

# Negotiated Connection Establishment Contract (general terms):



connection of subdivision  
(Developer reticulates and gifts reticulation)



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

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## Table of Contents

1.	WHAT DOCUMENTS MAKE UP THIS <i>CONTRACT</i> ? .....	3
2.	WHEN DOES THIS <i>CONTRACT</i> START AND FINISH? .....	3
3.	WHAT SERVICES IS THIS <i>CONTRACT</i> FOR?.....	3
4.	AGREEMENT AS TO <i>WORKS</i> .....	5
5.	WORKS PROGRAM.....	6
6.	CHANGES TO THE SCOPE.....	8
7.	SPECIAL PROVISIONS FOR <i>TRANSFERABLE ASSETS</i> .....	9
8.	PRECONDITIONS TO CONSTRUCTION .....	11
9.	INSPECTIONS AND AUDITS .....	12
10.	RECTIFICATION.....	13
11.	PROCESS FOR ISSUE OF CERTIFICATE OF ACCEPTANCE .....	13
12.	HOW MUCH WILL THIS COST? .....	16
13.	GOODS AND SERVICES TAX .....	17
14.	INSURANCE REQUIREMENTS .....	18
15.	LAND INTERESTS .....	18
16.	INFORMATION REQUIREMENTS .....	19
17.	LIABILITY .....	20
18.	COMPLAINTS AND DISPUTE RESOLUTION .....	21
19.	COMPLIANCE WITH LAWS.....	21
20.	DEFAULT AND TERMINATION .....	22
21.	AMENDMENT AND ASSIGNMENT.....	23
22.	NOTICES .....	23
23.	GENERAL.....	24
24.	GLOSSARY .....	26
25.	INTERPRETATION.....	32

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

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## 1. WHAT DOCUMENTS MAKE UP THIS CONTRACT?

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

## 2. WHEN DOES THIS CONTRACT START AND FINISH?

### 2.1. Contract term

This *contract*:

- (a) starts when we receive *your* acceptance of the relevant *connection offer* in the manner, and within the relevant timeframe for acceptance, set out in the *connection offer* letter; and
- (b) ends on the *expiry date* (unless terminated earlier).

### 2.2. Early termination

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

## 3. WHAT SERVICES IS THIS CONTRACT FOR?

### 3.1. Provision of connection service and consideration

- (a) This *contract* is for us to provide you with the requested *connection service*, which principally involves the *Ergon Energy activities*.

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

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- (b) The relevant *works* under this *contract* are:
- (i) *you* arranging for the *DD&C Works* (such as design and construction and testing of the electrical reticulation within the *real estate development*) at *your* cost (as these are contestable services and *you* have elected to procure these *works yourself* rather than request *us* to do them);
  - (ii) *us* carrying out the *Ergon Energy activities* required to enable *connection* of the electrical reticulation in *your real estate development* to *our distribution system* in exchange for a component of the *price*;
  - (iii) *you* transferring the *transferable assets* to *us*, free of charge, for *us* to own and be responsible for the ongoing operational and maintenance undertakings, which will relieve *you* of these obligations; and
  - (iv) *us* carrying out the *final commissioning* of the *transferable assets* in exchange for a component of the *price*.
- (c) The scope of the *Ergon Energy activities* has been determined by *us* based on:
- (i) *our* knowledge of *our distribution system* in the vicinity of the *real estate development* from a desktop perspective (i.e. without a detailed site inspection);
  - (ii) publicly available information concerning the requirements of local, State and Federal governments and relevant environmental, cultural and world heritage issues;
  - (iii) the electrical maximum demand, voltage and number of phases for each lot within the *real estate development* being as set out in *our* Distribution Design Manual, which is available on *our* website ([www.ergon.com.au](http://www.ergon.com.au));
  - (iv) certain underlying assumptions about the relevant conditions at or near the *real estate development* and the impact of any confirmation or otherwise of those assumptions on the relevant *works*, which will occur either during the design stage or during the construction stage (for example and without limitation, the location of the *connection point*, the density and location of vegetation, the relevant technical parameters of the soil, the presence of hard rock, patterns of drainage, other artificial or natural surface and subsurface structures and conditions and the time taken to obtain necessary *approvals* or *land interests*); and
  - (v) information provided by *you*,
- and it will be fine-tuned during the site inspection, design, construction and other relevant processes, including to comply with *our* policies, *good electricity industry practice*, relevant *energy laws* and *Australian Standards*, and may be affected by *force majeure* events.

## 3.2. Services that are not included

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

## 3.3. Certificate of electricity supply

If requested by *you*, and provided that *you* have:

- (a) complied with *your* obligations under this *contract* (including, in particular, providing the *performance security*); and
- (b) confirmed that any *land interests* to be procured by *you* for *us*, as set out in the *DD&C Works*, will be provided,

*we* will provide *you* with a *certificate of electricity supply* for the relevant local government.

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

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## 4. AGREEMENT AS TO WORKS

### 4.1. General

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

### 4.2. Manner of carrying out works

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

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

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

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

### 4.3. Liaison personnel

- (a) Each party must nominate at least one person to review the progress of, and coordinate, the *works*, being, initially, the persons set out as such in the *site-specific terms*, or as subsequently notified by one party to the other.
- (b) Each party must give the other party the name and contact details of their *liaison personnel*.
- (c) The parties each authorise their *liaison personnel* to adopt rules, procedures, timetables and schedules to coordinate and plan *works* in relation to the installation and interfacing of equipment, testing and commissioning procedures and any other tasks in respect of which such coordination is necessary or highly desirable to ensure safety and timely completion.
- (d) Notwithstanding anything else in this *contract*, the *liaison personnel* are not authorised to amend this *contract* or bind the parties on any matter except in relation to the progress and coordination of the *works*.
- (e) The *liaison personnel* must regularly meet to carry out their responsibilities, and must record in writing any rules, procedures, timetables, schedules or other relevant matters and provide a copy of these to the other party.
- (f) The *liaison personnel* for one party have equal authority to the *liaison personnel* for the other party, and all decisions must be unanimous.
- (g) The *liaison personnel* may escalate any issues for resolution in accordance with clause 18.

### 4.4. General provisions for *DD&C Works*

- (a) *You* must:
  - (i) arrange for the design, installation and testing of all work necessary to complete the *DD&C Works* (and any other activities required to allow *us* to provide the *connection service*):
    - (A) at *your* own risk and expense;
    - (B) such that the *DD&C Works* are started and finished by the relevant deadline dates set out in the *works program*;
    - (C) in accordance with all relevant *laws*, including, without limitation, those pertaining to health and safety, planning, cultural heritage, nature conservation and the environment, and all *technical and safety obligations*; and

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

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- (D) using appropriately qualified personnel (such as, for electrical works, a qualified electrical contractor, and for any work on or near exposed electrical parts, an authorised person as defined in the *Electrical Safety Act 2002* (Qld));
  - (ii) obtain any relevant *approvals* and *land interests* for you to carry out the *DD&C Works*, at your own risk and expense; and
  - (iii) other than as approved under this *contract*, not allow the attachment of anything to, or any interference with, *our* equipment.
- (b) You must seek your own independent legal advice on any laws (including, without limitation, planning laws, environmental laws, cultural heritage laws, workplace laws and safety laws) relevant to the proposed *connection* and the *DD&C Works*.

