

# Evoenergy

# Generator Connection Agreement

[insert]

Evoenergy  
(Evoenergy)

[insert]  
(Generator)

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# Evoenergy Generator Connection Agreement

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# Details

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Date [insert]

## Parties

Name Jemena Networks (ACT) Pty Ltd (ABN 24 008 552 663) and Icon Distribution Investments Limited (ABN 83 073 025 224) t/as Evoenergy (ABN 76 670 568 688)

ABN 76 670 568 688

Short form name **Evoenergy**

Notice details Evoenergy House, 40 Bunda Street, Canberra ACT 2600

Email: [insert]

Attention [insert]

Name [insert]

ABN [insert]

Short form name [insert]

Notice details [insert]

Email: [insert]

Attention [insert]

## Background

- A The Generator intends to construct, own and operate the Facility and has submitted an *Application to Connect* requesting Evoenergy to make an offer to *connect* the Facility to the current Distribution System.
- B The Generator is (or will be) registered with AEMO as a *Market Generator* and as a *Non-Scheduled Generator* in relation to the Facility.
- C In order to *connect* the Facility to the current Distribution System it will first be necessary to:
- (a) construct (amongst other things) the Connection Assets and the Network Assets; and

- (b) *connect* the Connection Assets to the Facility at the Connection Point; and
  - (c) *connect* the Connection Assets to the Network Assets and *connect* the Network Assets to the current Distribution System.
- D The Generator has agreed to undertake and complete the Generator Connection Work in accordance with the Evoenergy Design Brief and hand over ownership and control of the Generator Connection Work to Evoenergy upon satisfactory completion of the Acceptance Tests for Handover.
- E Evoenergy has agreed to:
  - (a) take over ownership and control of the Generator Connection Work upon satisfactory completion of the Acceptance Tests for Handover;
  - (b) undertake the Connection Work;
  - (c) permit the *connection* of the Facility to the Connection Assets at the Connection Point; and
  - (d) provide the Entry Services and other services referred to in this Agreement, in accordance with the terms and conditions of this Agreement.



# Agreed terms

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## Part 1 – Definitions and Interpretations

### 1. Defined terms & interpretation

#### 1.1 Defined terms

In this Agreement, unless the context otherwise requires:

**Acceptance Tests for Construction Completion** means the acceptance tests that:

- (a) are identified as such in the Scope of Works or in the testing and commissioning program that is agreed between the Parties in accordance with clause 4.9; and
- (b) will be undertaken by Evoenergy to demonstrate that Construction Completion of the Connection Work has been achieved.

**Acceptance Tests for Final Completion** means the acceptance tests that:

- (a) are identified as such in the Scope of Works or in the testing and commissioning program that is agreed between the Parties in accordance with clause 4.9; and
- (b) will be undertaken by Evoenergy to demonstrate that Final Completion of the Connection Work, the Generator Connection Work and the connection of the Facility to the Connection Assets at the Connection point have been achieved.

**Acceptance Tests for Handover** means the acceptance tests that:

- (a) are identified as such in the Scope of Works or in the testing and commissioning program that is agreed between the Parties in accordance with clause 4.9; and
- (b) must be satisfied before the transfer of ownership and handover of the Generator Work from the Generator to Evoenergy can take place.

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

**Evoenergy** refers to Jemena Networks (ACT) Pty Ltd (ABN 24 008 552 663) and Icon Distribution Investments Limited (ABN 83 073 025 224) t/as Evoenergy (ABN 76 670 568 688)

Evoenergy is the ACT's principal Distribution Network Service Provider (DNSP) and is responsible for the distribution of electricity to all Distribution Network connected customers within the ACT under a regulatory framework. Evoenergy designs, installs, upgrades, repairs and maintains the infrastructure which makes up the Distribution Network carrying electrical energy to ACT homes and businesses.

**Evoenergy Design Brief** means the design brief for the Generator Connection Work set out in the Scope of Works.

**Evoenergy Land** means the land identified as such in the Plan.

**Affected Party** means a Party which is prevented from performing any of its Non-Financial Obligations under this Agreement for reasons attributable to an Event of Force Majeure.

**Agreed Capability** means the amount set out in Item 7 of the Contract Details.

**Agreed Maximum Demand** means the amount set out in Item 6 of the Contract Details.

**Applicable Laws** means the NER, the Act, the Pricing Rules, the Distribution Licence, the Approvals and any other legislation, rules, regulations, codes, Directives, licence conditions or other regulatory instruments which are directly or indirectly binding on or are expressed to apply to Evoenergy or the Generator from time to time and relate to the Distribution System (including the Connection Assets and Network Assets), the Facility, the Connection Work, the Generator Connection Work, the Land, the Evoenergy Land or the provision or receipt of any of the Services.

**Approval** means any approval, declaration, certificate, consent, exemption, filing, licence, notarisation, permit, registration, ruling, statutory required policy of insurance or waiver (and any renewal or variation of any of them) by or with an Authority.

**Associates** means in relation to a Party, that Party's officers, employees, authorised agents, contractors and professional advisers but excludes the other Party.

**Authority** means:

- (a) any Government or regulatory department, body, instrumentality, minister, agency or other authority; or
- (b) the System Controller, AEMO or any other person exercising an authority granted to it under an Applicable Law.

**Bank Bill Rate** means the one month Australian Bank Bill SWAP Reference Mid-Rate specified by the Bloomberg page BBSW1M Index at or about 10.00am (Sydney time) on the first Business Day of each calendar month however if the Bank Bill Rate cannot be so determined, then 'Bank Bill Rate' will mean such generally equivalent rate as is reasonably determined by Evoenergy from time to time.

**Billing Period** means the period specified as such in Item 3 of the Pricing Schedule.

**Block Diagram** means the block diagram set out in Schedule 3 .

**Business Day** means any day except a Saturday, Sunday or public holiday in the Australian Capital Territory and 27, 28, 29, 30 or 31 December.

**Capacity** means the actual *power transfer capability* of Evoenergy's *Distribution Network* (including the Network Assets) to deliver electrical power to, or receive electrical power at the Distribution Network Connection Point as determined by Evoenergy from time to time in accordance with the requirements of Applicable Laws.

**Change in Applicable Law Event** means:

- (a) a change in (or a change in the application or interpretation of) an Applicable Law;
- (b) the repeal of an Applicable Law; or
- (c) the introduction of an Applicable Law,

after the Reference Date to the extent that the change, repeal or introduction directly or indirectly results in Evoenergy incurring materially higher or lower costs in providing any of the Services (as compared to the level of costs which Evoenergy would have incurred in providing the relevant Services if that event had not occurred).

**Change in Taxes Event** means:

- (a) a change in (or a change in the application or official interpretation of) a Relevant Tax or the way in which a Relevant Tax is calculated;

- (b) the removal of a Relevant Tax; or
- (c) the imposition of a Relevant Tax,

after the Reference Date to the extent that the change, removal or imposition directly or indirectly:

- (d) applies to the provision of any of the Services by Evoenergy or to goods or services supplied to Evoenergy in respect of the provision of any of the Services; and
- (e) results in Evoenergy incurring materially higher or lower costs in providing the Services (as compared to the level of costs which Evoenergy would have incurred in providing the relevant Services if that event had not occurred).

**Charge** means any one or more of the Design and Construction Charge, the Entry Charge and any other charge payable in accordance with this Agreement.

**Claims** means all claims, actions, disputes, proceedings, losses, liabilities, costs or expenses whether arising in contract, tort (including breach of statutory duty and negligence), equity or otherwise.

**Commencement Date** means the date on which the last Party executes this Agreement.

**Confidential Information** means in relation to a Party:

- (a) the terms of this Agreement and the operations and dealings under this Agreement; and
- (b) all information disclosed by a Party to another Party pursuant to this Agreement or in negotiating this Agreement which, by its nature is confidential to the Party disclosing that information or information that a Party has communicated to the other Party to be confidential.

**Connection Assets** means the assets identified as such in the Block Diagram and the Scope of Works and excludes the Network Assets.

**Connection Point** means a *Connection Point* identified in the Block Diagram (which will also be the agreed boundary between the Facility and the Distribution System for the purposes of the *Utilities (Electricity Network Boundary Code) Determination 2013*).

**Connection Work** means:

- (a) all work undertaken by Evoenergy or its Associates after the Commencement Date related to the *connection* of the Facility to the Distribution System;
- (b) the obtaining of all Approvals that Evoenergy is responsible for obtaining under clause 3.4;
- (c) the design, procurement, construction, commissioning, inspection and testing (including post commissioning testing) and project management by Evoenergy or its Associates of the 'Connection Work' described in the Scope of Works (and includes any Variations);
- (d) the acquisition of any Easement or Licence which Evoenergy or its Associates is responsible to obtain under clause 3.3, or any variation to, the Easements and Licences that are made by Evoenergy or its Associates in accordance with clause 3.3; and
- (e) any Preliminary Work undertaken by Evoenergy or its Associates.

**Construction Completion** means when the construction of the Connection Work has been completed to the stage where the Connection Work satisfies the Acceptance Tests for Construction Completion.

**Construction Liability Cap** means the amount set out in Item 9 of the Contract Details.

**Contract Details** means the details set out in Schedule 1 .

**Contract Year** means:

- (a) the period from the Date of Construction Completion to the next 30 June following the Date of Construction Completion (i.e. the '**First Contract Year**'); and
- (b) thereafter each financial year during the Term.

**Damages** means liabilities, expenses, losses, damages and costs (including legal costs on a full indemnity basis and whether incurred by or awarded against a Party).

**Date for Construction Completion** means the later of:

- (a) the date on which the Generator first serves a Notice on Evoenergy under clause 4.8;
- (b) the date specified as such in Item 1 of the Contract Details; or
- (c) such other date as may be determined in accordance with clause 5.1.

**Date for Final Completion** means:

- (a) the date being 20 Business Days after the Date of Construction Completion; or
- (b) where a Notice has not been issued by the Generator under clause 4.8 as at the Date of Construction Completion, the date reasonably determined by Evoenergy (when that Notice is received by Evoenergy) as being a sufficient period of time to allow Evoenergy to complete all activities required to achieve Final Completion at that time.

**Date of Construction Completion** means the date on which Construction Completion is achieved.

**Date of Final Completion** means the date on which Final Completion is achieved.

**Default Rate** means, at any time, the Bank Bill Rate plus 2% per annum.

**Defect** means any aspect of the Generator Connection Work that is not in accordance with the requirements of this Agreement, or which is damaged, deficient, faulty, inadequate or incomplete in design, performance, workmanship or quality.

**Defect Liability Period** means a period of 24 months from the date of transfer of ownership and control of the Generator Connection Work from the Generator to Evoenergy in accordance with clause 4.3.

**Defect Notice** has the meaning given in clause 4.5(a).

**Delay Costs** means a quantum of costs determined in accordance with clause 5.1.

**Design and Construction Charge** means the amount set out in Item 1 of the Pricing Schedule.

**Directive** means any present or future requirement, instruction, direction, condition or order of an Authority (whether formal or informal) which is binding on or expressed to

apply to Evoenergy or the Generator or relates directly or indirectly to the design, construction, operation or maintenance of the Distribution System (including the Connection Assets and/or Network Assets) or the Facility.

**Dispute** means any dispute or difference of opinion between the Parties or the absence of agreement by the Parties about a matter in connection with this Agreement or its performance.

**Distribution Licence** means the licence issued to Evoenergy under the Act authorising it to operate a *Distribution Network* in the Australian Capital Territory.

**Distribution Network Connection Point** means the point at which the Connection Assets *connect* to the Network Assets, which point is identified in the Block Diagram.

**Distribution Network** means the *Distribution Network* operated by Evoenergy from time to time pursuant to the Distribution Licence and includes after the Date of Final Completion the Connection Assets and the Network Assets.

**Easements** means any easements which Evoenergy reasonably considers are necessary to construct operate and maintain the Connection Assets and Network Assets, which easements are described in more detail in clause 3.3.

**Easement Costs** means all costs and Other Expenses reasonably and necessarily incurred by Evoenergy or its Associates in relation to:

- (a) acquiring, obtaining, exercising, varying and registering the Easements; and
- (b) the exercise of Evoenergy's rights under those Easements prior to the Date of Final Completion.

**Emergency** means the actual or imminent occurrence of an event which in any way poses or has the potential to pose a threat to the safety of persons, a hazard to any equipment or property (including either Party's *facilities*) or a threat to *power system security*.

**Enforcement Notice** means any notice issued to the Generator or an Associate of the Generator by a Work Health and Safety Inspector or the Work Health and Safety Regulator under the relevant Work Health and Safety Laws, including improvement notices, prohibition notices and non-disturbance notices.

**Entry Charge** means the amount described as such and determined in accordance with Item 2 of the Pricing Schedule.

**Entry Services** means:

- (a) the provision of the capability of the Connection Assets in accordance with the terms and conditions of this Agreement, so as to enable the Generator to:
  - (i) deliver electricity to Evoenergy's Distribution System via the Connection Point up to but not exceeding the Agreed Capability; and
  - (ii) take delivery of electricity from Evoenergy's Distribution System via the Connection Point up to but not exceeding the Agreed Maximum Demand for the sole purposes of commissioning and operating the Facility,in both cases, subject to the overriding limitations referred to in clause 8;
- (b) the routine management and maintenance of the Connection Assets and the Network Assets in accordance with clause 10;

- (c) the provision of any backup protection *facilities* which form part of the Connection Assets and Network Assets; and
- (d) the provision of any communication *facilities* which form part of the Connection Assets and Network Assets.