## 4.5. General provisions for *Ergon Energy activities*

- (a) We must:
- (i) endeavour to obtain all *approvals* necessary to carry out the *Ergon Energy activities*; and
  - (ii) give you any information that you reasonably request about your *connection* that is in our possession or control as soon as reasonably practical following a written request from you in accordance with relevant privacy and right to information laws.
- (b) Provided that we act reasonably, we are entitled to determine:
- (i) the design, specifications and any other requirements for the *Ergon Energy activities*; and
  - (ii) the point of origin, the route, the length, and any facilities required for the *connection point* and any other assets installed by us under this *contract*.
- (c) Until the issue of the *certificate of acceptance*, our obligations extend down to the *connection point* (as defined by us) and not beyond.
- (d) We may carry out any other works or other activities required to deal with an emergency as part of providing the *Ergon Energy activities*.
- (e) We may subcontract or assign our rights or obligations under this *contract* as we determine.

## 5. WORKS PROGRAM

### 5.1. Expected timeframes

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

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

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- (c) Each party must provide the other party with updates to their relevant sections of the *works program*, if so requested.
- (d) *You*:
  - (i) acknowledge that the completion of the *Ergon Energy activities* will depend on when various components of the *DD&C Works* and *your* obligations under this *contract* are completed; and
  - (ii) must do all things necessary to be done by *you*, including, without limitation, providing access, obtaining relevant *approvals* and *land interests*, and carrying out other relevant *DD&C Works* and obligations under this *contract*, to allow the above timeframes to be achieved.
- (e) The parties may from time to time agree to update or amend any of the *site-specific terms* to meet the objectives of the parties. Note that any costs incurred by *us* in connection with any agreed amendment of the *site-specific terms* will become part of the *price*.

## 5.2. Qualifications on timeframes

Despite clause 5.1(a):

- (a) *we* do not have to start the *Ergon Energy activities* until:
  - (i) *you* have paid *our* tax invoices for:
    - (A) the expenses directly and reasonably incurred by *us* in assessing *your connection application* and making a *connection offer*; and
    - (B) the amount specified as being payable upon acceptance in the *site-specific terms*; and
  - (ii) if a *certificate of electricity supply* is required, *you* have provided a *performance security*;
- (b) *we* do not have to finish the *Ergon Energy activities* until:
  - (i) *you* have complied with *your* obligations under this *contract* (including, without limitation, providing any necessary *land interests* that *you* are required to provide to *us*, as set out in the *site-specific terms* so that *we* can carry out the *Ergon Energy activities*); and
  - (ii) *we* have obtained all necessary *approvals* and *land interests* required to proceed with the *Ergon Energy activities*;
- (c) if there is a relevant *force majeure event*, *we* may delay the start and/or finish of the *Ergon Energy activities* by as long as that *force majeure event* affects the provision of the *connection service*;
- (d) if there is a *latent issue* that affects the carrying out of the *Ergon Energy activities*, *we* may delay the start and/or finish of the *Ergon Energy activities* by as long as required to address that *latent issue*; and
- (e) if *we* become aware of any material information or circumstances (including, without limitation, any inaccuracy in the *connection application* or anything that is discovered at or near the *real estate development* that will affect the relevant *works* or the carrying out of the *Ergon Energy activities*) which, had *we* known of it before this *contract* started, would have resulted in *us* not entering this *contract*, then *we* may take such reasonable actions as *we* consider appropriate in the circumstances.

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

- (a) Each party must keep the other party informed of that party's progress in carrying out their respective *works* in light of the agreed milestones.
- (b) If a party believes that it will not be able to achieve a milestone, then it must immediately notify the other party of that fact and comply with the relevant provisions of clause 6.

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

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## 6. CHANGES TO THE SCOPE

### 6.1. Material changes

- (a) Each party is entitled to make changes to its *works* at its own cost and without notice to the other party, so long as they do not result in a *material change*.
- (b) The parties acknowledge that there may be *material changes* to the *Ergon Energy activities* and/or *DD&C Works*, including, for example and without limitation, where:
  - (i) changes are identified during the site inspection, design, construction and other relevant processes, including as a result of the confirmation or otherwise of various assumptions made in respect of the *works*, as referred to in clause 3.1(c)(iv) (for example and without limitation, redesign of reinforcements that might be required to cater for the actual site conditions);
  - (ii) heavy vegetation clearing is, and/or tree removals are, required;
  - (iii) these changes are needed to remove, overcome or mitigate the effects of, or caused by, a *force majeure event*;
  - (iv) there is a delay in obtaining, or inability to obtain, any required *approvals* or *land interests*;
  - (v) there are prolonged delays in commencing or completing the *Ergon Energy activities* that are attributable to *your* actions;
  - (vi) there are changes to any approved documentation or *works* plans;
  - (vii) something adversely affects the ability of a party to meet a milestone or relevant completion date, which, in *our* case, may require *us* to subcontract a part of the *Ergon Energy activities* (which will have both cost, timing and scope impacts on those activities);
  - (viii) there is a substantive discrepancy between the amounts paid by *you* and the amounts which *we* are entitled to receive under this *contract*;
  - (ix) *you* make relevant changes to the *works* on *your* side of the *connection point*;
  - (x) *you* make a specific request for the change;
  - (xi) there is a need to realign the timing and/or content of the *Ergon Energy activities* with the *DD&C Works*; or
  - (xii) there is a relevant change in law.

### 6.2. When a *change notice* must be issued

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

- (a) the event or circumstance giving rise to the requirement for the change;
- (b) the impact that this event or circumstance is expected to have on the *works* (including, for example, any consequential changes to, or delays in, the *works*, or any changes to the cost of the *works*);
- (c) potential mechanisms for mitigating the impact on the *works* (provided that these are consistent with *good electricity industry practice*), and any particular advantages or disadvantages of these suggested mechanisms (for example and without limitation, *us* subcontracting part of the *Ergon Energy activities* may result in shorter timeframes but higher costs); and
- (d) where there is a change to approved documentation, a marked up copy of that documentation.



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

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## 6.3. Addressing a change notice

- (a) Within 10 *business days* of a *change notice* being issued, the parties must commence liaison with each other in respect of the *material change*, including:
  - (i) sharing any further information about the *material change*;
  - (ii) arranging to meet to agree upon the appropriate actions to take to proceed with the *works* to achieve the purposes of this *contract* in a manner acceptable to each party (acting reasonably), provided that it is reasonable for *us* to withhold *our* agreement if the proposed actions may, or would, result in:
    - (A) the *DD&C Works* not complying with the requirements of this *contract*;
    - (B) an adverse effect on the proposed connection, *our* other customers or the *distribution system*;
    - (C) an increase in the cost of completing the *Ergon Energy activities*; or
    - (D) a change to the *Ergon Energy activities* that is not acceptable to Ergon Energy; and
  - (iii) upon reaching agreement, document this agreement.
- (b) Where the agreed actions result in changes to the scope or timing of the *Ergon Energy activities*, *we* must use reasonable endeavours to determine the estimated change in the *price*, and provide these estimates to *you*.
- (c) Unless otherwise agreed, or where necessary or highly desirable in the circumstances, the parties must not commence any changes to the *works* in connection with a *material change* prior to the agreement being documented as referred to above.
- (d) If the parties cannot reach agreement, either party may terminate this *contract* by written notice to the other party.

## 7. SPECIAL PROVISIONS FOR TRANSFERABLE ASSETS

### 7.1. General

- (a) *You* acknowledge that *we* wish to ensure that any *transferable assets* are compatible with the existing *distribution system*, and, accordingly, *you* must ensure that the following is met for any *DD&C Works* relevant to the *transferable assets*:
  - (i) only *designers* and *contractors* are used who are listed in *our approved suppliers register*;
  - (ii) *we* are notified of the name and address of any *designer* or *contractor* engaged to carry out any of these *works*, prior to that *designer* or *contractor* starting any such *works*; and
  - (iii) these *works* are done in accordance with:
    - (A) all *approvals* and *technical and safety obligations*;
    - (B) this *contract*;
    - (C) the *final design documentation*;
    - (D) the *specifications* and any construction standards specified by *us*;
    - (E) materials complying (as a minimum) with Form PW000400R100 Approved Products List.
- (b) *You* warrant that, when completed, the *transferable assets* will be in accordance with the requirements of this *contract* and fit for their purpose.

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

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## 7.2. Approved suppliers register

We have lodged an exclusive dealing notification to the Australian Competition and Consumer Commission in accordance with section 93(1) of the *Competition and Consumer Act 2010* (Cth) in relation to the requirement that *you* must, and must ensure that any *contractor* does, engage *contractors* and *designers* from the *approved suppliers register*. As at the date of this *contract*, that notification has not been revoked.

## 7.3. Design review process

- (a) *You* must, at least one month prior to the expected time for starting the construction component of any *DD&C Works* relevant to the *transferable assets*, submit the *preliminary design documentation* to *us*, together with a *certificate of design – electrical reticulation* and, if any of the *transferable assets* comprise *street lighting*, a *certificate of design – street lighting*, for *our* review.
- (b) The *preliminary design documentation* and the *certificates of design* must be:
  - (i) certified by an *RPEQ* engaged by *you* at *your* cost who has experience in the relevant types of work; and
  - (ii) in a format acceptable to *us*, acting reasonably (provided that *we* must give *you* details of such acceptable formats on request).
- (c) *Our* review does not relieve *you* of *your* obligations under this *contract*.
- (d) *We* must, within a reasonable time of receiving the *preliminary design documentation*, review this and advise *you* either:
  - (i) of any changes which *we* require to the *preliminary design documentation*, together with the reason for those changes; or
  - (ii) that the *preliminary design documentation* is acceptable to *us*, at which point it will become the *final design documentation*.
- (e) If *we* notify *you* that changes are required, *you* must make the necessary changes and, before starting the construction component of the *DD&C Works*, resubmit the amended *preliminary design documentation* (which must be recertified by an *RPEQ*) to *us* for *our* review, and clause 7.3(d) will apply to that resubmitted *preliminary design documentation*.
- (f) Please note that additional *charges* will apply to resubmission of the *preliminary design documentation* or requests for further information, which *we* will calculate in accordance with clause 12.2(b).
- (g) If *you* wish to amend the *final design documentation*, *you* must:
  - (i) submit to *us* a revised copy of the relevant *design documentation*, marked up to show the proposed changes and the final installation to be constructed; and
  - (ii) obtain *our* written approval to the changes, which *we* will not unreasonably withhold, provided that the changes:
    - (A) do not have a material adverse effect on the provision of the *Ergon Energy activities*, any provision of customer connection services or the *distribution system*; and
    - (B) do not result in an increase in the cost of carrying out the *Ergon Energy activities*; and
  - (iii) not commence or continue any *works* proposed to be changed until *we* have advised that the proposed changes are acceptable to *us*.

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

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## 7.4. Street lighting requirements

- (a) Where the *transferable assets* include *street lighting*, you must ensure that the design for any *street lighting* is:
  - (i) approved by the relevant *street lighting customer*;
  - (ii) in accordance with AS/NZS 1158, unless the relevant *street lighting customer* has approved any discrepancies from that standard and completed a *non-standard street lighting indemnity deed*;
  - (iii) positioned so that it does not interfere with the proposed location of any driveways; and
  - (iv) certified by an *RPEQ* (engaged by you at your cost who has experience in the relevant types of work) as being in accordance with the relevant standards or as requested by us.
- (b) Any non-standard light fittings must be metered in accordance with the *QECMM Documents*, and may form part of the *transferable assets*. You should note that where replacement of these light fittings is required in the future, we will replace these with standard light fittings.

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

- (a) You must, prior to starting the construction component of any *DD&C Works* relevant to the *transferable assets*, provide satisfactory evidence to us that:
  - (i) for any such *works* outside the boundary of the *real estate development*, (including in a *publicly controlled place*), that:
    - (A) for a *publicly controlled place* – the local government or other entity with responsibility for the place; or
    - (B) for a place other than a *publicly controlled place* – the owner and each lessee or occupier of the place,have stated in writing that they have no objection to those *works*; and
  - (ii) appropriate *approvals* and *land interests* have been obtained by you to permit you to undertake those *works* (including providing copies of all of the *approvals* and *land interests* required to be obtained to carry out the *DD&C Works* and to access, install, own, operate, maintain, replace and remove the *transferable assets*).
- (b) We must, acting reasonably and within a reasonable time after receiving the evidence, notify you as to whether that evidence is satisfactory to us and we consider that the *approvals* and *land interests* are in an appropriate form.

## 8. PRECONDITIONS TO CONSTRUCTION

### 8.1. Preliminary meeting

- (a) At least one week prior to starting the construction component of the *DD&C Works*, a site meeting must be held with *representatives* of us, you and your *contractors* to:
  - (i) ensure that you and your *representatives* (including *contractors*) fully understand the obligations under, and the requirements of, this *contract*;
  - (ii) obtain your reconfirmation of the schedule of milestone activities submitted under clause 5.1(a)(ii); and
  - (iii) facilitate consultation, cooperation and coordination between the parties about safety and health risks.
- (b) If we, acting reasonably, consider that the purpose of the meeting set out above has been met, we must ratify the outcome of the meeting as soon as practicable after the meeting.