**Event of Force Majeure** means any event, circumstance, act or omission (or combination of them) which is beyond the reasonable control of the Affected Party and which causes a delay in or prevents the performance by the Affected Party of its obligations under this Agreement and which the Affected Party could not have prevented by the exercise of a standard of care and diligence consistent with the observance of *good electricity industry practice*. Events of Force Majeure include events or circumstances of the kind listed below, provided that the conditions set out in the preceding sentence are satisfied:

- (a) acts of God, lightning strikes, earthquakes, floods, droughts, storms and other adverse weather conditions, landslides, mudslides, radioactive or chemical contamination, explosions, fires or other natural disasters, acts of war (declared or undeclared) or terrorism, acts of public enemies, riots, civil commotions, martial law, protest, malicious damage, sabotage, blockades and revolutions;
- (b) industrial disputes;
- (c) action or inaction by, or an order, Approval, Directive or finding of, a Court, government or Authority including any injunction or a denial, refusal or failure to grant any Approval;
- (d) the compliance by the Affected Party in good faith with a requirement of an Applicable Law due to the occurrence of an event or circumstance after the Commencement Date which is beyond the reasonable control of the Affected Party;
- (e) an act or omission of a third party (excluding an Associate of the Affected Party but including another *Generator* and/or a *Distribution Network User*);
- (f) a failure of a supplier of goods and services to provide such goods and services by reason of any event, circumstance, act or omission, or combination of them, which is beyond the reasonable control of that supplier and the Affected Party and which constitutes an event of force majeure under the terms of the supplier's contract with the Affected Party;
- (g) a delay of a supplier of goods and services to provide those goods and services, where that supplier is granted an extension of time for the provision of those goods or services under the terms of its contract with the Affected Party due to an event, circumstance, act or omission, or combination of them, which is beyond the reasonable control of that supplier and the Affected Party and which constitutes an event of force majeure under the terms of the supplier's contract with the Affected Party; or
- (h) asset and software failures.

**Excepted Risk** means where:

- (a) any Approval (or any condition or requirement of an Approval) granted before the Reference Date is varied after the Reference Date;
- (b) a new Approval is granted after the Reference Date;

- (c) any assumption referred to in the Scope of Works is determined to be incorrect after the Reference Date;
- (d) an event which is defined in the Scope of Works or in another clause of this Agreement as an "Excepted Risk" occurs after the Reference Date;
- (e) any Applicable Law is varied or introduced after the Reference Date;
- (f) any Latent Conditions are discovered after the Reference Date;
- (g) any other Event of Force Majeure occurs after the Commencement Date; or
- (h) any failure by the Generator to comply with a material obligation under this Agreement occurs after the Commencement Date,

other than as a result of:

- (i) a failure by Evoenergy to comply with its obligations under this Agreement; or
- (j) a negligent act or omission of Evoenergy or an Associate of Evoenergy.

**Facility** means the facility proposed to be constructed, owned and operated by the Generator and described in the Scope of Works.

**Final Completion** means the circumstance where the construction and commissioning of the Connection Work has been completed to the stage where Evoenergy has demonstrated to the Generator that the Connection Assets and the Network Assets satisfies the Acceptance Tests for Final Completion.

**Generator Performance Standards** means, in relation to the *generating system* which forms part of the Facility, the *performance standards* registered with AEMO from time to time for that *generating system*. Set out in Schedule 7 is a copy of the registered *performance standards* as at the Commencement Date.

**Generator Connection Work** means those activities and items of work described as such in the Scope of Works that will be carried out by the Generator.

**Independent Expert** means an independent expert appointed in accordance with clause 22.4.

**Intellectual Property Rights** means all intellectual property rights including:

- (a) copyright, moral rights, rights in relation to inventions, trademarks and goodwill in those trademarks, patents, designs, circuit layout rights, the right to protect confidential information, know-how and trade secrets;
- (b) any application or right to apply for registration of any of the rights referred to in item (a);
- (c) all rights of a similar nature to any of the rights in items (a) and (b) which may subsist in Australia or elsewhere; and
- (d) all other rights of intellectual property as defined in Article 2 of the *Convention Establishing the World Intellectual Property Organisation of July 1967* whether or not such rights are registered or capable of being registered.

**Land** means the land identified as such in the Plan.

**Land and Equipment Access Rules** means:

- (a) during the period from the Commencement Date to the Date of Construction Completion, the rules agreed in accordance with the Scope of Works; and

- (b) during the period from the Date of Construction Completion until the date this Agreement is terminated, the rules specified in the Operating Protocol.

**Latent Conditions** means any physical conditions on the Land, the Evoenergy Land or an Easement (including artificial things, for example the presence of other services, weather conditions, rocks or other sub-surface or surface conditions) which differ materially from the conditions which should reasonably have been anticipated by Evoenergy having regard to Evoenergy's preliminary investigations prior to the Reference Date.

**Licences** means all licences which are required in relation to the undertaking and completion of the Connection Work (including any required licences or approvals to enter and place any part of the Connection Assets and Network Assets on or over any land or equipment belonging to a third party), which Evoenergy reasonably considers are necessary in order to install, complete and maintain that part of the Connection Assets and Network Assets.

**Licence Costs** means all costs and Other Expenses reasonably and necessarily incurred by Evoenergy or its Associates in relation to:

- (a) acquiring the Licences in accordance with this Agreement; and
- (b) exercising Evoenergy's rights under those Licences prior to the Date of Final Completion.

**Maximum Permitted Output** means the maximum permitted output for the Facility set out in Item 2 of the Contract Details.

**NER** means the 'National Electricity Rules' as defined in the *National Electricity Law* set out in the schedule to the *National Electricity (South Australia) Act 1996 (SA)*.

**Network Assets** means the assets identified as such in the Block Diagram and the Scope of Works and excludes the Connection Assets.

**Network Event** means a change in the way or rate at which a charge for the use of an interstate *network* or *interconnector* is calculated, or the removal or imposition of such a charge after the Reference Date, as a result of which Evoenergy incurs materially higher or lower costs in providing any of the Services (as compared to the level of costs which Evoenergy would have incurred in providing the relevant Services if that event had not occurred).

**Non-Financial Obligation** means an obligation under this Agreement other than an obligation to pay or cause to be paid an amount of money.

**Notice** has the meaning given in clause 24.1.

**Operating Protocol** means the safety and operating procedures referred to in Schedule 9.

**Operations Liability Cap** means the amounts (per event and in the aggregate) set out in Item 10 of the Contract Details.

**Other Expenses** means, in relation to an Easement or a Licence:

- (a) any compensation payable by Evoenergy to a third party owner on account of unavoidable loss of use of land caused by the undertaking of the Connection Work in accordance with the Scope of Works and the Program of Works;



- (b) all licence fees, permit fees, registration fees, productions fees, stamp duty and other disbursements which may be payable by Evoenergy in relation to the completion and registration of an Easement or Licence; and
- (c) the cost of any required remediation of any land as a result of the undertaking of the Connection Work in accordance with the Scope of Works.

**Party** means either Evoenergy or the Generator and **'Parties'** means both of them.

**Pass Through Amount** means in relation to a relevant Pass Through Event:

- (a) an amount the Generator is required to pay Evoenergy or Evoenergy is required to pay the Generator (as the case may be); or
- (b) a factor by which an amount the Generator is required to pay Evoenergy is increased or decreased (as the case may be),

as determined pursuant to Item 5 of the Pricing Schedule.

**Pass Through Event** means in relation to a Service:

- (a) a Change in Applicable Law Event, a Change in Taxes Event, a Network Event or a Service Standard Event which relates to that Service; and/or
- (b) the occurrence of any event which is determined by the AER under the Pricing Rules to be a 'pass through event' for the purposes of amending the *revenue cap* applying to the *standard control services* provided by Evoenergy during a *regulatory control period*.

**Plan** means the survey plan set out in Schedule 1 .

**Planned Work** means, in relation to:

- (a) the Generator, all Work in relation to the Facility after the Date of Final Completion (other than Unplanned Work) which may affect the Distribution System or Evoenergy; and
- (b) Evoenergy, all Work in relation to the Distribution System after the Date of Final Completion (other than Unplanned Work) which may affect the Facility or the Generator.

**Preconditions** means the preconditions (if any) set out at the end of the Contract Details.

**Preliminary Work** means:

- (a) those parts of the Connection Work which are described as 'Preliminary Work' in the Scope of Works;
- (b) all work related to the satisfaction of the Preconditions and the preparation, negotiation, approval and execution of the Easements, the Licences and any other required documents; and
- (c) any other part of the Connection Works which the Parties agree in writing after the Commencement Date should be undertaken by Evoenergy as 'Preliminary Work').

**Pricing Rules** means the provisions of Chapter 6 of the NER and (where applicable) a Revenue Decision made in accordance with Chapter 6 of the NER which regulates the

manner in which the price payable for the provision of the *distribution services* provided by Evoenergy may be determined by Evoenergy.

**Pricing Schedule** means the pricing schedule set out in Schedule 6 .

**Program of Works** means the indicative program for the performance of the Connection Work set out in Schedule 5 (as adjusted by Evoenergy from time to time in accordance with clauses 3.5, 3.6 or 5.1).

**Quarter** means a 3 month period ending on 31 March, 30 June, 30 September or 31 December and **Quarterly** will have a corresponding meaning.

**Related Body Corporate** has the meaning given to that term by the *Corporations Act 2001* (Cth) and, for the purposes of this Agreement, also includes a partnership comprised of one or more Related Bodies Corporate.

**Reference Date** means [insert date upon which the offer to connect is finalised by Evoenergy].

**Relevant Tax** means any tax imposed by or payable directly or indirectly to any Authority (including a goods and services tax), but excluding any:

- (a) income tax (or State equivalent income tax), fringe benefits tax or capital gains tax;
- (b) payroll tax;
- (c) stamp duty, financial institutions duty, bank accounts debits tax or similar taxes and duties;
- (d) penalties and interest for late payments relating to any tax; or
- (e) any tax that replaces any of the taxes referred to in items (a) to (d) above.

**Required Date** means, in relation to a Precondition, the date which is described as such in the Contract Details for that Precondition.

**Revenue Decision** means a decision, determination, order or other ruling made by the *AER* in accordance with the terms of the *NER* relating to the provision of, and/or the pricing for, any *distribution services* provided by Evoenergy.

**Risk Margin** will have the meaning given in item 1 of Schedule 6 – Pricing Schedule.

**Scope of Works** means the scope of works set out in Schedule 4 .

**Security Amount** means the amount set out in Item 11 of the Contract Details.

**Service** means the Entry Services and/or another service referred to in this Agreement.

**Service and Installation Rules** mean the rules published by Evoenergy from time to time for electricity connection and installation, under the Act.

**Service Standards Event** means in relation to a Service, a decision made by an Authority or any amendment to an Applicable Law after the Reference Date that has the effect of:

- (a) imposing a set of minimum standards on Evoenergy in respect of that Service which is different from the set of minimum standards imposed on Evoenergy in respect of that Service as at the Reference Date;

- (b) requiring Evoenergy to undertake any activity as part of a Service in addition to those activities required to be undertaken as part of that Service as at the Reference Date; or
- (c) substantially varying the manner in which Evoenergy is required to undertake any activity forming part of a Service as at the Reference Date,

as a result of which Evoenergy incurs materially higher or lower costs in providing the Services (as compared to the level of costs Evoenergy would have incurred in providing the relevant Services if that event had not occurred).

**Shared Access Road** means the portion of land identified as the 'Shared Access Road' in the Plan.

**Solvency Default** means, in relation to a Party, the occurrence of any one of the following events in relation to that Party:

- (a) an administrator or liquidator is appointed or a resolution is passed or any steps are taken to appoint or to pass a resolution to appoint an administrator or liquidator to that Party;
- (b) a receiver, receiver manager, official manager, trustee, administrator, other controller or similar officer is appointed over the assets or undertakings of that Party;
- (c) that Party enters into or proposes to enter into any arrangements, composition or compromise with or assignment for the benefit of, its creditors or a class of them; or
- (d) that Party is deemed by the provisions of the *Corporations Act 2001* (Cth) or any other relevant legislation to be insolvent.

**System Controller** means the person authorised under an Applicable Law to exercise system control over that part of the *power system* situated in the Australian Capital Territory (and includes a *System Operator* under the NER in relation to that part of the *power system*).

**System Study** means the document set out in Schedule 8 - System Study.

**Technical Obligations** means in relation to:

- (a) Evoenergy and the Distribution System, the requirements set out in Schedules S5.1a and S5.1 of the NER as those requirements are fixed or modified by any derogations in force under the NER;
- (b) the Generator and the Facility, the Generator Performance Standards, the Service and Installation Rules and the other standards and requirements set out in (or determined in accordance with) this Agreement; and
- (c) a Party, any other requirements or standards set out in or published by any Authority under any Applicable Laws (including, in particular, Schedule S5.1a of the NER and the Generator's licence to generate issued under the Applicable Law) that relate to the physical performance or operation of, or a service provided by, that Party's *facilities*.

**Term** means the period specified in clause 2.1.

**Termination Date** means the date on which this Agreement is terminated.

**Unplanned Work** means any Work in relation to a Party's *facilities* after the Date of Final Completion which that Party considers should be undertaken in order to prevent or deal with an Emergency or as a result of an Emergency.

**Variation** means a variation to the Connection Work in accordance with clause 3.5 or 3.10.

**Variation Costs** means a quantum of costs determined in accordance with clause 3.5 or 5.1.

**Wilful Breach** means fraud, or an intentional or reckless breach of any provision of this Agreement not resulting from an error of judgement or mistake made in good faith.

**Work** means the installation, construction, commissioning, *augmentation*, *extension*, removal, inspection, testing, undertaking of repairs and undertaking of maintenance of a part of the Distribution System.

**Work Health and Safety Inspector** means an inspector appointed by the Work Health and Safety Regulator under the applicable Work Health and Safety Laws.

**Work Health and Safety Laws** means all applicable work health and safety related laws (including the *Work Health and Safety Act 2011* (ACT) and associated regulations and any work health and safety, dangerous goods, chain of responsibility, mining, electricity safety and other industry specific laws) and any related codes of practice, standards, notices and directions issued by any Authority.

**Work Health and Safety Regulator** means the regulator, authority, commissioner or other relevant body responsible for enforcement of the applicable Work Health and Safety Laws.

**WPI** means the 'Wage Price Index: Total Hourly Rates of Pay Excluding Bonuses, Sector by Industry – Index numbers (a) : Original (All Sectors)' published by the Australian Bureau of Statistics, but if there is any suspension or discontinuance of such figures by the Australian Bureau of Statistics or if its method of calculation is materially altered, then an index which similarly reflects movements in wage prices will be substituted by the Parties (but if the Parties are unable to agree upon the most appropriate index, then an appropriate index determined by an actuary appointed by the President for the time being of the Institute of Actuaries of Australia, which determination will be made by the appointee as an expert and not an arbitrator and will be binding on the Parties).

## 1.2 NER Definitions and References

In this Agreement, unless the context otherwise requires:

- (a) words appearing in italics have the meaning assigned to them from time to time by the NER; and
- (b) if a word in italics is no longer defined in the NER, it will have the meaning last assigned to it by the NER until the Parties otherwise agree.