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

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## 8.2. General requirements

- (a) You may only start the construction component of the *DD&C Works* after we have advised in writing that:
  - (i) we have advised in writing that the *preliminary design documentation* is acceptable and has become the *final design documentation*;
  - (ii) we have advised in writing that the evidence described in clause 7.5(a) is satisfactory to us; and
  - (iii) we have ratified the outcome of the meeting under clause 8.1(b).
- (b) You:
  - (i) acknowledge that certain components of the *transferable assets* will, as part of the *DD&C Works*, be concealed, covered, buried or otherwise treated in a manner that will result in those components not being readily visible to a person attempting to view those components, and that the purpose of clause 8.2(b)(ii) is to provide us with reasonable assurance that we will not assume any risk in excess of its acceptable risk profile;
  - (ii) must, prior to any *DD&C Works* that relate to the *transferable assets* being treated as contemplated in clause 8.2(b)(i), notify us that such treatment will occur and the expected date of such treatment, provided that such notification must be given sufficiently prior to the expected date of such treatment to enable us to carry out an audit of those components of the *DD&C Works*; and
  - (iii) must not treat any *transferable assets* as contemplated in clause 8.2(b)(i) unless we have either carried out an audit, or notified you that we do not intend to undertake such an audit.
- (c) If we receive a notice under clause 8.2(b)(ii), we must, within five *business days*, respond to you as to whether we intend to carry out an audit or not.

## 9. INSPECTIONS AND AUDITS

### 9.1. Inspections

- (a) While we (and other third parties) periodically carry out inspections for the purpose of auditing and assessing the extent to which contractors are complying with the *energy laws*, we do not represent or warrant that:
  - (i) we (or any third party) will carry out an inspection at *your real estate development*;
  - (ii) any inspection carried out by us or any third party will identify any or all faults or defects, or that the electrical installation and relevant assets *connecting* the electrical reticulation in the *real estate development* to *our distribution system* are free from faults or defects if none are identified in the course of any such inspection,and you remain responsible and liable for all work undertaken by *your* contractors.
- (b) Whether or not we have carried out an inspection at *your real estate development*, we may, at any time, notify you of any work in relation to the electrical installation or the *connection assets* that must be completed by you (including through *your* electrical contractor) in order to comply with this *contract*. Failure to rectify such a defect may result in *disconnection* of the *real estate development* from *our distribution system* in accordance with the *energy laws*.

### 9.2. Audits

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

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

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## 10. RECTIFICATION

### 10.1. Ability to rectify non-compliances

- (a) If, prior to transfer of the *transferable assets*, we discover or become aware of any non-compliance of the *transferable assets* with this *contract*, the *final design documentation*, the *specifications*, the *technical and safety obligations*, relevant *approvals* or relevant *laws*:
  - (i) we must notify *you* of this non-compliance;
  - (ii) we will reject the *certificate of completion*; and
  - (iii) *you* must ensure that the non-compliance is rectified within the time specified by *us*, acting reasonably (and, in any case, before the *certificate of acceptance* is issued).
- (b) *You* may continue to perform other work during the period of rectification of the non-compliance, unless otherwise advised by *us*.
- (c) Where it is necessary for *us* to take action in an emergency, we must provide details to *you* of the action taken as soon as practicable thereafter.
- (d) If, during the *defects rectification period*, we discover any *transferable asset defect*, we must provide *you* with details of those defects.

### 10.2. Failure to rectify

- (a) If:
  - (i) *you* fail to rectify any non-compliance notified under clause 10.1(a) within the time specified by *us*; or
  - (ii) there is an emergency; or
  - (iii) clause 10.1(d) applies,we may, at *our* election, do one or more of the following:
  - (iv) rectify the non-compliance and recover the costs of doing so as part of the *price*;
  - (v) for clause 10.2(a)(i), terminate the *contract*; and
  - (vi) exercise all other remedies that may be available to *us*.
- (b) Any action taken by *us* under this clause is without prejudice to any other rights or remedies that we may have against *you*.

## 11. PROCESS FOR ISSUE OF CERTIFICATE OF ACCEPTANCE

### 11.1. No Encumbrances

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

### 11.2. Preconditions to issue of *certificate of acceptance*

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

- (a) *you* have given *us*:
  - (i) a *certificate of completion – civil works*;
  - (ii) a *certificate of completion – electrical works*;
  - (iii) all things necessary for *us* to operate and maintain the *transferable assets* as part of its *distribution system*, including, as required, keys, access cards and the like;

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

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- (iv) detailed marked up drawings illustrating any changes from the *final design documentation*, provided that the mark-ups comply with the relevant requirements in the *specifications*;
  - (v) detailed “as constructed” plans in respect of the *transferable assets* signed and dated by *your* appropriate *representative*, and, if the “as constructed” plans materially differ from the *final design documentation*, certification by an *RPEQ*, engaged by *you* at *your* cost who has experience in the relevant types of work comprising the *transferable assets*, that the *transferable assets* have been designed in accordance with this *contract*, and are fit for service;
  - (vi) a cable location log;
  - (vii) copies of test certificates, test results and inspection and test plans, including, without limitation, earthing resistance test results and a *certificate of completion – electrical testing*;
  - (viii) manuals for any materials and equipment;
  - (ix) copies of any technical documentation received from any manufacturers or suppliers of materials or equipment forming part of the *transferable assets*;
  - (x) manufacturer test certificates for any materials and equipment;
  - (xi) completed asset data sheets for each item of equipment included in the *transferable assets*, in the form provided by *us* to *you* during formulation of the inspection and test plans;
  - (xii) the warranties referred to in clause 11.2(c), in a form which enables *us* to claim under those warranties;
  - (xiii) an enforceable undertaking that the *transferable assets* are free from any *encumbrances*;
  - (xiv) copies of all assessments, agreements and management plans that have been carried out under relevant laws, including, without limitation, native title, cultural heritage and environmental laws; and
  - (xv) any other documents or items that are reasonably required by *us* to enable *us* to access, own, install, operate, maintain, replace and remove the *transferable assets* in the same manner as for the rest of *our distribution system*; and
- (b) where any of the *transferable assets* are located on land that is not owned by *us*, *we* are satisfied that *we* will, upon issue of the *certificate of acceptance*, hold appropriate and relevant *land interests* to access, own, operate, maintain, replace and remove such *transferable assets*;
- (c) *you* have:
- (i) obtained from the *contractor* or any sub-contractor to the *contractor* or any supplier or manufacturer of any of the materials or equipment forming part of the *transferable assets* any warranties obtained in respect of such *works*, materials or equipment;
  - (ii) ensured that any such warranties will be transferred to *us* upon issue of the *certificate of acceptance*; and
  - (iii) paid all monies due and payable by *you* under this *contract*, and provided *us* with all securities required under this *contract*;
- (d) *we*:
- (i) have given *you* a notice stating that, in *our* reasonable opinion, the *Ergon Energy activities* (apart from transfer and *final commissioning*) have been completed;
  - (ii) have completed all audits of the *transferable assets* that *we* wish to undertake;

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

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- (iii) are, as far as is reasonably possible (taking into account that *final commissioning* has not yet occurred) satisfied that the *transferable assets* have been completed in accordance with, and otherwise comply with, the requirements of this *contract* and are suitable for use with *our* relevant assets to permit the connection of the electrical reticulation in the *real estate development* to *our distribution system* and the transfer of the *transferable assets* to *us*; and
- (iv) have received sufficient information to populate *our* internal asset registers with the *transferable assets* and expand *our* network operating model to incorporate the relevant details, and are satisfied that *our* asset registers and network operating model include all the relevant information about the *transferable assets* to enable *us* to operate and maintain those assets as part of *our distribution system*; and
- (v) are satisfied that, upon issue of the *certificate of acceptance*, *we* will hold appropriate and relevant *land interests* to access, own, operate, maintain, replace and remove the *transferable assets*.