## 1.3 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) words indicating the singular number include the plural number and vice versa;
- (b) words indicating one gender include any other gender;
- (c) words indicating persons only include natural persons, bodies corporate and unincorporated associations;

- (d) other grammatical forms of words or phrases defined in this Agreement will have a corresponding meaning;
- (e) references to persons include their respective administrators, successors, liquidators and permitted assigns;
- (f) headings are for convenience only and do not affect the interpretation of this Agreement;
- (g) a reference to a clause or Schedule is to a clause or Schedule of this Agreement;
- (h) the recitals and Schedules form part of this Agreement;
- (i) mentioning anything after include, includes or including does not limit what else might be included;
- (j) a reference to an Authority includes anybody which is the successor to the administrative responsibilities of that Authority;
- (k) a reference to a period of time (including, without limitation, a year, a month and a day) is to a calendar period;
- (l) a reference to any Act of Parliament or to any section or provision in any Act of Parliament extends to and includes:
  - (i) any regulations, codes, orders or other instruments made under that Act; and
  - (ii) any statutory modification, re-enactment or substitution for that Act, section or provision;
- (m) any reference to a Party complying with the requirements of an Applicable Law will, in the case of the Generator, include all requirements of Applicable Laws which are expressed to apply to a *Generator* or the holder of a generation licence under the Act in relation to the Facility even if the Generator:
  - (i) is not registered or ceases to be registered as the Generator for the Facility under the NER;
  - (ii) appoints an *intermediary* for the Facility under clause 2.9.3 of the NER; or
  - (iii) is not the holder of or ceases to be the holder of a generation licence under the Act; and
- (n) a rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of this Agreement or any part of it.

#### 1.4 Determinations, Consents and Discretions

A reference in this Agreement to a Party:

- (a) making a determination;
- (b) giving its consent; or
- (c) exercising a discretion,

will be interpreted as a reference to that Party making that determination, giving that consent or exercising that discretion on reasonable grounds, after taking into account all relevant facts and (where applicable) in a manner which reflects and is consistent with *good electricity industry practice* at that time.

# Part 2 – Connection Work and Generator Connection Work

## 2. Commencement and Preconditions

### 2.1 Commencement

Subject to clause 2.2, this Agreement will commence on the Commencement Date and will continue until terminated in accordance with clause 18.

### 2.2 Preconditions and Preliminary Work

- (a) Each Party must use its reasonable endeavours to satisfy the Preconditions applying to that Party as soon as reasonably possible after the Commencement Date but in any event by no later than the Required Date for the satisfaction of the relevant Precondition.
- (b) Each Party must notify the other Party when it has satisfied a relevant Precondition.
- (c) Each Party must provide to the other Party such assistance as the other Party may reasonably request from time to time in relation to any activity required to be undertaken by that Party in order to satisfy any Precondition.
- (d) The requirement for Evoenergy to undertake any aspect of the Connection Work will not commence until all of the Preconditions have been satisfied.
- (e) Despite clause 2.2(d), Evoenergy will commence or continue to undertake during the period from the Commencement Date to the date on which all of the Preconditions have been satisfied the Preliminary Work.
- (f) If a Precondition is not satisfied by the Required Date for the satisfaction of that Precondition (despite the Party who is responsible for satisfying that Precondition (**First Party**) having used its reasonable endeavours to satisfy that Precondition) the First Party must as soon as reasonably possible after the expiry of the relevant Required Date serve a Notice on the other Party (**Second Party**) advising that the relevant Precondition has not been satisfied by the Required Date.
- (g) If the First Party fails to serve a Notice on the Second Party in accordance with clause 2.2(f), the Second Party may serve a Notice on the First Party advising that the relevant Precondition has not been satisfied by the Required Date.
- (h) The Parties agree that a failure to satisfy a Precondition by the Required Date for the satisfaction of that Precondition will be an 'Excepted Risk'.
- (i) Upon receipt of a Notice under clause 2.2(f) or (g), the Parties must consult to determine:
  - (i) whether the relevant Precondition can be satisfied by the First Party within 20 Business Days from the date of that Notice or such longer period as is agreed between the Parties (**Rectification Period**); and
  - (ii) what changes will need to be made under clause 3.5 and 4 as a result of the failure to satisfy the relevant Precondition by the Required Date for the satisfaction of that Precondition.

- (j) A Party may terminate this Agreement immediately by giving written notice to the other Party if:
  - (i) that Party has complied with its obligations under this clause 2.2; and
  - (ii) the relevant Precondition is still not satisfied before the end of the relevant Rectification Period.
- (k) If this Agreement is terminated by a Party in accordance with clause 2.2(j) the Generator must pay to Evoenergy upon demand any outstanding costs reasonably and necessarily incurred by Evoenergy in relation to undertaking the Preliminary Work (including any costs which are incurred as a result of cancelling the Preliminary Work) as those costs are increased by the Risk Margin. If the Generator has made a prepayment on account of those costs, Evoenergy will refund to the Generator that portion of prepayment which exceeds the outstanding costs and Risk Margin.
- (l) Clause 2.2(k) survives termination of this Agreement.

### 3. Performance of the Connection Work

#### 3.1 Evoenergy's Obligations

- (a) Evoenergy will use its reasonable endeavours to undertake and complete the Connection Work in accordance with the Scope of Works and so as to:
  - (i) enable Evoenergy to provide the Services to the Generator up to the Agreed Capability at the Connection Point and in accordance with the requirements of this Agreement;
  - (ii) achieve Construction Completion of the Connection Work by the Date for Construction Completion;
  - (iii) achieve Final Completion of the Connection Work by the Date for Final Completion; and
  - (iv) comply in all respects with the requirements of this Agreement (including the Scope of Works).
- (b) In undertaking and completing the Connection Work, Evoenergy will:
  - (i) exercise due care, skill and judgement and at all times act in accordance with relevant professional principles and standards (including *good electricity industry practice*);
  - (ii) not be relieved from any of its obligations or liabilities under this Agreement if it elects to subcontract any part of the Connection Work (i.e. Evoenergy will be responsible for the acts or omissions of its subcontractors); and
  - (iii) comply with all Applicable Laws.

#### 3.2 Configuration of the Connection Assets or Network Assets

- (a) If the Generator elects to adopt a configuration for any part of the Connection Assets and/or Network Assets which is less than the standard recommended by Evoenergy in the Scope of Works (i.e. the 'recommended configuration'), the Generator:
  - (i) agrees that Evoenergy will not be liable for any Damage (however that Damage is caused) which the Generator would not have suffered; and

- (ii) will indemnify Evoenergy for any Claim made against Evoenergy or any Damage suffered by Evoenergy (however that Claim or Damage is caused) which would not have been made against or suffered by Evoenergy,

if the Generator had adopted Evoenergy's recommended configuration for the Connection Assets and/or Network Assets.

- (b) For the avoidance of doubt, nothing in clause 3.2(a) will limit Evoenergy's discretion under the Applicable Laws to determine the appropriate configuration for the Connection Assets and/or Network Assets.

### 3.3 Easements and License

- (a) The Generator must, at its cost, grant to or procure the granting by a third party to, Evoenergy all Easements over the Land that are reasonably required by Evoenergy to undertake the Connection Work and operate and maintain the Connection Assets and Network Assets by the date set out in the Program of Works.
- (b) The Generator must, at its cost, procure the granting to Evoenergy of any Licences in relation to the Land that are reasonably required by Evoenergy to undertake the Connection Work and operate and maintain the Connection Assets and Network Assets by the date set out in the Program of Works.
- (c) The Generator must pay to Evoenergy on demand all Easement Costs and Licence Costs which are incurred by Evoenergy in relation to the Connection Work.
- (d) The Generator will be responsible (at its sole cost) for the construction and ongoing maintenance of the Shared Access Road (if any) in accordance with the requirements and timing specified in the Program of Works.
- (e) For the avoidance of doubt, if the Generator fails to satisfy any of its obligations set out in this clause 3.3 by the date set out in the Program of Works for the satisfaction of that obligation, the Parties agree that this delay will be treated as an Excepted Risk for the purposes of clauses 3.5 and 5.1.

### 3.4 Approvals

- (a) The Generator will be responsible for:
  - (i) obtaining and maintaining (at its cost) all Approvals which the Generator is required under the Applicable Laws to obtain and hold before the performance of the Generator Connection Work can commence and be completed;
  - (ii) obtaining (at its cost) all Approvals which the Generator is required under the Applicable Laws to obtain or hold in order to operate the Facility;
  - (iii) obtaining (at its cost) all Approvals which Evoenergy is required under the Applicable Laws to obtain and hold before the performance of the Connection Work can commence and be completed other than the Approvals referred to in clause 3.4(b)(i); and
  - (iv) without limiting clauses 3.4(a)(i), (ii) and (iii), obtaining, maintaining (and complying) at its cost with the specific Approvals identified in the Contract Details or the Scope of Works as being the responsibility of the Generator.
- (b) Evoenergy will be responsible for:



- (i) obtaining and maintaining those Approvals in relation to the Connection Work that are identified in the Contract Details or the Scope of Works (if any) as being the responsibility of Evoenergy;
- (ii) undertaking all activities in relation to the Connection Work (other than any activity that is identified as being part of the Generator Connection Work);
- (iii) obtaining and maintaining all Approvals which Evoenergy is required under Applicable Laws to obtain or hold in order to provide the Services; and
- (iv) paying all costs associated with the activities referred to in clauses 3.4(b)(i) to 3.4(b)(iii), which costs will be recovered from the Generator through the Charges or via the Variation Costs or the payments under clause 2.2 or 17.6(b).

### 3.5 Variations

- (a) If an Excepted Risk occurs and the occurrence of that Excepted Risk necessitates:
  - (i) a change to the scope of the Connection Work or the required standard for the Connection Work (as compared to the scope and standard described in the Scope of Works);
  - (ii) a change to the manner in which the Connection Work will be undertaken or the timing for the Connection Work (as compared to the manner and timing referred to in the Scope of Works and/or the Program of Works);
  - (iii) a change to the industrial conditions under which the Connection Work will be undertaken;
  - (iv) an increase in the cost of undertaking and completing the Connection Work; and/or
  - (v) an additional ongoing increase in the cost of providing the Services,

the Parties will negotiate in good faith to agree on the extent of the required changes (i.e. the Variation), the quantum of the additional costs that Evoenergy will incur as a result of those changes (and the related Risk Margin in the case of any costs which are not additional ongoing costs), (i.e. the **Variation Costs**) and in the case of any additional ongoing increase in the cost of providing the Services, the adjustment to the Charges that will be required to be made in order to recover those additional ongoing costs.
- (b) If the Parties are unable to reach agreement within 10 Business Days of commencing negotiations under clause 3.5(a), either Party can refer that matter to be determined in accordance with the dispute resolution procedures set out in clause 22 by serving a notice on the other Party.
- (c) Evoenergy must use its reasonable endeavours to mitigate the effect of the Excepted Risk.
- (d) Evoenergy will notify the Generator that an Excepted Risk has occurred as soon as reasonably possible after becoming aware of the occurrence of that Excepted Risk but in any event within 5 Business Days of becoming aware of the occurrence of the Excepted Risk.
- (e) Within 10 Business Days of notifying the Generator under clause 3.5(d), Evoenergy will provide a further written notice to the Generator setting out the

available details in relation to the Excepted Risk and its best estimate of the likely consequences and costs in relation to that Excepted Risk.

- (f) Evoenergy will update the information contained in a Notice given under clause 3.5(e) at regular intervals.
- (g) The Generator must pay to Evoenergy the Variation Costs agreed between the Parties under clause 3.5(a) or, in the event of a Dispute, as determined in accordance with clause 3.5(b), in the manner and in accordance with the requirements set out in clause 14.
- (h) The Parties agree that nothing in this clause 3.5 will:
  - (i) prevent Evoenergy or its Associates from taking immediate and reasonable steps to deal with and/or mitigate the effect of an Excepted Risk including incurring any cost or commencing any Work which is required in order to deal with the occurrence of the Excepted Risk and the potential consequences of that Excepted Risk; or
  - (ii) limit Evoenergy's or its Associate's discretion in relation to the steps that may need to be taken to deal with and/or mitigate the effect of an Excepted Risk.

### **3.6 Variation to Program of Works**

Evoenergy may vary the Program of Works at any time provided that:

- (a) Evoenergy has complied with its obligations under clause 3.9; and
- (b) the Date for Construction Completion and the Date for Final Completion can only be varied in accordance with clause 5.2 or by agreement between the Parties.

Evoenergy will advise the Generator of any proposed variation to the current Program of Works prior to implementing that variation.

### **3.7 Reporting**

Evoenergy will provide reports on a regular basis, but in any event not less than monthly, to the Generator concerning the progress of the Connection Work.

### **3.8 Project Meetings**

The Parties must hold a project meeting monthly to review progress and future planning of the Connection Work and the Generator Connection Work and to:

- (a) assist in any necessary coordination; and
- (b) consider any occupational health and safety, environmental or other issues identified by the Generator or Evoenergy.

### **3.9 Co-ordination**

The Parties agree that the implementation and undertaking of the Connection Work, the Generator Connection Work and the various other activities relating to the development of the Facility will require:

- (a) the co-ordination of their respective activities and responsibilities; and
- (b) the establishment of an effective interface between their respective Associates (including the co-ordination of program details, technical issues and safety matters).

The Parties will use their reasonable endeavours to facilitate this co-operation, including by each Party attending open discussions with the other Party's Associates.

### 3.10 Variations to Connection Work

- (a) Without limiting clause 3.5 (i.e. Evoenergy is entitled to vary the Connection Work under clause 3.5 if that Variation is required as a result of the occurrence of an Excepted Risk), Evoenergy may vary any part of the Connection Work at Evoenergy's own expense provided that any such Variation will not:
  - (i) derogate from Evoenergy's obligation under clause 3.1; or
  - (ii) cause the Generator to make any change, variation or modification to the Facility, or increase the time to complete the Facility; or
  - (iii) cause the Generator to obtain any new Approvals or vary any of the existing Approvals for the Facility; or
  - (iv) cause the cost of the Generator Connection Work or the operation and maintenance of the Facility to increase beyond the costs which would have been incurred if no Variation had been made.
- (b) Evoenergy will advise the Generator of any proposed Variation to the Connection Work that may impact upon the Generator Connection Work and/or the Facility and will consult with the Generator in respect of any such proposed Variation prior to making that Variation to the Connection Work.

## 4. Performance of the Generator Connection Work

### 4.1 Generator's Obligations

- (a) The Generator will:
  - (i) use its reasonable endeavours to undertake and complete any component of the Generator Connection Work which is separately identified in the Scope of Works:
    - (A) by the date set out in the Program of Works for the completion of that component of the Generator Connection Work;
    - (B) in accordance with the requirements (if any) set out in the Scope of Works for that component of the Generator Connection Work; and
    - (C) to enable the Generator to *connect* the Facility to the Evoenergy System and accept the Services from Evoenergy at the Connection Point;
  - (ii) in undertaking and completing the Generator Connection Work, exercise due care, skill and judgement and at all times act in accordance with relevant professional principles and standards (including *good electricity industry practice*); and
  - (iii) provide all information relating to the Generator Connection Work that is reasonably requested by Evoenergy within 10 Business Days of receiving that request.
- (b) The Generator acknowledges and agrees that it must:
  - (i) provide the Generator Connection Work so as to effectively interface with (including not to impede the progress of) the Connection Work; and

- (ii) complete the Generator Connection Work in a timely and coordinated manner so as to allow Evoenergy to satisfy its obligations to provide the Services.

#### 4.2 Proposed Variations to the Generator Connection Work

- (a) Subject to clause 4.2(c), the Generator may propose a variation to any part of the Generator Connection Work by Notice to Evoenergy.
- (b) The receipt of a Notice from the Generator under clause 4.2(a) will be an Excepted Risk.
- (c) The Generator must obtain Evoenergy's prior consent to any proposed variation to the Generator Connection Work which will:
  - (i) increase the Maximum Permitted Output;
  - (ii) require a change to the Generator Performance Standards; or
  - (iii) require Evoenergy to obtain or comply with any additional Approvals or Applicable Laws (including any Directives from an Authority).

#### 4.3 Transfer of Generator Connection Work

- (a) The Generator must provide confirmation of the successful completion of the factory acceptance tests for the Generator Connection Work to Evoenergy as soon as reasonably possible after successful completion of those factory acceptance tests (and in any event by the date specified in the Program of Works).
- (b) Within a reasonable period of receiving the notice referred to in clause 4.3(a), Evoenergy will inspect the Generator Connection Work and conduct the Acceptance Tests for Handover once the Generator notifies Evoenergy that it has completed the Generator Connection Work.
- (c) Upon completion of the Acceptance Tests for Handover to the satisfaction of Evoenergy:
  - (i) Evoenergy will provide confirmation to the Generator of the successful completion of the Acceptance Tests for Handover; and
  - (ii) upon receipt of the notice referred to in clause 4.3(c)(i), the Generator will transfer ownership and control of the Generator Connection Work to Evoenergy at no cost to Evoenergy.

#### 4.4 Title and risk

Title to and risk in the Generator Connection Work will not pass to Evoenergy until ownership and control of the Generator Connection Work has been transferred to Evoenergy in accordance with clause 4.3(c)(ii).

#### 4.5 Defects

- (a) If, during the Defect Liability Period, Evoenergy identifies any Defect in the Generator Connection Work, Evoenergy may give the Generator notice in writing of the Defect (**Defect Notice**) and require the Generator to make good the Defect (at the Generator's cost) within a reasonable period as stated in the notice.
- (b) The Generator must comply with any Defect Notice.
- (c) If the Generator fails to comply any Defect Notice within the period specified in the Defect Notice, Evoenergy may, after giving the Generator 5 Business Days'

notice, have the rectification work carried out and the costs and expenses incurred by Evoenergy in doing so will be a debt due and payable from the Generator to Evoenergy on demand.

#### **4.6 Additional Defect Liability Period**

Where the Generator has rectified any Defect in accordance with clause 4.5, the rectified part of the Generator Connection Work will be subject to a further Defect Liability Period from the date that Evoenergy confirms that the Defect has been rectified. Each additional Defect Liability Period will last for the shorter of:

- (a) 24 months from the date the additional or rectified work was completed; or
- (b) 48 months from the Date of Construction Completion.

#### **4.7 Manufacturers' Warranties**

- (a) Before the expiry of the Defect Liability Period, the Generator must pass on to Evoenergy the benefit of any manufacturers' warranties applicable to the Generator Connection Work.
- (b) If required by Evoenergy, the Generator must sign such documents as Evoenergy reasonably requires in order for Evoenergy to secure the benefit of such warranties.

#### **4.8 Completion of the Facility for final commissioning**

The Generator must serve a Notice on Evoenergy when the Generator has completed the construction and commissioning of the Facility to the stage where Evoenergy is able to complete the commissioning of the Connection Work and the Acceptance Tests for Final Completion.

#### **4.9 Construction Completion / Final Completion Procedures**

- (a) At least 40 Business Days before Evoenergy is scheduled to commence Acceptance Tests for Construction Completion, the Parties will meet to discuss and agree on the details of:
  - (i) the joint commissioning and acceptance testing plan for the Connection Work, the Generator Connection Work and the Facility; and
  - (ii) the Acceptance Tests for Construction Completion, the Acceptance Tests for Handover and the Acceptance Tests for Final Completion.
- (b) Evoenergy must give the Generator at least 5 Business Days' Notice of the date on which Evoenergy anticipates that Construction Completion or Final Completion will be achieved.
- (c) When Evoenergy considers that Construction Completion or Final Completion has been achieved Evoenergy will notify the Generator of the planned time for conducting the Acceptance Tests for Construction Completion or the Acceptance Tests for Final Completion (whichever is applicable).
- (d) Subject to clause 7, Evoenergy will commission the Connection Assets and Network Assets and the Generator will commission the Facility in accordance with the joint commissioning and acceptance testing plan agreed between the Parties in accordance with clause 4.9(a).
- (e) Within 2 Business Days of the completion of the Acceptance Tests for Construction Completion or the Acceptance Tests for Final Completion (whichever is applicable), the Generator must confirm to Evoenergy in writing that

Construction Completion or Final Completion (whichever is applicable) has been achieved.

- (f) If any acceptance test is not successfully completed and that failure relates to the Generator Connection, the Generator will perform any necessary corrective works and repeat the Acceptance Test as soon as possible.
- (g) An Acceptance Test will be taken to have been successfully completed if Evoenergy confirms (acting reasonably) that it has been successfully completed.

#### 4.10 Post Final Completion obligations in relation to the Facility

- (a) As soon as reasonably practicable after Final Completion is achieved, the Generator must provide all notices, complete all tests, provide all information and do all other things that the Generator is required under the Applicable Laws or by AEMO do and complete in relation to the Facility within the first 6 months of operating the Facility.
- (b) As soon as reasonably possible after Construction Completion has been achieved, the Parties will meet to discuss and agree on the details of, and timing for the completion of, the matters referred to in clause 4.10(a).
- (c) The Generator must, when requested in writing by Evoenergy, provide evidence to Evoenergy which demonstrates that the Generator is diligently complying with or has complied with its obligations under clause 4.10(a).

## 5. Extensions of Time

### 5.1 Notice of delay

- (a) If Evoenergy becomes aware of any potential or actual delay to the progress of the Connection Work as compared to the rate of progress identified in the Program of Works, Evoenergy must, within 5 Business Days of becoming aware of that fact, notify the Generator of that fact.
- (b) Evoenergy must as soon as reasonably possible after notifying the Generator under clause 5.1(a) but in any event within 10 Business Days of notifying the Generator under clause 5.1(a), send a further Notice to the Generator setting out the circumstances and probable effects of the potential or actual delay on the progress of the Connection Work including Evoenergy's best estimate of:
  - (i) the length of the likely delay;
  - (ii) the change to the Connection Work, the Program of Works or the manner in which the Connection Work will be undertaken (as compared to the manner referred to in the Scope of Works) which will result from that delay; and
  - (iii) where the delay is caused (whether in whole or in part) by the occurrence of an Excepted Risk, the quantum of the costs that Evoenergy estimates it will incur as a result of that delay (i.e. the **Delay Costs**).
- (c) Evoenergy will update the information contain in a Notice given under this clause 5.1(b) as soon as reasonably possible but in any event at intervals of not less than 10 Business Days.
- (d) Subject to clause 5.2, the Parties must use their best endeavours to mitigate the impact of that event:

- (i) on the achievement of Construction Completion and/or Final Completion of the Connection Work;
- (ii) on the quantum of the additional costs which Evoenergy will or might incur as a result of that delay; and
- (iii) on the extent of any change to the Connection Work, the Program of Works or the manner in which the Connection Work will be undertaken.

## 5.2 Delay caused by an Excepted Risk

- (a) If an Excepted Risk occurs and as a result Evoenergy is or will be delayed in achieving Construction Completion of the Connection Work by the Date for Construction Completion or Final Completion of the Connection Work by the Date for Final Completion (in each case, the extent of the relevant delay being the **Eligible Delay**) the Parties will negotiate in good faith to agree upon:
  - (i) the extension to the Date for Construction Completion and/or the Date for Final Completion (whichever is applicable) taking into account the length of the Eligible Delay;
  - (ii) any necessary change to the Connection Work, the Program of Works or the manner in which the Connection Work will be undertaken as a result of that delay determined in accordance with clause 3.5 (i.e. a Variation); and
  - (iii) the quantum of the additional costs which Evoenergy will incur as a result of that delay (i.e. the **Delay Costs**) which costs may include any additional holding or financing costs and any Variation Costs determined under clause 3.5 that are related to the required changes to the Connection Work.
- (b) If the Parties are unable to reach agreement in accordance with clause 5.2(a) within 20 Business Days of commencing negotiations, either Party can refer that matter to be determined in accordance with the dispute resolution procedures set out in clause 22 by serving a notice on the other Party.
- (c) The Generator must pay to Evoenergy the Delay Costs agreed under clause 5.2(a)(iii) or, in the event of a Dispute between the Parties, as determined in accordance with clause 5.2(b) in the manner and in accordance with the requirements set out in clause 14.

## 5.3 Immediate action to mitigate effect of Excepted Risk

The Parties agree that nothing in this clause 5 will:

- (a) prevent Evoenergy or its Associates from taking immediate and reasonable steps to deal with and/or mitigate the effect of an Excepted Risk including incurring any cost or commencing any Work which is required in order to deal with the occurrence of an Excepted Risk and the potential consequences of that Excepted Risk; or
- (b) limit Evoenergy's or its Associate's discretion in relation to the steps that may need to be taken to deal with and/or mitigate the effect of an Excepted Risk.

## 6. Insurance

### 6.1 Generator Insurance

At all times during the Term, the Generator must, at its own expense, secure or cause to be secured and maintained such policies of insurance as a prudent owner and operator of the Facility would effect including:

- (a) public liability insurance for the amount specified in Item 3 of Schedule 1 – Contract Details; and
- (b) worker's compensation and employer's liability insurance as required by Applicable Laws.

### 6.2 Inspection of Generator Insurance Policy Documentation

Evidence that the insurance policies are being maintained as required by clause 6.1 will be made available for inspection by Evoenergy on reasonable request by Evoenergy.

## 7. Inspections, Testing and Commissioning

### 7.1 Inspection by Generator

- (a) An authorised representative of the Generator may inspect any part of the Connection Work at any time by giving 5 Business Days' Notice to Evoenergy.
- (b) In exercising its right of inspection under this clause 7.1, the Generator's representative must be accompanied by a representative of Evoenergy.
- (c) Nothing in this clause 7.1 will require Evoenergy to give the Generator or its representative access to any area which is described as an 'excluded area' in the Scope of Works or the Operating Protocol.

### 7.2 Compliance Testing and Commissioning

- (a) Prior to the initial *connection* of the Facility to the Connection Assets, Evoenergy will be entitled to inspect and, where necessary, test those parts of the Facility that have a direct effect on the Distribution System, to satisfy itself that the Facility is acceptable for *connection* and complies in all material respects with the requirements of this Agreement.
- (b) Evoenergy will:
  - (i) give the Generator not less than:
    - (A) 3 Business Days' Notice of any proposed inspection; and/or
    - (B) 7 Business Days' Notice of any proposed tests
 under clause 7.2(a); and
  - (ii) minimise, as far as possible, any disruption to the Facility arising out of such inspections or tests.
- (c) On completion of the tests, Evoenergy will notify the Generator of any non-compliance resulting from such tests and provide the Generator with such further information as is reasonably required by the Generator to identify the relevant non-compliance.
- (d) Without limiting clause 7.2(a), the Parties will each comply with their respective obligations under clause 5.8 of the NER so as to ensure that the *connection* of the Facility is carried out in accordance with the procedures and timeframes set



out in clause 5.8 of the NER (as those timeframes may be varied by agreement between the Parties).

- (e) Any inspection and testing of the Facility by Evoenergy in accordance with this clause 7.2 will not relieve the Generator from any liability, responsibility or obligation under this Agreement (nor create any obligation or liability on Evoenergy) to ensure that the Facility is acceptable for *connection* and complies in all material respects with the requirements of this Agreement (including, in particular, any requirements for the Facility identified in the Scope of Works).

### 7.3 Non-compliance

- (a) If in Evoenergy's reasonable opinion the Facility is not acceptable for *connection* because it does not comply in any material respect with the requirements of this Agreement (**Facility Deficiency**) and the Facility Deficiency would have a material adverse effect on the Distribution System if the Facility was *connected*, then until the Generator remedies the Facility Deficiency, the Facility will not be *connected* to the Distribution System.
- (b) Where, in Evoenergy's reasonable opinion, the Facility Deficiency would not have a material adverse effect on the Distribution System, Evoenergy may agree to permit the *connection* of the Facility to the Distribution System on such reasonable terms as it notifies in writing to the Generator at that time.
- (c) However, if Evoenergy agrees to permit the *connection* of the Facility to the Distribution System, the Generator must:
  - (i) remedy the Facility Deficiency as soon as reasonably practicable after *connection*;
  - (ii) notify Evoenergy in writing when that Facility Deficiency has been remedied; and
  - (iii) comply with any requirements which are imposed by Evoenergy as a condition of the grant of this permission.
- (d) Evoenergy will notify the Generator of any Facility Deficiency as soon as reasonably possible after becoming aware of the existence of that Facility Deficiency and provide the Generator with such further information as is reasonably required by the Generator to identify the nature and extent of that Facility Deficiency.
- (e) Nothing in this clause 7.3 will require Evoenergy to permit the *connection* of the Facility to the Distribution System if the *connection* of the Facility to the Distribution System would be contrary to an Applicable Law (including in particular, a Directive from an Authority).