## 11.3. Non-performance report

If *you* have not complied with any of the matters set out in clause 11.2 that are *your* responsibility, *we* may issue *you* with a notice setting out the outstanding matters, and *you* must rectify those matters before *we* can issue a *certificate of acceptance*.

## 11.4. Issue of a certificate of acceptance

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

## 11.5. Final commissioning and preconditions to energisation

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

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



- (ii) we have completed all audits of the *transferable assets* that we require to complete our due diligence and are satisfied (acting reasonably) with the outcomes of this due diligence.

## 12. HOW MUCH WILL THIS COST?

### 12.1. Cost of DD&C Works

You must carry out the *DD&C Works* at your cost.

### 12.2. Connection charges

- (a) You must pay us the *price* for the *Ergon Energy activities* (which comprises the *connection charges* and any other costs referred to in this *contract*).
- (b) Our estimate of the *price*, and the due dates for payment of the components of the *price*, are specified in the *site-specific terms*. Where the relevant charges are subject to economic regulation, they are calculated in accordance with our *Connection Policy* and *ACS Price List*, which are available on our website ([www.ergon.com.au](http://www.ergon.com.au)). Otherwise, the charges will be agreed between the parties.
- (c) Please note that the charges specified in the *site-specific terms* are only an estimate based on the scope (which is based on the matters referred to in clause 3.1(c)) and are likely to vary as a result of fine tuning during the detailed design process, and may also vary where there are time delays or where changes are required to the scope of this *contract* or the relevant *connection services* to comply with *good electricity industry practice* or relevant *energy laws* (refer the change provisions in clause 6), or otherwise under this *contract* where an event occurs and any costs that we incur as a consequence of that event will become part of the *price*.

### 12.3. Additional costs of early termination

- (a) If this *contract* is terminated before the *certificate of acceptance* has been issued, any of the following costs that are relevant will become part of the *price*:
  - (i) all costs incurred by us in relation to the *connection service* (including the *Ergon Energy activities*) up to the date of termination; and
  - (ii) the total of the following estimated or actual costs incurred by us as a result of your failure to proceed with the *DD&C Works*:
    - (A) the reasonable costs incurred by us to finish the *DD&C Works* or *Ergon Energy activities* such as are necessary to provide a supply of electricity to any residential purchaser of any lot within the *real estate development*;
    - (B) in connection with terminating contracts with subcontractors under which the subcontractors were to carry out any part of the *Ergon Energy activities*;
    - (C) the reasonable costs to recover installed and reusable assets that are dedicated to you;
    - (D) the reasonable costs to recover and dispose of unusable components of the *connection service* that are dedicated to you; and
    - (E) the reasonable costs incurred by us to reconfigure the *distribution system*, which costs are attributable to the failure to proceed with this *contract*,less the value of any reusable components that can be used by us as the basis for determining *network charges* payable by other users as and from the date of termination, provided that we attach relevant supporting documentation to the tax invoice(s) for these costs.
- (b) For the avoidance of any doubt, the costs referred to in clause 12.3(a) include costs payable by us to third parties arising directly out of the *connection service* after the date of termination, the liability for which was incurred before the date of termination.



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

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

## 12.4. Net amount payable upon completion

- (a) Upon issuing the *certificate of acceptance*, we will carry out a reconciliation of the amounts received from you under this *contract* and the amounts to which we are entitled to receive in accordance with this *contract* in respect of the carrying out of the *Ergon Energy activities*, and thus calculate the *net amount payable upon completion*.
- (b) We will account for the following in calculating the *net amount payable upon completion*:
  - (i) the *transformer equalisation payment*; and
  - (ii) any other monies owed by you to us, or vice versa, under this *contract*.
- (c) Within 30 *business days* of issuing the *certificate of acceptance*, we will advise you of the *net amount payable upon completion*, together with, if you owe money to us, a statement (in the form of a tax invoice) of the amount that you owe us.
- (d) If the *net amount payable upon completion* shows that we owe money to you:
  - (i) you must submit a tax invoice to us for the *net amount payable upon completion*; and
  - (ii) upon receiving the tax invoice referred to in clause 12.4(d)(i), we will pay any monies owed by us to you.
- (e) If the *net amount payable upon completion* shows that you owe money to us, you must pay that money in the manner, and by the date, set out in the relevant statement.

## 12.5. Tax invoices

- (a) We will issue tax invoices for any component of the *price* payable by you in connection with this *contract*, and you must pay us in the manner, and by the date, set out in the tax invoice.
- (b) Where we are entitled to recover costs under this *contract* (such as when they are specified to be part of the *price*), we must:
  - (i) advise you of those costs as soon as reasonably possible after we have determined those costs; and
  - (ii) provide you with a tax invoice under clause 12.5(a) and supporting documentation for those costs.

## 12.6. Performance security

- (a) If you request a *certificate of electricity supply* (as referred to in clause 3.3), you must provide us with a *performance security* to secure your performance of the obligations under this *contract* before we issue the *certificate of electricity supply*.
- (b) A *performance security* must be for the amount stated in the *site-specific terms* and in the form of a cash deposit, bank guarantee, surety bond or other form of security acceptable to us.
- (c) We may draw down upon the *performance security* whenever you owe money to us under this *contract* and this amount remains unpaid for at least five *business days* after the due date for payment specified in the relevant tax invoice.
- (d) Subject to your compliance with this *contract*, we must return the *performance security* to you within 20 *business days* of issuing the *certificate of acceptance*.

## 13. GOODS AND SERVICES TAX

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

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

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- (b) If a party is a GST group member, relevant references to GST and input tax credits include references to GST and input tax credits for the representative member of the GST group.
- (c) All amounts in this *contract* are GST exclusive unless otherwise indicated.
- (d) If a GST exclusive amount in this *contract* is consideration for a taxable supply, then the party required to pay the amount must, subject to the supplier issuing a tax invoice, pay both the GST exclusive amount and, at the same time, an additional amount equal to the GST payable on the supply.
- (e) For the avoidance of doubt, if an amount of non-monetary consideration is provided for a taxable supply made under this *contract*, clause 13(d) applies in respect of the GST payable relating to the non-monetary consideration. The parties agree that the GST inclusive market value of any amount of non-monetary consideration will be determined by *us* in accordance with the principles accepted by the Australian Taxation Office. *You* must provide, or procure the *contractor* to provide, any information or assistance as is reasonably necessary for the purpose of determining the GST inclusive value of any non-monetary consideration.
- (f) Where non-monetary consideration is provided, the parties must share information as required to determine the appropriate amount of GST.
- (g) Where a supplier incurs a cost or expense for which it may be reimbursed by, indemnified against, claim against or set-off against another party under this *contract*, the amount to be paid or credited is the cost or expense (reduced by any relevant input tax credit) plus the amount attributable to GST (as referred to above).
- (h) If an adjustment event occurs, the supplier must issue a valid adjustment note and the parties must then make appropriate payments to reflect the required adjustment of GST.
- (i) If, after the recipient either pays any GST on, or claims an input tax credit for, acquisitions made under this *contract*, the supply to which either GST paid attached or the entitlement to the input tax credit arose is determined by the Australian Taxation Office not to be a taxable supply, the recipient can recover from the supplier an amount equal to the amount either paid in respect of the GST or claimed as an input tax credit.