### 7.4 Execution of Operating Protocol

- (a) Notwithstanding anything else in this Agreement, Evoenergy is not required to *connect* the Facility to the Connection Assets or provide any Services to the Generator until such time as the Parties have finalised and executed the Operating Protocol.
- (b) The Parties agree that the Operating Protocol will be based on the principles set out in Schedule 9 as that document is amended by the Parties to take into account:

- (i) the outcome of the compliance testing and commissioning which is performed in accordance with clauses 7.1 and 7.2;
  - (ii) any relevant technical requirements set out in the Scope of Works and/or Applicable Laws; and
  - (iii) any relevant Directives and the development of national industry standards or requirements.
- (c) Without limiting clause 7.4(a), Evoenergy will consult with the Generator concerning the final content and terms and conditions of the Operating Protocol.
  - (d) The Parties must finalise and execute the Operating Protocol as soon as reasonably practicable after completion of the detailed design work for the Connection Work and the Facility.

## 7.5 Finalisation of Generator Performance Standards

Notwithstanding anything else in this Agreement, Evoenergy is not required to *connect* the Facility to the Connection Assets or provide any Services to the Generator until such time as:

- (a) the final form of the Generator Performance Standards for the Facility have been accepted by AEMO and Evoenergy under clause 5.3.4A of the NER; and
- (b) the Generator has fully satisfied the requirements of clauses 7.2 and 7.3 (i.e. demonstrating to Evoenergy's reasonable satisfaction that the Facility can comply with the requirements of this Agreement).

## 7A Work Health and Safety

### 7A.1 Responsibility for work health and safety

The Generator has primary responsibility for managing health and safety for, or in connection with, the Generator Connection Work.

### 7A.2 Work health and safety obligations

- (a) The Generator warrants that it is familiar with and has the capability and resources to comply with all relevant Work Health and Safety Laws.
- (b) The Generator must (and must ensure that its Associates):
  - (i) comply with, and ensure that all other persons engaged in the Generator Connection Work comply with, all Work Health and Safety Laws;
  - (ii) upon request, provide Evoenergy with evidence of compliance with its obligations under clause 7A.2(b)(i);
  - (iii) cooperate with and do all things necessary to assist, and refrain from doing anything that may impede, the discharge by any person of their obligations under Work Health and Safety Laws; and
  - (iv) comply with any Evoenergy policy, procedure or direction related to, or associated with, work health and safety which is relevant to the Generator Connection Work and ensure that all of its Associates comply with any such policy, procedure or direction. For the avoidance of doubt, where Evoenergy provides any policy, procedure or direction related to work health and safety, this does not relieve the Generator and its Associates of the primary obligation to ensure the safety of their workers.

### 7A.3 Consultation

- (a) At the request of Evoenergy, the Generator must (and must ensure that its Associates) consult, cooperate and coordinate with the Evoenergy on work health and safety issues.
- (b) At the direction of the Evoenergy, the Generator must (and must ensure that its Associates) do all things necessary to enable Evoenergy to consult with persons engaged in the Generator Connection Work on work health and safety issues.

### 7A.4 Further obligations

- (a) Where the Generator Connection Work falls within the definition of 'construction work' under Work Health and Safety Laws, the Generator agrees and acknowledges that for the purposes of the Work Health and Safety Laws in carrying out any construction work the Generator (and where applicable, any relevant Associate) has been:
  - (i) authorised by Evoenergy to have management and control of the site in relation to the relevant construction work; and
  - (ii) engaged by Evoenergy and has accepted appointment as the 'principal contractor' in relation to the relevant construction work.
- (b) The Generator must (and must ensure that its Associates) comply with all the duties and obligations imposed on principal contractor and a person with management and control of the site under the Work Health and Safety Laws.
- (c) Upon request, the Generator must provide Evoenergy with evidence of compliance with its obligations under clause 7A.4(b), including by provision of the work health and safety management plan required under the Work Health and Safety Laws.
- (d) The Generator must (and must ensure that its Associates) ensure that all persons that are engaged to carry out the construction work have completed necessary training for undertaking construction work, including in accordance with any requirements in the applicable Work Health and Safety Laws, and are supervised.
- (e) At Evoenergy's request, the Generator must (and must ensure that its Associates) provide Evoenergy with documentary evidence of completion of the construction work training referred to in item (d).

### 7A.5 Notification of risks on site

- (a) If the Generator or Evoenergy becomes aware of any risks to health and safety arising from the site or the means of entering or exiting the site:
  - (i) that Party must immediately notify the other Party of the risk; and
  - (ii) the Generator must immediately take all reasonably practicable measures to eliminate or reduce the risk; and
  - (iii) as soon as practicable, the Generator must provide Evoenergy with evidence that the hazards giving rise to the risk have been eliminated or reduced, so far as is reasonably practicable.

### 7A.6 Notification of incidents

- (a) If any incident or event that is in breach of or is notifiable under the applicable Work Health and Safety Laws occurs in connection with the Generator Connection Work, the Generator must (and must ensure that its Associates):

- (i) immediately notify Evoenergy;
- (ii) investigate the incident;
- (iii) where site preservation is required by the applicable Work Health and Safety Laws, ensure, so far as is reasonably practicable, that the site where the incident occurred is not disturbed until further direction is given to the Generator by Evoenergy; and
- (iv) as soon as practicable, provide Evoenergy with evidence that the hazards or risks giving rise to the incident have been eliminated or reduced, so far as is reasonably practicable, including a copy of its incident investigation report.

#### **7A.7 Notification of entry by permit holders or inspectors**

- (a) If the Generator or any of its Associates become aware that a 'permit holder' under the Work Health and Safety Laws has entered or proposes to enter the site, the Generator must immediately notify Evoenergy and provide it with all relevant details of that entry.
- (b) If the Generator or any of its Associates become aware that a Work Health and Safety Inspector has entered or proposes to enter the site, the Generator must immediately notify Evoenergy and provide it with all relevant details of that entry.

#### **7A.8 Enforcement measures**

The Generator must notify Evoenergy immediately if:

- (a) the Generator or an Associate is issued with an Enforcement Notice;
- (b) the Generator or any of its Associates become aware of any other person engaged in the Generator Connection Work being issued with an Enforcement Notice; or
- (c) the Generator or any of its Associates become aware that legal proceedings have been, or are likely to be, commenced against the Generator, or any other person engaged in the Generator Connection Work, for an alleged contravention of the Work Health and Safety Laws relating to the Generator Connection Work.

## Part 3 – Services

### 8. Entry Services

#### 8.1 Evoenergy's Obligation

- (a) Subject to clauses 7.3, 7.4 and 7.5, during the period from the Date of Construction Completion to the Date of Final Completion, Evoenergy will provide Entry Services to the Generator at the Connection Point to the level and standard reasonably determined by Evoenergy at that time for the purposes of commissioning the Facility (which level and standard must be consistent with *good electricity industry practice* taking into account the status of the Facility at that time).
- (b) Subject to clauses 7.3, 7.4 and 7.5, as and from the Date of Final Completion and during the Term, Evoenergy will provide Entry Services to the Generator at the Connection Point in accordance with *good electricity industry practice*, the Scope of Works and the other requirements of this Agreement.
- (c) Evoenergy will:
  - (i) manage, operate and maintain the Distribution System in accordance with the requirements of all Applicable Laws and in a manner which is consistent with this Agreement and *good electricity industry practice*; and
  - (ii) use its reasonable endeavours to manage, operate and maintain the Distribution System so as to protect and avoid any damage to, or any other adverse effect upon, the Facility which Evoenergy knows or ought reasonably know could occur if it does not comply with clause 8.1(c)(i).
- (d) The parties confirm that the Generator has not requested, and Evoenergy has not agreed to provide, any *Distribution Network user access* arrangements.

#### 8.2 Operation and Control of Facility

- (a) The Generator must operate, control and maintain the Facility in accordance with *good electricity industry practice*, the requirements of Applicable Laws, the Technical Obligations and the other requirements of this Agreement.
- (b) Without limiting clause 8.2(a), the Generator will:
  - (i) not operate the Facility so that the Agreed Capability is exceeded;
  - (ii) not operate the Facility so that the Capacity of the Distribution System as notified in writing to the Generator from Evoenergy from time to time is exceeded;
  - (iii) not operate the Facility so that the Maximum Permitted Output of the Facility is exceeded; and
  - (iv) without limiting clauses 8.2(b)(i), (ii) and (iii), only import electricity from the Distribution System through the Connection Point up to but not exceeding the Agreed Maximum Demand; and

- (v) immediately notify Evoenergy if the Generator becomes aware of any material and probable threat of a breach of clause 8.2(a) or this clause 8.2(b).
- (c) Without limiting clause 17.1, Evoenergy may take such steps as it reasonably considers necessary to limit, suspend or interrupt the delivery of electricity from the Facility to the Distribution System or to the Facility from the Distribution System, if Evoenergy reasonably believes that such steps are necessary so as to avoid an Emergency or a breach of clauses 8.2(a) or (b).
- (d) The Generator and Evoenergy agree that:
  - (i) as at the Commencement Date, the maximum Capacity of the Distribution System to accept electricity at the Distribution Network Connection Point is equal to the *power transfer capability* set out in the System Study under the network conditions and other circumstances described in the System Study;
  - (ii) the actual amount of electricity which can be exported from the Facility (via the Connection Assets) to or through the Distribution System at any point in time will depend upon the Capacity of the Distribution System, the Agreed Capability and the Maximum Permitted Output of the Facility at that time and may be limited by conditions on the Distribution System (including *constraints* caused by other *Generators* exporting electricity to or through the Distribution System in accordance with the terms of the NER) so that the Generator may be unable to transfer electricity from the Facility to the Distribution System via the Connection Assets up to the Maximum Permitted Output of the Facility at that time;
  - (iii) the Capacity of the Distribution System will only be available to be utilised on a non-exclusive or 'non-firm' basis (i.e. the Generator has no exclusive or 'firm' right or entitlement to use all or any part of the available Capacity of the Distribution System in priority to any other *Distribution Network Users*); and
  - (iv) without limiting the scope and effect of the exclusions from liability and the limits on liability set out in clause 20, Evoenergy will not be liable (to the maximum extent permitted at law and whether in tort (including negligence), contract or otherwise) for any Damage suffered by the Generator (or any third party with whom the Generator contracts) as a direct or indirect result of the Generator being unable to transfer electricity to the Distribution System via the Connection Assets up to the Maximum Permitted Output due to any limitation in relation to the Capacity of the Distribution System at that time.

### 8.3 Connection of New or Altered Equipment

Any application made by the Generator to Evoenergy after the Commencement Date to:

- (a) modify the Connection Assets or the Generator's *connection* with the Distribution System (including in order to increase the Agreed Capability of the Connection Assets); or
- (b) otherwise modify, alter or change the Facility or the electrical configuration or characteristics of the Facility (including any proposed increase in the Maximum Permitted Output from the Facility),

will be dealt with as an application to modify a *connection* to the Distribution System for the purposes of Chapter 5 of the NER (and, in particular, clauses 5.2.5(b)(1) and 5.3 of the NER) unless Evoenergy agrees otherwise.

#### 8.4 Generator Performance Standards

- (a) The Generator must ensure that the *generating system* at the Facility complies with the Generator Performance Standards and the other requirements of rule 4.15 of the NER.
- (b) Without limiting clause 8.4(a), if the Generator Performance Standards do not include the *automatic access standards* referred to in clause S5.1.5(a) and clause S5.1.6(a) of the NER, the Generator will be required to either:
  - (i) upgrade its Facility to comply with the relevant *automatic access standard*; or
  - (ii) fund the reasonable cost of any works necessary to mitigate the effect of *connecting* the Facility at a standard below the relevant *automatic access standard*,

if that upgrading or work is necessary in order to allow for the *connection* of other *Network Users* to Evoenergy's *Distribution Network*.

#### 8.5 Continue to monitor

Without limiting clause 8.4(a), the Generator must:

- (a) continue to monitor the Facility and notify Evoenergy as soon as reasonably possible after it becomes aware that any item of *plant* comprised within the Facility has failed or is required to be taken out of service if the loss of that item of *plant* will or is likely to cause the Facility to fail to perform in accordance with the requirements of this Agreement;
- (b) ensure that the *generating system* at the Facility meets or exceeds the requirements of this Agreement;
- (c) ensure that the *generating system* at the Facility is not likely to cause a material adverse effect on *power system security* or adversely affect the quality or security of *network services* to other *Network Users* through its failure to comply with a requirement of this Agreement; and
- (d) notify Evoenergy if it serves a notice on *AEMO* under clause 4.15(f) of the NER or receives a notice from *AEMO* under clause 4.15(i)(3) of the NER before 5.00 PM on the next Business Day after the day on which the relevant notice was received or given.

#### 8.6 Compliance monitoring program

- (a) The Generator must develop and maintain a compliance program which satisfies the requirements of clauses 4.15 of the NER in relation to the ongoing compliance of the *generating system* at the Facility with the Generator Performance Standards.
- (b) The Generator acknowledges that Evoenergy accepts no liability for any compliance monitoring program relating to the Facility.

## 8.7 May take action

Nothing in this clause 8 is intended to prevent Evoenergy from taking action under clause 17.

## 9. Obligations Related to Metering

### 9.1 Provision of Inputs

- (a) Evoenergy will provide inputs from the metering class *current transformers* and *voltage transformers* which form part of the Connection Work and cable these inputs to an agreed interface for each Connection Point, if the Generator has not elected to use alternate metering arrangements that do not require the use of Evoenergy's metering class *current transformers* or *voltage transformers*.
- (b) Unless Evoenergy has been engaged as the *Metering Provider* for the Connection Point under a separate metering agreement, the Generator will:
  - (i) provide to Evoenergy the *metering data* reasonably required by Evoenergy for the purpose of the operational planning of the *power system* or for the billing and charging of Services;
  - (ii) ensure that the *meters* for each Connection Point meet the requirements set out in the Applicable Laws;
  - (iii) provide details for the *meters* prior to commissioning; and
  - (iv) be the *Responsible Person* in respect of the *metering installation* for each Connection Point.

### 9.2 Warranty

The Generator warrants that all metering equipment provided by the Generator in relation to the *connection* of the Facility complies with the requirements of all relevant Applicable Laws.

## 10. Routine Management and Maintenance Services

### 10.1 Scope of routine management and maintenance obligation

As and from the Date of Construction Completion and during the Term, Evoenergy will provide as part of the Entry Services the operation and maintenance services described in the Scope of Works for the Connection Assets and the Network Assets.

### 10.2 Limit on operation and maintenance obligation

- (a) The Generator acknowledges that the Entry Services:
  - (i) only include the routine management and maintenance services described in the Scope of Works; and
  - (ii) exclude any replacement of the Connection Assets or Network Assets during the Term.
- (b) If Evoenergy reasonably considers that any or all of the Connection Assets or Network Assets need to be replaced so that the Entry Services can continue to be provided to the Generator, Evoenergy will notify the Generator of:
  - (i) the need to replace the relevant Connection Asset or Network Asset;
  - (ii) which assets referred to in item (i) should be replaced; and



- (iii) the amount that the Generator will be required to make in relation to the capital expenditure proposed in accordance with this clause 10.2; and
  - (iv) the other terms and conditions relating to the replacement of those assets and the payment of that amount.
- (c) Upon receipt of the notice referred to in clause 10.2(b), the Generator must pay to Evoenergy the amount referred to in clause 10.2(b)(iii) and comply with any other requirements of Evoenergy as notified under clause 10.2(b).
- (d) Where the relevant asset needs to be replaced as a result of a breach of this Agreement by Evoenergy, the Generator will not be required to pay for the replacement of those assets (except to the extent that the acts and/or omissions of the Generator have contributed to the need to replace the relevant asset).

## 11. Operating Protocol

Each Party will comply with the Operating Protocol when operating its *facilities* or undertaking any *Work* in relation to its *facilities* covered by the Operating Protocol to the extent that the Operating Protocol is not inconsistent with the terms of this Agreement.

## Part 4 – General obligations

### 12. Access

#### 12.1 Land and Equipment Access Rules

Each Party will give the other Party (and its Associates) reasonable access to its *facilities* and any land or premises owned or occupied by that Party upon which any *facilities* belonging to that Party is situated or are proposed to be situated, in accordance with the Land and Equipment Access Rules, for:

- (a) any purpose identified in the Land and Equipment Access Rules or the Operating Protocol; and
- (b) the purpose of complying with, or monitoring compliance with, the obligations of the Parties under this Agreement or under an Applicable Law.

#### 12.2 Additional Requirements

Each Party must comply, and ensure that its Associates comply, with any reasonable requirements relating to the health and safety of people on or near the Land, the protection of property on or near the Land and the protection of the environment and the security of the Land notified to them by the other Party (including any such requirements relating to the Shared Access Road).

### 13. Maintenance

#### 13.1 Maintenance Obligation

Each Party must:

- (a) manage, operate and maintain its *facilities* in accordance with the requirements of all Applicable Laws and *good electricity industry practice* (including any Directives which may be issued to the Parties from time to time); and
- (b) use its reasonable endeavours to manage, operate and maintain its *facilities* so as to protect and avoid any damage to, or any other adverse effect upon the other Party's *facilities* and any other plant, equipment, property or other person *connected* to the Distribution System, which that Party knows or ought reasonably know could occur if it does not comply with clause 13.1(a).

#### 13.2 Impact of Maintenance on Capability

Subject to clauses 13.3(c) and 13.3(e), the Generator agrees that:

- (a) Evoenergy has the right to maintain the Distribution System and undertake other Work in relation to its Distribution System in accordance with Evoenergy's own maintenance policies and procedures (subject to those policies and procedures complying with *good electricity industry practice* and the requirements of any relevant Applicable Laws) and the requirements of this clause 13;
- (b) an *outage* of a part of the Distribution System (including any part of the Connection Assets and Network Assets) for the purposes of undertaking any works on the Distribution System may:
  - (i) reduce the *power transfer capability* of the Distribution System;

- (ii) reduce the Capacity of the Distribution System available for use by the Generator at that time; or
  - (iii) otherwise interrupt, suspend or limit the provision of some or all of the Services by Evoenergy to the Generator;
- (c) Evoenergy may *disconnect* the Facility from the Distribution System or interrupt, suspend or limit the provision of any Services in relation to the Connection Point (including by limiting the transfer of electricity to or from the Facility via the Connection Assets) in accordance with the requirements set out in this clause 13 for the purposes of undertaking any Work in accordance with this clause 13; and
- (d) Evoenergy will not be liable to the Generator for any Damages incurred or suffered by the Generator (including any third party Claims) as a result of Evoenergy *disconnecting* the Facility from the Connection Assets or Evoenergy's Distribution System or interrupting, suspending or limiting the provision of any Services to the Generator, in accordance with the requirements set out in this clause 13 in order to undertake any Work in accordance with this clause 13.

### 13.3 Schedule of Maintenance

- (a) On or before the end of the First Contract Year and each subsequent Contract Year, each Party will provide to the other Party an indicative program of the Work which that Party:
- (i) proposes to undertake during the following 12 month period on or in relation to the Connection Assets and Network Assets (in the case of Evoenergy) and the Facility (in the case of the Generator); and
  - (ii) reasonably considers may affect the other Party.
- (b) Notwithstanding clause 13.2(d):
- (i) each Party will notify the other Party as soon as it becomes aware of any circumstances which will require the current Program of Work to be materially modified; and
  - (ii) without limiting item (i), the Parties can agree to vary their programs of Work at any time to take advantage of any outage of a Party's *facilities*.
- (c) Unless otherwise agreed, each Party must give to the other Party at least 10 Business Days (and where it is reasonably possible up to 3 months) prior Notice of the final details for:
- (i) the planned date of commencement of any Planned Work;
  - (ii) the duration of any planned *outage* associated with that Planned Work; and
  - (iii) the details of the nature and purpose of an action proposed to be taken by the Party undertaking that Planned Work during that planned *outage*.
- (d) The Parties will use their reasonable endeavours to schedule Planned Work and ensure the co-ordination of their respective Program of Work so as to minimise any adverse effect upon the other Party.
- (e) Nothing in this clause 13 will prevent a Party immediately carrying out any Unplanned Work on its *facilities*. The Party needing to undertake any Unplanned Work must notify the other Party as soon as possible after it becomes aware of the need to undertake that Unplanned Work.

- (f) Each Party will, in carrying out any Planned Work or Unplanned Work:
  - (i) diligently carry out any work and ensure that it is completed in a timely manner; and
  - (ii) not unreasonably delay or restrict the other Party from performing Work which is necessary for that Party to perform in order to comply with the requirements of any Applicable Law, *good electricity industry practice* or any other requirements of this Agreement.
- (g) Where a Party requires the other Party's consent under any Applicable Law before it can undertake any Work, that consent will not be unreasonably withheld.
- (h) If a Party requests the other Party to schedule Planned Work outside normal business hours, the requesting Party will pay any reasonable additional costs incurred as a result of that request.
- (i) Without limiting clauses 13.3(a) to 13.3(h) inclusive, in the lead up to Planned Work:
  - (i) Evoenergy will provide the Generator with information concerning the likely impact of the Planned Work on the Facility and in particular the ability of the Facility to export electricity during the period of the Planned Work; and
  - (ii) the Parties will consult to determine the different options available to minimise the impact of the Planned Work on the Facility and any preconditions that will apply to each option and how to manage any risks associated with the *service target performance incentive scheme* relating to the Planned Work; and
  - (iii) the Parties will endeavour to agree in writing the option (if any) that will be implemented to minimise the impact of the Planned Work on the Facility and any preconditions that will apply to the implementation of that option and how any risks associated with the *service target performance incentive scheme* will be managed.

#### 13.4 Disconnection to Undertake Work

- (a) Subject to clauses 13.2(d) and 17 and the requirements of any relevant Applicable Laws, Evoenergy may *disconnect*, interrupt, suspend or limit the provision of any Services to the Generator if that is necessary in accordance with *good electricity industry practice* or to comply with any Applicable Laws, in order to undertake any Planned Work or Unplanned Work on or in relation to the Distribution System.
- (b) The Generator may request Evoenergy to *disconnect*, interrupt, suspend or limit the provision of any Service to the Generator if that is necessary in accordance with *good electricity industry practice* or to comply with any Applicable Laws, in order to undertake any Work on or in relation to the Facility. Subject to the Generator agreeing to reimburse Evoenergy's reasonable costs in relation to complying with that request, Evoenergy will comply with that request unless to do so would be contrary to an Applicable Law.
- (c) Subject to clause 12.4(b), each Party will bear its own costs of and incidental to any switching of the Distribution System (in the case of Evoenergy) and the Facility (in the case of the Generator) which is reasonably required to enable the other Party to undertake any Planned Work or Unplanned Work in accordance with this Agreement.

**13.5 Inspection and Testing under the NER**

- (a) Each Party will comply with the provisions of clause 5.7 and 5.8 of the NER and the requirements of this clause 13, in relation to the inspection and testing of the Distribution System (in the case of Evoenergy) and the Facility (in the case of the Generator) during the Term.
- (b) Evoenergy acting reasonably may require the Generator to conduct (at the Generator's cost) tests to demonstrate that the Facility complies with the requirements of all Applicable Laws and this Agreement. Evoenergy may witness such tests.
- (c) The Generator acknowledges that Evoenergy will need to conduct tests from time to time in relation to the Distribution System and that these tests may result in an interruption to or a limitation of Services to the Generator. The Generator will provide all assistance reasonably requested by Evoenergy in relation to the conduct of these tests.
- (d) The Generator grants to Evoenergy (and its Associates) the right to inspect those parts of the Facility necessary to enable Evoenergy to give effect to the requirements of this clause 13.5 at any time during the Term.
- (e) Evoenergy will, in performing the tests under this clause 13, use its reasonable endeavours to cause the minimum amount of disruption to the provision of the Services and operations of the Generator.

## Part 5 – Costs, Charges, Billings and Payments

### 14. Variation Costs and Delay Costs

#### 14.1 Determination of Variation Costs

The quantum of costs determined in accordance with clause 3.5 in relation to a Variation will be used to determine the Variation Costs for the purposes of clause 14.3.

#### 14.2 Determination of Delay Costs

The quantum of costs determined in accordance with clause 5.1 in relation an Eligible Delay will be used to determine the Delay Costs for the purposes of clause 14.3.

#### 14.3 Payment of Variation Costs and Delay Costs

- (a) Subject to clause 14.3(b) the Generator must pay to Evoenergy any Variation Costs and Delay Costs determined from time to time under clause 3.5 and/or 5.1 within 20 Business Days of the later of:
  - (i) the date of receipt of the relevant invoice for those Variation Costs and/or Delay Costs; and
  - (ii) the date upon which those Variation Costs and/or Delay Costs are finally determined in accordance with the provisions of this Agreement.
- (b) If any Variation Costs or Delay Costs are determined under clauses 3.5 and/or 5.1 using estimated costs, Evoenergy will be entitled to adjust the final amount of the Variation Costs or Delay Costs to take into account any difference between the estimated costs determined in accordance with clauses 3.5 and/or 5.1 and the final costs as reasonably determined by Evoenergy.

### 15. Charges

#### 15.1 Generator's Obligation to Pay Charges

- (a) The Generator must pay:
  - (i) the Design and Construction Charge in the manner set out in the Pricing Schedule; and
  - (ii) the Entry Charge as invoiced by Evoenergy to the Generator in accordance with this Agreement.
- (b) Without limiting clause 2.2 and Item 1.2 of Schedule 1, the Generator acknowledges and agrees that Evoenergy is under no obligation to commence the Connection Work until the Generator has complied with Item 1(c)(i) of the Schedule 6 - Pricing Schedule.
- (c) In accordance with clause 16.1, Evoenergy will issue an invoice to the Generator at the beginning of each Billing Period in respect of the Charges for that Billing Period (and, if applicable, any Charges for a previous Billing Period which have not been previously invoiced or have been previously invoiced but have been subsequently adjusted in accordance with clause 15.1(f) or (g)).

- (d) If at any time the Pricing Rules cease to directly regulate the amount that can be charged by Evoenergy to the Generator in relation to any Service, the charge for the relevant Service will be the fair and reasonable Charge negotiated between the Parties at the time.
- (e) If the Parties cannot agree a fair and reasonable Charge under clause 15.1(c), either Party may refer that dispute for resolution by an Independent Expert in accordance with clause 22 by serving a Notice on the other Party. Pending the outcome of that Dispute under clause 22, the last Charge applying under this Agreement to those Services will continue to apply as the relevant Charge for the provision of those Services until that Dispute is finally determined in accordance with clause 22.
- (f) If the interim charge applied under item (e) is different from the charge determined under clause 22, an adjustment will be made to the relevant Charge with the resultant amount, together with interest on any amount overpaid or underpaid by the Generator at the Bank Bill Rate for each day between the date the Charge fixed under clause 15.1(d) first applied and the date of the determination, being invoiced by Evoenergy to the Generator (if the Charge is adjusted upwards) or credited to the Generator (if the Charge is adjusted downwards) in the first invoice given by Evoenergy under this Agreement after that determination.
- (g) If any Charge invoiced under clause 15.1(c) is subsequently shown to be incorrect for any reason, the amount of the difference between the previously invoiced Charge and the corrected Charge will be added to or credited to (as the case may be) the next invoice issued by Evoenergy to the Generator under clause 15.1(c) after that error is discovered.
- (h) Interest will be payable at a rate equal to the Bank Bill Rate on any overcharged or undercharged amounts from the date on which the incorrect invoice was due for payment until the date of payment of such undercharge or overcharge calculated on a daily basis with payment of such interest due on the date on which the amount of the undercharge or overcharge is due.

## 15.2 Metering Data

The Generator must ensure that its nominated *metering data agent* for each Connection Point provides to Evoenergy such *metering data* for each Connection Point as is reasonably required by Evoenergy for the purposes of complying with its obligations under this Agreement.

### 15.3 Variations of Charges

- (a) Evoenergy may vary the Design and Construction Charge by adding any unpaid Variation Costs or Delay Costs determined in accordance with clause 14 to the initial Design and Construction Charge listed in the Pricing Schedule. A variation to the Design and Construction Charge under this clause 15.3(a) will take effect on the date when the Variation Costs or Delay Costs are notified to the Generator under clause 14.
- (b) Evoenergy may vary the Entry Charge in accordance with clause 3.5 and the procedures set out in Items 2 and 5 of the Pricing Schedule. Any variation to the Entry Charge under this clause 15.3(b) will commence to apply as and from the first day of the Contract Year following the relevant Review Date (as that term is defined in the Pricing Schedule).
- (c) Evoenergy may recover from the Generator in accordance with Item 5 of the Pricing Schedule any Pass-Through Amount which is not otherwise being recovered as a result of the operation of clause 15.3(b) (unless Evoenergy is prohibited by the requirements of the Pricing Rules applying at that time from recovering that Pass-Through Amount from the Generator). Any variation to the Entry Charge under this clause 15.3(c) will commence to apply as and from the first day of the Contract Year following the relevant Review Date (as that term is defined in the Pricing Schedule).