## 14. INSURANCE REQUIREMENTS

- (a) *You* must, while the *DD&C Works* are being carried out and up until the date on which the *certificate of acceptance* is issued, obtain and maintain:
  - (i) public liability insurance to the value of \$10 million and on terms acceptable to *us*, covering liability to third parties (including *us*) arising from third party property and third party injury claims arising from *your* negligence in connection with the carrying out of the *DD&C Works*; and
  - (ii) all other insurances required by *law* in respect of any persons, plant or equipment employed in the carrying out of the *DD&C Works*.
- (b) *You* must ensure that the entity that carries out the design *works* in respect of the *DD&C Works* carries a policy of professional indemnity insurance that covers liability howsoever arising in connection with the provision of the professional services or breach of professional duty by that entity carrying out the design of the *DD&C Works*, has a limit of liability of not less than \$1 million for any one claim and in the aggregate, and is maintained for a period of 6 years after the issue of the *certificate of acceptance*.
- (c) Written evidence of the above insurances must be provided to *us* on request.

## 15. LAND INTERESTS

- (a) *You* consent to *us* and *our representatives*:

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

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- (i) (together with any plant, equipment or vehicles) having non-exclusive access to land and improvements controlled by *you* (including, without limitation, to any metering equipment owned by *us*) in connection with the *connection service* (including to confirm compliance with the *technical and safety obligations* or to install any plant or equipment on the *real estate development*) and the *energy laws*; and
- (ii) accommodating on *your real estate development* all plant and equipment necessary for the connection (including, without limitation, metering equipment).
- (b) *You* must, if required by *us*, grant or procure the granting to *us* of an easement or other interest over land (such as by providing a consent to works, which is a simple legal document giving *us* permission to build and maintain infrastructure on private property) on terms consistent with *our* design standards that are part of the *specifications*, satisfactory to *us* and at no cost to *us*, to secure tenure for any *transferable assets* and any assets installed by *us* on the *real estate development*, provided that, if an easement is required:
  - (i) it must be granted in perpetuity by the registered owner of the land;
  - (ii) it must be as set out on *our* relevant standard easement conditions registered with the Queensland Department of Natural Resources and Mines (dealing numbers 710384570 (freehold) and 711950329 (State land, leasehold and reserves)); and
  - (iii) *you* must procure a survey plan of that easement, suitable for registration, and any other necessary documentation, which must be sent to *us* for review, approval and execution prior to lodgement.
- (c) *You* must ensure that:
  - (i) *we*, and our *representatives*, can access the land and improvements as described in clause 15(a)(i) in a manner that is safe, unhindered and unobstructed (including protecting against animal threats and attacks); and
  - (ii) *you* take reasonable precautions to protect from harm all plant and equipment (including, without limitation, metering equipment) that is installed on the *real estate development* by *us* or *our representatives* pursuant to this *contract*.

## 16. INFORMATION REQUIREMENTS

- (a) *You* must give *us* all information:
  - (i) about any risks, hazards or other actual or potential concerns that could impact in any way on the nature, cost or timing of any part of the *Ergon Energy activities*, as soon as possible (and in any case before *we* start the *Ergon Energy activities*); and
  - (ii) that *we* reasonably ask *you* for in connection with this *contract*.
- (b) *You* must notify *us* immediately if:
  - (i) any information that *you* previously gave *us* stops being accurate; or
  - (ii) *you* become aware of any matter or thing that might affect the nature, cost or timing of any part of the *connection service*, or anything *we* must do under this *contract*.
- (c) The information and notification requirements in clauses 16(a) and 16(b) apply not just to core matters related to the physical *connection* but also to ancillary matters such as relevant control, washdown and quarantine procedures designed to prevent the spread of noxious weeds, plant diseases, invasive animals and pests.
- (d) *You* must ensure that all information *you* give *us* is correct, and that *you* do not mislead or deceive *us* in any way.
- (e) *You* should quote the Ergon Energy Work Request No. set out on the cover page in all communications with *us*.

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

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## 17. LIABILITY

### 17.1. General

- (a) This clause 17 survives the expiry or earlier termination of this *contract*.
- (b) Despite any provision of this *contract*, we will not be liable to *you* for any liability arising from delays to the progress or completion of the *Ergon Energy activities* for any reason, to the full extent permitted by law, except to the extent that this is the result of *our* failure to observe *good electricity industry practice*, or *our* negligence, bad faith, wilful misconduct, fraud, breach of laws or failure to comply with any relevant *approval* or this *contract*.
- (c) *You* acknowledge that any involvement by *us* in relation to the *DD&C Works*, including, without limitation, the *preliminary design documentation* under clause 7.3 and *your approvals* and *land interests* under clause 7.5, is:
  - (i) undertaken by *us* purely to provide reasonable assurance to *us* that *we* will not, upon transfer of the *transferable assets*, assume any risk in excess of *our* acceptable risk provide;
  - (ii) not to be taken to constitute any review, supervision, approval, consent, ratification or endorsement, and

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

### 17.2. Indemnity

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

- (a) all liability incurred by *us* in connection with *your* failure to comply with this *contract* or breach of warranty, or failure to comply with any other contract *you* are a party to, any *approvals* and any *laws*, except to the extent it arises from *our* negligence or wilful misconduct;
- (b) any payments we are required to make under the *Building and Construction Industry (Portable Long Service Leave) Act 1991* (Qld);
- (c) any claims against *us* by any of *your designers, contractors* or other *representatives*;
- (d) any loss to *us* or any claims against *us* for personal injury or death, or loss of, or damage to, any other property or loss of supply arising out of or as a consequence of the performance of the *DD&C Works* or the supply or installation of any equipment or material by or on behalf of *you*, except to the extent it arises from *our* negligence or wilful misconduct.

### 17.3. Competition and Consumer Act and other guarantees

- (a) The *Competition and Consumer Act 2010* (Cth) and other consumer protection laws provide certain statutory guarantees, conditions, warranties or rights that cannot be excluded or limited. Unless one of those laws requires it, *we* give no guarantee, condition, warranty or undertaking, and *we* make no representation to *you*, regarding any matter, including as to:
  - (i) the condition or suitability of electricity or the *connection service*; or
  - (ii) the quality, fitness or safety of electricity or the *connection service*, other than as set out in this *contract*.
- (b) Any liability *we* have to *you* under these laws that cannot be excluded but that can be lawfully limited is (at *our* option) limited to:
  - (i) providing equivalent goods or services provided under this *contract* in respect of the *real estate development*; or
  - (ii) paying *you* the cost of replacing the goods or services provided under this *contract* in respect of the *real estate development*, or acquiring equivalent goods or services.