### 15.4 Recovery of Costs on Termination

- (a) For the purposes of this clause 15.4:
  - (i) **Unpaid Costs** means any unpaid Variation Costs, Delay Costs or Design and Construction Charges as at the Termination Date; and
  - (ii) **Remediation Costs** means the reasonable costs associated with removing the Connection Assets and the Network Assets and reinstating, remediating and/or making good the Distribution System following the termination of this Agreement as those costs are increased by the Risk Margin.
- (b) On termination of this Agreement by Evoenergy under clauses 18.1(b), 18.2, 18.2(c) or 18.4, the Generator must pay to Evoenergy within 20 Business Days of the Termination Date:
  - (i) the Unpaid Costs and Remediation Costs; or
  - (ii) such lesser amount as may be advised by Evoenergy at that time.
- (c) Nothing in this clause 15.4 will limit Evoenergy's right to recover any amount owing by the Generator under this Agreement prior to the Termination Date or damages from the Generator in relation to a breach of any of the Generator's Non-Financial Obligations which have occurred prior to the Termination Date.
- (d) This clause 15.4 survives the termination of this Agreement.

### 15.5 Goods and Services Tax

- (a) Unless specifically described in this Agreement as 'GST inclusive', any sum payable (or amount included in the calculation of a sum payable), or consideration to be provided, under or in accordance with this Agreement does not include any amount on account of GST.



- (b) Where any payment to be made by one Party (**Supplier**) to another Party (**Recipient**) under or in accordance with this Agreement is subject to GST (other than a supply the consideration for which is specifically described in this Agreement as 'GST inclusive'):
  - (i) the consideration payable or to be provided for that supply but for the application of this clause (**GST Exclusive Consideration**) will be increased by, and the Recipient will pay to the Supplier, an amount equal to the GST payable by the Supplier in respect of that supply; and
  - (ii) the Recipient must pay that additional amount at the same time and in the same manner as the GST Exclusive Consideration payable or to be provided for that supply.
- (c) If any payment to be made to a Party under or in accordance with this Agreement is a reimbursement or indemnification of an expense or other liability incurred or to be incurred by that Party, then the amount of the payment must be reduced by the amount of any input tax credit to which that Party is entitled for that expense or other liability, such deduction to be effected before any increase in accordance with clause 15.5(b).
- (d) The Supplier must issue a tax invoice to the Recipient in respect of a taxable supply made by the Supplier under or in accordance with this Agreement, such tax invoice to be issued no later than 14 days after the Supplier receives the consideration for that taxable supply.
- (e) If an adjustment event has occurred in respect of a taxable supply made under or in accordance with this Agreement, any Party that becomes aware of the occurrence of that adjustment event must notify each Party to that taxable supply as soon as practicable, and all of those Parties agree to take whatever steps are necessary (including to issue an adjustment note), and to make whatever adjustments are required, to ensure that any GST or additional GST on that taxable supply, or any refund of GST (or part thereof), is paid no later than 28 days after the Supplier first becomes aware that the adjustment event has occurred.
- (f) A word or expression used in this clause 15.5 which is defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the same meaning in this clause 15.5.

## 16. Billing and Payment

### 16.1 Billing

- (a) Within 5 Business Days of the end of a Billing Period, Evoenergy will issue to the Generator an invoice in respect of all Charges payable by the Generator for that Billing Period and any other amount payable by the Generator under this Agreement by the Generator in relation to that Billing Period.
- (b) An invoice may include Charges in respect of one or more Billing Periods and be in respect of a Charge that has previously been made in order to reflect any adjustments under clause 15.1(e) or (f) due to (for example) revised or substituted *metering data* information or other information.

## 16.2 Payments

- (a) The Generator must pay Evoenergy the amount set out in an invoice under clause 16.1(a) no later than 12.00 noon on the 20<sup>th</sup> Business Day after the start of the Billing Period to which the invoice relates.
- (b) The Generator must make payments under this clause 16.2 free and clear of any withholding or deduction for any tax unless required by law or this Agreement.
- (c) All payments to be made under this Agreement must be made in cleared funds to a bank account nominated in writing by Evoenergy, rounded to the nearest dollar.

## 16.3 Billing Disputes

- (a) The Generator must notify Evoenergy not less than 2 Business Days before the due date for payment of an invoice under 16.2(a), if the Generator Disputes on a bona fide basis its obligation under this Agreement to pay all or part of that invoice (**disputed amount**).
- (b) If the Generator notifies of a disputed amount in accordance with clause 16.3(a):
  - (i) the Generator must pay 80% of the disputed amount by the date due for payment of that invoice;
  - (ii) the Generator must pay the whole of the remaining balance of the amount due under that invoice (after deduction of any outstanding amount in relation to the disputed amount) by the date due for payment of that invoice; and
  - (iii) either Party can refer that matter to be determined in accordance with the dispute resolution procedures set out in clause 22 by serving a notice on the other Party.
- (c) If as a result of the dispute resolution process under clause 22 it is determined that the amount of that invoice should have been:
  - (i) less than the amount already paid by the Generator on account of that invoice, Evoenergy must pay to the Generator the difference between the amount already paid and the amount determined as being properly due together with interest on that amount at the Default Rate; or
  - (ii) more than the amount already paid but less than the amount of the invoice, the Generator must pay to Evoenergy the difference between the amount already paid and the amount determined as being properly due together with interest on the amount of that difference at the Default Rate,

for each day after the date that invoice was due to be paid, up to and including the date the difference is paid. An amount payable under this clause 16.3(c) will fall due 5 Business Days after the determination of the Dispute.
- (d) A Notice given by the Generator under clause 16.3(a) must contain sufficient information and supporting detail to enable Evoenergy to determine that the Dispute is bona fide and the nature of the Generator's Dispute concerning that invoice.
- (e) For the avoidance of doubt, the payment of all or part of an amount will not preclude the Generator from subsequently challenging its liability to pay that amount.

#### **16.4 Interest for late payment**

Subject to clause 16.3, a Party must pay to the other Party interest on any amount due to the other Party under this Agreement and not paid by the due date for payment under this Agreement. Such interest will:

- (a) accrue daily at the Default Rate for each day from the date on which the amount became due and payable until the amount is paid;
- (b) be payable on the first Business Day of each month;
- (c) be calculated on actual days elapsed and a 365 day year; and
- (d) be capitalised on the first Business Day after the due date for payment of such interest if not paid when due.

The Generator's obligation to pay the Charges or any other amount payable under this Agreement by the Generator on the due date for payment of those Charges or that amount shall not be affected by this clause 16.4.

## Part 6 - Disconnection, Force Majeure and Indemnities

### 17. Disconnection

#### 17.1 Disconnection or interruption, suspension or limitation of Services

Evoenergy may *disconnect* the Facility from the Connection Point or interrupt, suspend or limit the provision of any Services in relation to the Connection Point (including by limiting the transfer of electricity to or from the Facility to or from the Distribution System):

- (a) if requested by the Generator to do so;
- (b) where the Generator fails to pay any amounts due to Evoenergy under this Agreement (other than any amount that is the subject of a bona fide Dispute under clause 16.3 but excluding any amount that is required to be paid under clause 16.3(b)(i) or clause 16.3(c)) (**Financial Default**), and:
  - (i) Evoenergy has given a Notice to the Generator specifying the particulars of the Financial Default and giving the Generator 20 Business Days from the date of the Notice to remedy the Financial Default (**Financial Cure Period**); and
  - (ii) the Generator has not remedied the Financial Default within the Financial Cure Period;
- (c) if the Generator has failed to comply with any of its Non-Financial Obligations under this Agreement (**Performance Default**) and:
  - (i) Evoenergy has given a Notice to the Generator specifying the particulars of the Performance Default (**Default Notice**); and
  - (ii) the Generator has not, within 10 Business Days after receiving the Default Notice, provided Evoenergy with a plan (**Corrective Action Plan**) which specifies a reasonable cure period (i.e. the shortest period of time that could reasonably be expected to be required to remedy the Performance Default) (**Cure Period**); or
  - (iii) where the Generator has already provided Evoenergy with a Corrective Action Plan under clause 16.1(c)(ii), the Generator has not remedied the Performance Default within the Cure Period;
- (d) if the Generator breaches clause 8.2(b) and does not immediately remedy that breach after receiving a Notice from Evoenergy to do so;
- (e) during an Emergency (including those circumstances where Evoenergy forms the reasonable view that the *power system security* is at risk or there is a threat of personal injury and/or death to any person);
- (f) if directed by the System Controller or AEMO or by any person exercising an authority granted to it under an Applicable Law (for example, in order to achieve any *load shedding* directed by AEMO under the NER, or the System Controller under the Act);
- (g) where a Party is required or directed (whether formally or informally) to do so under an Applicable Law;
- (h) in accordance with clause 13;

- (i) upon termination of this Agreement for any reason; or
- (j) in accordance with the terms of any agreed run back system which forms part of the Connection Work (which terms will be described in more detail in the Scope of Works and will be finally determined by Evoenergy during the final design phase for the Connection Work).

## 17.2 Extension of disconnection Cure Period

- (a) The Generator may, before the end of the Cure Period determined under clause 17.1(c)(ii), request Evoenergy by notice in writing to extend the Cure Period. Such request must be accompanied by an updated Corrective Action Plan which sets out why an extension of the Cure Period is required.
- (b) If the Generator is diligently pursuing the remedy or cure of the Performance Default in accordance with the original Corrective Action Plan, Evoenergy will grant an extension to the Cure Period for the period reasonably required to implement the updated Corrective Action Plan submitted under clause 17.2(a).
- (c) If Evoenergy does not grant the extension under clause 17.2(b), the Generator may refer the matter to an Expert for determination in accordance with clause 22, and the Cure Period will be extended until such time as the determination is made.
- (d) If the Generator has not remedied the Performance Default within the extended Cure Period granted by Evoenergy under clause 17.2(b) or determined by an Expert under clause 22, Evoenergy may *disconnect* the Facility from the Connection Point or interrupt, suspend or limit the provision of any Services in relation to the Connection Point (including by limiting the transfer of electricity to or from the Facility to or from the Distribution System).

## 17.3 Reason for Disconnection

Subject to clause 17.4, if Evoenergy proposes to exercise its rights under clause 17.1 or 17.2, Evoenergy must notify the Generator as soon as practicable (where possible, prior to *disconnection*) setting out the reasons why Evoenergy is or proposes to exercise that right.

## 17.4 Emergencies

Without limiting clauses 13, 17.1 and 17.2, if the continued *connection* at the Connection Point has caused or is likely to cause an Emergency, a Party may take all reasonable steps to prevent or remove that Emergency including:

- (a) causing the *disconnection* of, or interrupting, suspending or limiting the provision of any Services in relation to the Connection Point;
- (b) interrupting, suspending or limiting the provision of any Service relating to the Connection Point; and
- (c) entering in or onto land or premises owned or occupied by the other Party in accordance with the Land and Equipment Access Rules.

The Party proposing to take that action:

- (d) will not be required give the other Party any prior Notice if in the circumstances of the Emergency it is not reasonably possible to do so; and
- (e) must notify the other Party as soon as is reasonably possible thereafter of the nature of the Emergency and the steps taken to deal with that Emergency.



## 17.5 Reconnection

If:

- (a) Evoenergy *disconnects* the Connection Point in accordance with clause 17.1 (except clause 17.1(i)) or 17.2, Evoenergy will use its reasonable endeavours to re-establish the *connection* at the Connection Point or *energise* the Connection Point (as the case may be) as soon as possible after the circumstances giving rise to that *disconnection* have ceased or been rectified; or
- (b) Evoenergy interrupts, suspends or limits the provision of any Services in relation to the Connection Point in accordance with clause 17.1 (except clause 17.1(i)) or 17.2, Evoenergy will use its reasonable endeavours restore the provision of those Services as soon as possible after the circumstances justifying that interruption or limitation have ceased or been rectified.

## 17.6 Costs of Reconnection

- (a) If a *disconnection*, interruption, suspension or limitation under clause 17.1 was due to an act or omission of the Generator, the Generator must pay to Evoenergy the reasonable costs incurred by Evoenergy in effecting that *disconnection*, interruption, suspension or limitation and complying with Evoenergy's obligation under clause 0.
- (b) If a *disconnection*, interruption, suspension or limitation under clause 17.1 was due in part to the act or omission of the Generator, the Generator must pay to Evoenergy a proportion of the reasonable costs incurred by Evoenergy in effecting that *disconnection*, interruption, suspension or limitation and complying with Evoenergy's obligation under clause 0, which proportion should reflect the extent to which that *disconnection*, interruption, suspension or limitation was due to the act or omission of the Generator.
- (c) Any amount payable by the Generator under this clause 17.6 must be paid within 10 Business Days of the reconnection or resumption of full Services in relation to the Connection Point or within 5 Business Days of the date on which Evoenergy notifies the Generator of the amount payable (whichever is the later).

## 18. Termination

### 18.1 Termination by Evoenergy prior to Date of Construction Completion

Prior to the Date of Construction Completion Evoenergy may terminate this Agreement:

- (a) in accordance with clause 2.2(j) or clause 19.5;
- (b) if:
  - (i) the Generator fails to pay any amounts due to Evoenergy under this Agreement (other than any amount that is the subject of a bona fide Dispute under clause 16.3 but excluding any amount that is required to be paid under clause 16.3(b)(i) or clause 16.3(c)) (**Financial Default**) and:
  - (ii) Evoenergy has given a Notice to the Generator specifying the particulars of the Financial Default and giving the Generator 20 Business Days from the date of the Notice to remedy the Financial Default (**Financial Cure Period**); and
  - (iii) the Generator has not remedied the Financial Default within the Financial Cure Period;

- (c) if the Generator fails to comply with the requirements of clause 21.3 within 10 Business Days after a Notice from Evoenergy to remedy that failure;
- (d) if the Generator notifies Evoenergy in writing that it will not be proceeding with the construction and commissioning of the Facility; or
- (e) if the Generator has failed to comply with any of its other obligations under this Agreement (**Performance Default**) and:
  - (i) Evoenergy has given a Notice to the Generator Notice specifying the particulars of the Performance Default (**Default Notice**); and
  - (ii) the Generator has not, within 10 Business Days after receiving the Default Notice, provided Evoenergy with a plan (**Corrective Action Plan**) which specifies a reasonable cure period (i.e. the shortest period of time that could reasonably be expected to be required to remedy the Performance Default) (**Cure Period**); or
  - (iii) where the Generator has provided Evoenergy with a Corrective Action Plan under clause 17.1(e)(ii), the Generator has not remedied the Performance Default within the Cure Period;

## 18.2 Termination by Evoenergy after Date of Construction Completion

After the Date of Construction Completion Evoenergy may terminate this Agreement:

- (a) by giving 20 Business Days' written Notice where the Connection Point has been *disconnected* or the provision of any Services in relation to the Connection Point has been interrupted, suspended or limited under clause 17.1(b) for non-payment, and the Generator has not paid the amount due within 20 Business Days after the date of that *disconnection*, interruption, suspension or limitation; or
- (b) by giving 20 Business Days' written Notice where the Connection Point has been *disconnected* or the provision of any Services has been interrupted, suspended or limited under clauses 17.1(c) due to the Generator's default and the Generator has not:
  - (i) commenced to remedy that default within 20 Business Days after the date of that *disconnection* interruption or limitation; or
  - (ii) remedied that default within a reasonable time after the date of that *disconnection*, interruption, suspension or limitation; or
- (c) at any time after the 20th anniversary of the Date of Construction Completion by giving not less than 12 months' Notice in writing to the Generator expiring on or after the 20th anniversary of the Date of Construction Completion.