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

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- (c) We are not otherwise liable to *you* for any loss *you* suffer if we have not been negligent or have not acted in bad faith.
- (d) Sections 97 and 97A of the *Electricity Act 1994* (Qld), sections 119 and 120 of the *NEL*, section 316 of the *NERL*, and any other limitations of liability or immunities granted under the *energy laws*, are not limited in their operation or application by anything contained in this *contract*, and may also limit or exclude *our* liability in some cases.

## 17.4. No liability for indirect or consequential loss

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

- (a) loss of profits, loss of contract, loss of opportunity, loss of goodwill, loss of business, loss of reputation, loss of revenue, loss of use of property, loss of production or anticipated savings, or any loss or corruption of data or loss of privacy of communications;
- (b) increased costs of working or labour costs;
- (c) costs of capital or costs of business interruption;
- (d) any indirect, incidental, special or consequential damage, cost, expense or loss; and
- (e) damage, cost, expense, loss or damage that otherwise is not a direct and immediate consequence of the breach,

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

## 17.5. Contributory negligence

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

## 18. COMPLAINTS AND DISPUTE RESOLUTION

- (a) If *you* have a query or complaint relating to this *contract*, *you* may lodge a complaint with *us* in accordance with *our* standard complaints and dispute resolution procedures, which are available on *our* website ([www.ergon.com.au](http://www.ergon.com.au)).
- (b) We must handle a complaint made by *you* in accordance with the relevant *Australian Standards* and *our* standard complaints and dispute resolution procedures, which are available on *our* website ([www.ergon.com.au](http://www.ergon.com.au)). We must provide *you* with a copy of these procedures upon request.
- (c) If *you* are not satisfied with the response to any query, complaint or dispute raised with *us*, and it is within the purview of the Energy and Water Ombudsman Queensland, *you* may refer the complaint or dispute to this Ombudsman.
- (d) This clause does not limit *your* rights under relevant *energy laws* to refer a dispute regarding this *contract* or the *connection charges* payable to *us* to the *AER*.
- (e) We must inform *you* of the outcome of any complaint made by *you* to *us*.
- (f) *You* can contact *us* using the relevant contact details set out on *our* website ([www.ergon.com.au](http://www.ergon.com.au)).

## 19. COMPLIANCE WITH LAWS

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

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

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- (b) *You*:
  - (i) acknowledge that health and safety for all persons and property, including the public, is of paramount importance to *us*;
  - (ii) commit to the highest standards of safety and health in respect of the design, construction, installation and performance of the *DD&C Works*; and
  - (iii) warrant that *you* are familiar with, and has the capability and resources to comply with, its obligations for safety and health under relevant *laws* and this *contract*.
- (c) *You* must comply with, and must ensure that *your designers* and *contractors* comply with, all *laws* that are relevant to health and safety (including, without limitation, the *Work Health and Safety Act 2011* (Qld) and the *Electrical Safety Act 2002* (Qld)).
- (d) *You* must, if *we* reasonably request, demonstrate *your* compliance with the obligations referred to in this clause by providing *us* with written evidence of measures taken to achieve compliance.
- (e) The parties acknowledge that their intent is as follows with regard to the operation of *laws* relevant to health and safety:
  - (i) *you* will be the person responsible for carrying out the *DD&C Works*;
  - (ii) *we* will be the person responsible for the design and construction of the *Ergon Energy activities*; and
  - (iii) *you* will retain management and control of the relevant workplace relating to the *real estate development*, and all plant, equipment and materials relevant to the *DD&C Works*, until *we* issue the *certificate of acceptance*.
- (f) *You* must ensure that, at all times during the term of this *contract*, the *real estate development* and the *DD&C Works* comply with all *laws*, any applicable *approvals* or *land interests*, the *specifications* and this *contract*.
- (g) The parties must consult and coordinate with each other and any other concurrent duty holders in relation to health and safety matters.

## 20. DEFAULT AND TERMINATION

### 20.1. Default notice

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

### 20.2. Cure Periods

- (a) After receiving a *default notice*, the defaulting party has:
  - (i) for a *financial default*, 10 *business days* from the date of receipt of the *default notice*; or
  - (ii) for a *non-financial default* that is capable of remedy, the period stated in the *default notice*,to remedy the *default*.
- (b) The period of time stated in a *default notice* for a *non-financial default* must be a reasonable period of time, taking into account the nature of the *default*.
- (c) In the case of a *non-financial default* that is capable of remedy, the defaulting party must diligently pursue a reasonable course of action to remedy the *default*, and must use *good electricity industry practice*.
- (d) If the defaulting party stops diligently pursuing a reasonable course of action to remedy the *non-financial default*, the cure period will end once the non-defaulting party sends a notice to the defaulting party ending the relevant cure period.

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

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## 20.3. Remedies

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

## 21. AMENDMENT AND ASSIGNMENT

### 21.1. Amendment

- (a) Except where otherwise expressly provided in this *contract*, this *contract* can only be amended, supplemented, replaced or novated by another document signed by the parties.
- (b) The parties must regularly review the *technical and safety obligations* to ensure that they are correct and consistent with the *laws* and reflect the relevant operating arrangements.

### 21.2. Assignment

- (a) Subject to clause 21.2(c), assignment or novation of all or part of this *contract* requires the other party's consent, which cannot be unreasonably withheld if the assignee/novatee is technically and financially able to comply with the assignor/novator's obligations and the assignment/novation will not adversely affect the rights or obligations of the consenting party.
- (b) A *change of control* of a party is deemed to be an assignment/novation of the party's rights under this *contract* to which the assignment/novation provisions of this clause applies (except for clause 21.2(d)).
- (c) Whilst *we* are (directly or indirectly) majority owned by the Queensland Government or one or more Ministers of that Government, *we* may assign or novate all or part of this *contract* by *law* or to an entity who is acquiring most or all of the relevant part of *our* business unit and is technically and financially able to comply with *our* obligations under this *contract*.
- (d) If a party consents to an assignment/novation, the assignor/novator must cause the assignee/novatee to enter into a deed in favour of the consenting party under which the assignee/novatee covenants to comply with the obligations of the assignor/novator under this *contract*.

## 22. NOTICES

- (a) A communication between the parties (whether described as a notice, notification, consent, waiver or other type of communication) is only effective if it is:
  - (i) in writing and addressed to the recipient;
  - (ii) either (for a hard copy) signed by the person or (for an electronic copy) includes a digital signature; and
  - (iii) sent by pre-paid mail, fax or electronic means and, for fax or electronic means, the sender is not notified of any failure to send.
- (b) A compliant communication is regarded as given and received:
  - (i) if sent by fax or electronic means by 5:00 pm (recipient's time) on a Business Day – that day; otherwise on the next Business Day; and
  - (ii) if sent by pre-paid mail within Australia – 3 Business Days after posting; otherwise 7 Business Days after posting.
- (c) Relevant contact details are set out in the *site-specific terms*, or as otherwise notified.

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

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## 23. GENERAL

### 23.1. Governing law

This *contract* is governed by the law in force in Queensland. Each party submits to the exclusive jurisdiction of the courts having jurisdiction in Queensland and any courts that may hear appeals therefrom.

### 23.2. Obligations and rights

- (a) Some obligations placed on a party under this *contract* may be carried out by a third party, and, if so:
  - (i) that party is deemed to have complied with the obligation if another person does it; and
  - (ii) that party is still liable to the other party if the obligation is not complied with.
- (b) Any right that a person may have under this *contract* is in addition to, and does not replace or limit, any other right that the person may have.

### 23.3. Severance of unenforceable clauses

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

### 23.4. Costs and expenses

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

### 23.5. Entire agreement

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

### 23.6. Cooperation and waivers

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



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

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## 23.7. Ownership

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

## 23.8. Force majeure event

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

## 23.9. Privacy of personal information

- (a) We will comply with all relevant privacy legislation in relation to your personal information.
- (b) You can find a summary of our privacy policy on our website ([www.ergon.com.au](http://www.ergon.com.au)).
- (c) If you have any questions, you can contact us using the relevant contact details set out on our website ([www.ergon.com.au](http://www.ergon.com.au)).

## 23.10. Confidentiality

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

## 23.11. Retention of property

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

## 23.12. Accrued rights and obligations

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

## 23.13. Execution

- (a) This *contract* may be executed in counterparts, and all executed counterparts constitute one document.
- (b) Each person executing under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.
- (c) Where a party to this *contract* is a corporation, that party warrants that it has the power to enter into and give effect to this *contract*.

## 23.14. Termination

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

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



## 24. GLOSSARY

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

*ACS* means *alternative control service*;

*ACS price list* means Ergon Energy's Price List for Alternative Control Services, a copy of which is available on *our* website ([www.ergon.com.au](http://www.ergon.com.au));

*AER* means the Australian Energy Regulator established under section 44AE of the *Competition and Consumer Act 2010* (Cth);

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

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

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

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

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

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

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

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

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

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

*certificate of design – electrical reticulation* means the certificate of that name issued by *you* under clause 7.3(a), which must be in *our* approved form (Form PW000400T100, which is available on *our*

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



website ([www.ergon.com.au](http://www.ergon.com.au)) and which certifies that the design of the *DD&C Works* (other than in respect of any *street lighting*) has been completed in accordance with this *contract*. This certificate must attach all attachments listed in that approved form including, without limitation, relevant *approvals*, the construction issue plan and LV drop calculations in electronic and hard copy forms;

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

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

*change notice* means a notice issued under clause 6.2;

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

- (a) *control* of the composition of the board of directors of the corporation;
- (b) *control* of more than half the voting rights attaching to shares in the corporation; or
- (c) *control* of more than half the issued shares of the corporation (excluding any part that carries no right to participate beyond a specified amount in the distribution of either profit or capital),

other than:

- (d) a change where the ultimate controlling entity of the corporation remains the same; and
- (e) a change resulting from the transfer of shares listed on a recognised stock exchange;

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

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

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

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

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

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

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

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

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

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

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

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

*default notice* means a notice issued under clause 20.1;

*defects rectification period* means:

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

after the date of the *certificate of acceptance*;

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

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

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

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

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

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

*encumbrance* means any:

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

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

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

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

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

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

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

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

*final commissioning* means the process of testing and commissioning:

- (a) the assets installed by *us* that are dedicated to the *connection* of the electrical reticulation installed by *you* at the *real estate development* to *our distribution system*; and
- (b) (after the *certificate of acceptance* has been issued and the electrical reticulation has been transferred to *us*) that electrical reticulation,

a part of which is dependent upon energisation of the *connection point*;

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

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

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

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

*good electricity industry practice* means:

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

*government agency* means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a *law*;

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

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

*latent issue* means any physical conditions on the *real estate development* or its surroundings (including artificial things but excluding weather conditions or the effect of weather conditions), which differ materially and substantially from the physical conditions which *we* reasonably expected (at the

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

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date of the *offer* for the *connection service* and without the benefit of a site investigation) to exist in that area;

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

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

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

*Mount Isa-Cloncurry supply network* means that part of the supply network (as the term “supply network” is defined in the *Electricity Act 1994* (Qld)) that is:

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

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

*NER* means the National Electricity Rules under the *NEL*;

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

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

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

*NERR* means the National Energy Retail Rules under the *NERL*;

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

*non-financial default* means:

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

but does not include a *financial default*;

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

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

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

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

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



*QECMM Documents* means:

- (a) the Queensland Electricity Connection and Metering Manual: Service and Installation Rules, a copy of which is available on *our* website ([www.ergon.com.au](http://www.ergon.com.au)); and
- (b) where the *connection* is on a part of *Ergon Energy's* *distribution system* that is not part of either the *national grid* or the supply network located in the Mount Isa-Cloncurry area, *Ergon Energy's* "Guidelines for Electrical Installations at Isolated Systems" PW000202R114, which can be obtained from *Ergon Energy's* general customer service on 13 74 66;

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

*reimbursement scheme contribution* means a contribution made by a customer under a reimbursement/pioneer scheme, as those terms are defined in the *Connection Policy* (essentially, the contribution made by a customer designed to recompense earlier customers for the use of existing assets funded by those earlier customers) and to the value set out in the *site-specific terms*;

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

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

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

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

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

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

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

*technical and safety obligations* means the obligations set out in:

- (a) the *QECMM Documents*;
- (b) the *energy laws*;
- (c) relevant *Australian Standards* and codes of practice, including, without limitation, the AS/NZS 3000 Wiring Rules;

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



- (d) any relevant construction manuals available on *our* website ([www.ergon.com.au](http://www.ergon.com.au));
- (e) the *specifications*; and
- (f) the *metrology procedures*;

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

*transferable assets* means the assets to be constructed as part of the *DD&C Works* that comprise the electrical reticulation within the *real estate development*, which must be suitable to transfer electricity from *our distribution system* to each lot (and, if required by *us*, *vice versa*) comprising the *real estate development*, and which are transferred to *us* under clause 23.7(b);

*transformer equalisation payment* is the amount calculated in accordance with the methodology set out in the *Developers Handbook* which *you* are required to pay for each lot in which electricity is supplied from a previously installed transformer;

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

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

## 25. INTERPRETATION

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

- (a) headings are for convenience and do not affect interpretation;
- (b) a reference to:
  - (i) any law is to that legislation (including subordinate legislation) as amended or replaced;
  - (ii) a clause, schedule or appendix is a reference to that part of this *contract*;
  - (iii) a document or agreement is to that document or agreement as amended, supplemented, replaced or novated, and includes references to any clause, schedule or appendix within that document or agreement;
  - (iv) a party includes a permitted substitute or assignee of that party;
  - (v) a person includes any type of entity or body of persons including any executor, administrator or successor in law of the person;
  - (vi) anything (including a right, obligation or concept) includes each part of it;
  - (vii) a day is to a calendar day and a month is to a calendar month;
- (c) a singular word includes the plural, and vice versa;
- (d) examples are not exclusive;
- (e) a reference to 'A\$', '\$A', 'dollar' or '\$' is a reference to Australian currency; and
- (f) if a day on or by which a party must do something under this *contract* is not a *business day*, the person must do it on or by the next *business day*.