## 18.3 Extension of termination Cure Period

- (a) The Generator may, before the end of the Cure Period determined under clause 18.1(e)(ii), request Evoenergy by notice in writing to extend the Cure Period. Such request must be accompanied by an updated Corrective Action Plan which sets out why an extension of the Cure Period is required.
- (b) If the Generator is diligently pursuing the remedy or cure of the Performance Default in accordance with the original Corrective Action Plan, Evoenergy will grant an extension to the Cure Period for the period reasonably required to implement the updated Corrective Action Plan submitted under 18.3(a).



- (c) If Evoenergy does not grant the extension under clause 18.3(b), the Generator may refer the matter to an Expert for determination in accordance with clause 22, and the Cure Period will be extended until such time as the determination is made.
- (d) If the Generator has not remedied the Performance Default within the extended Cure Period granted by Evoenergy under clause 18.3(b) or determined by an Expert under clause 22, Evoenergy may terminate this Agreement.

#### 18.4 Termination by the Generator

The Generator may terminate this Agreement:

- (a) in accordance with clause 2.2(j) or clause 19.5;
- (b) where Evoenergy has failed to comply with any of its material obligations under this Agreement and has not:
  - (i) commenced to remedy that failure within 20 Business Days after receiving a Notice from the Generator to do so; or
  - (ii) remedied that failure within a reasonable time after receiving a Notice from the Generator to do so; or
- (c) at any time after the 20th anniversary of the Date of Construction Completion by giving not less than 12 months' Notice in writing to Evoenergy expiring on or after the 20th anniversary of the Date of Construction Completion.

#### 18.5 Termination for Solvency Default

- (a) If a Solvency Default occurs in relation to Evoenergy, the Generator may terminate this Agreement at any time by Notice to Evoenergy.
- (b) If a Solvency Default occurs in relation to the Generator, Evoenergy may terminate this Agreement at any time by Notice to the Generator.
- (c) If a Party gives a termination Notice under this clause 18.5 then this Agreement terminates from the start of the later of the day following the day on which the Notice was given and the day nominated in the Notice.

#### 18.6 Consequences of Termination

- (a) On termination of this Agreement by either Party under this clause 18:
  - (i) each Party must promptly return to the other Party any of the other Party's Confidential Information which is in its possession and control as at the date of termination;
  - (ii) Evoenergy retains all title in all Connection Assets and Network Assets;
  - (iii) Evoenergy may *disconnect*, dismantle, *decommission* and remove any of the Connection Assets and Network Assets; and
  - (iv) Evoenergy may undertake, complete and commission all other work which Evoenergy reasonably determines is necessary to allow the Distribution System to operate in accordance with *good electricity industry practice* and the other requirements of Applicable Laws following the removal of the Connection Assets and Network Assets referred to in clause 18.6(a)(iii).
- (b) If this Agreement is terminated for any reason (other than where this Agreement is terminated by the Generator under clause 18.4(b) or clause 18.5) the

Generator will reimburse Evoenergy in accordance with clause 15.4 for the work referred to in clause 18.6(a).

- (c) Nothing in this clause 18.6 will limit either Party's right to recover Damages from the other Party for breach of contract.
- (d) This clause 18.6 survives termination or expiration of the Agreement.

## 18.7 Survival

Termination of all or any part of this Agreement for any reason does not affect the accrued rights and obligations of the Parties or the operation of any clauses in this Agreement that are expressed to survive termination.

## 19. Force Majeure

### 19.1 Notice of Event of Force Majeure

- (a) A Party that becomes aware of any matter likely to constitute an Event of Force Majeure in relation to any of its obligations under this Agreement (other than an obligation to pay money or a trivial or minor obligation) must immediately give Notice to the other Party of that fact and all relevant particulars relating to that potential Event of Force Majeure of which it is aware at that time.
- (b) If an Event of Force Majeure occurs, the Affected Party must give Notice containing whatever particulars are available at that time of the Event of Force Majeure (including its nature and likely duration, the obligations affected by it and the nature and extent of its effect on those obligations) (**Force Majeure Suspension Notice**) to the other Party. The Affected Party must notify the other Party of any changes to the particulars of the Event of Force Majeure (as compared to those set out in the relevant Force Majeure Suspension Notice) as soon as possible after becoming aware of that change in particulars.
- (c) Within 10 Business Days of an Event of Force Majeure occurring, the Affected Party must give to the other Party a report containing full particulars of the Event of Force Majeure that are known to the Affected Party at that time. The Affected Party must provide the other Party with whatever information the other Party may reasonably request from time to time concerning the Event of Force Majeure.

### 19.2 Suspension of Obligations

- (a) The Non-Financial Obligations of a Party shall be suspended in whole or in part as the case may require, to the extent that that Party is prevented from performing those Non-Financial Obligations by the Event of Force Majeure, from the time the Event of Force Majeure commences until the cessation of that Event of Force Majeure.
- (b) Suspension of any Non-Financial Obligation pursuant to clause 19.2(a) will not affect any rights or obligations in relation to any other Non-Financial Obligations which the Affected Party is not prevented from performing by the Event of Force Majeure.
- (c) An obligation of a Party under this Agreement to pay money to the other Party shall not be suspended in whole or part by an Event of Force Majeure.

### 19.3 Mitigation

- (a) The Affected Party shall, subject to clause 19.3(b), use all reasonable endeavours to remove the Event of Force Majeure and mitigate the effect of the Event of

Force Majeure, and the other Party will co-operate and give such assistance as the Affected Party may reasonably request in connection with the removal and mitigation of the effect of that Event of Force Majeure.

- (b) Nothing in this clause 19 requires the Affected Party to settle any industrial or labour Dispute otherwise than as the Affected Party in its absolute discretion sees fit or to act in a manner which is contrary to the requirements of any Applicable Law.

#### **19.4 Cessation of An Event of Force Majeure**

An Affected Party must:

- (a) give immediate Notice to the other Party of the cessation of an Event of Force Majeure the subject of a Force Majeure Suspension Notice; and
- (b) as soon as reasonably possible after the cessation of that Event of Force Majeure, resume performance of any suspended obligation.

#### **19.5 Prolonged Force Majeure**

If an Event of Force Majeure prevents a Party from performing or observing its obligations under this Agreement (other than an obligation to pay money) for 6 months or more from the date of commencement of the Event of Force Majeure, either Party may, by providing not less than 10 Business Days' notice, terminate this Agreement.

### **20. Indemnities and Limitations on Liability**

#### **20.1 Warranties**

Except as expressly set out in this Agreement, any representation, warranty, condition or undertaking which would be implied in this Agreement by law is excluded to the fullest extent permitted by law.

#### **20.2 Applicable Laws and Limitations on Liability**

This clause 20 will apply in addition to, and will not limit, any exclusion from, or limitation on, liability a Party may be entitled to claim the benefit of under an Applicable Law (including without limitation the *National Electricity Law*).

#### **20.3 Liability of Evoenergy**

Subject to clauses 20.4 and 20.5, Evoenergy and its Associates will not be liable (to the maximum extent permitted at law and whether in tort (including negligence), contract or otherwise) for any Damage or Claims of whatever kind suffered or incurred by the Generator or its Associates arising out of or in connection with this Agreement except for:

- (a) any damage to the Facility caused by Evoenergy's or its Associate's negligence and/or breach of this Agreement;
- (b) any illness, injury or death of any person caused by Evoenergy's or its Associate's negligence and/or breach of this Agreement; and
- (c) any Damages or Claims caused by Evoenergy's Wilful Breach.

#### **20.4 Maximum Liability**

Subject to this clause 20, the sum of all amounts recoverable by the Generator from Evoenergy in accordance with clause 20.3 is limited to the:

- (a) Construction Liability Cap, for all Claims and Damages that are related to an act or omission which occurred prior to the Date of Final Completion; and
- (b) Operations Liability Cap, for all Claims and Damages that are related to an act or omission which occurred during a Contract Year (including the aggregate of all Claims and Damages that are related to an act or omission of the Generator which occurred during a Contract Year).

Nothing in this clause 20.4 will limit the Generators obligation to pay any amount under clauses 14, 15 or 16 or Schedule 6 – Pricing Schedule.

## 20.5 Indirect or Consequential Loss

- (a) Neither Party is liable for any:
  - (i) loss of profit, business, production, use or revenue;
  - (ii) losses arising from interruptions to the Generator's *connection*;
  - (iii) loss or denial of opportunity;
  - (iv) loss of access to markets;
  - (v) loss or corruption of data;
  - (vi) loss of agreement;
  - (vii) loss of, or damage to, goodwill, reputation or future reputation;
  - (viii) business interruption;
  - (ix) increased cost of working;
  - (x) damage to credit rating;
  - (xi) loss of anticipated savings;
  - (xii) loss suffered as a direct or indirect result of a delay in achieving Construction Completion by the Date for Construction Completion or Final Completion by the Date for Final Completion; or
  - (xiii) any other indirect loss, special damages or consequential losses, incurred or suffered by either the Generator or Evoenergy in connection with any act or omission of the other Party or its Associates.
- (b) Nothing in this clause 20.5 limits and/or excludes in any manner whatsoever the indemnities provided by the Generator to Evoenergy in accordance with clauses 20.6 and 20.7.

## 20.6 Third party indemnity

The Generator must indemnify and keep indemnified Evoenergy and its Associates from and against any Claims made by third parties against Evoenergy or its Associates to the extent that those Claims arise as a result of or in connection with an act or omission of the Generator under this Agreement (other than an act or omission of the Generator that is expressly permitted or required under this Agreement).

## 20.7 Performance incentive scheme indemnity

- (a) An *outage* which is required for the purpose of undertaking and completing the Connection Work may be taken into account by the *AER* when determining Evoenergy's performance results for the purposes of a *service target performance incentive scheme*.

- (b) If the *AER* takes into account any *outage* which is required for the purpose of undertaking and completing the Connection Work when calculating an adjustment to Evoenergy's *maximum allowed revenue* under the *service target performance incentive scheme* the Generator must pay to Evoenergy the difference between the *maximum allowed revenue* determined by the *AER* and the *maximum allowed revenue* which would have been determined by the *AER* if the relevant *outage* had not occurred.
- (c) Evoenergy confirms that, in the absence of a change to the *service target performance incentive scheme* or a notified change to the *AER's* policy in relation to the *service target performance incentive scheme*, Evoenergy will submit and will argue that an *outage* that is related to undertaking and completing the Connection Work should be excluded from the *AER's* determination of Evoenergy's *maximum allowed revenue* under the *service target performance incentive scheme* for the relevant calendar year.

## 20.8 Provisions Relating to Indemnities

- (a) The Generator must pay to Evoenergy any amount which is properly payable by the Generator to Evoenergy under clause 20.6 and 20.7 within 30 days of receiving a demand from Evoenergy.
- (b) A demand made under clause 20.8(a) may be made at any time and from time to time.
- (c) The Generator must pay interest on any amount due and payable under clause 20.8(a) in accordance with clause 16.4.
- (d) Evoenergy must, before making a demand under clause 20.6:
  - (i) notify the Generator of any Claim for which it may be required to indemnify Evoenergy under clause 20.6;
  - (ii) permit the Generator (entirely at the Generator's expense) to defend or settle that Claim or action as the Generator sees fit, or, where the Generator does not elect to defend or settle that Claim, to have a watching brief and be kept fully informed by Evoenergy of the progress of that Claim; and
  - (iii) provide the Generator (at the Generator's expense) with such assistance in respect of the Claim or action as the Generator may reasonably request.
- (e) Evoenergy must not in relation to any Claim of the type referred to in clause 20.6:
  - (i) make any admission or representation prejudicial to the Generator;
  - (ii) agree to any compromise or settlement; or
  - (iii) do anything else that may be prejudicial to the Generator,
 without the Generator's written consent.

## 20.9 Related Company Indemnity

- (a) In this clause 20.9, **Related Company** means any person which:
  - (i) is registered as a *Generator* under the *NER* in relation to any of the *generating units* which make up the Facility; or
  - (ii) would have been required under the *National Electricity Law* and the *NER* to be registered as a *Generator* in relation to the Facility (or any part of the

Facility) if another party had not been registered as an *Intermediary* under the *National Electricity Law* and the NER in relation to the Facility (or that part of the Facility); or

- (iii) enters into a contract to purchase the output from the Facility or any other rights, credits or rebates that are determined by reference to the Facility and/or the output from the Facility.
- (b) The Generator will not appoint or engage a Related Company in relation to the Facility (and will ensure that none of its Related Bodies Corporate appoint a Related Company in relation to the Facility) without requiring that Related Company first to enter into a deed with Evoenergy under which that Related Company and the Generator agree that the limitations on Evoenergy's liability set out in clauses 20.3, 20.4 and 20.5 will apply to limit Evoenergy's total liability to:
- (i) both the Related Company and the Generator in relation to any Damages and Claims suffered or incurred by the Related Company or the Generator as a result of the same event or related series of events referred to in clauses 20.3, 20.4 and 20.5; and
  - (ii) the Related Company in relation to any Damages and Claims suffered or incurred by the Related Company as a result of an event or related series of events referred to in clauses 20.3, 20.4 and 20.5,
- in the manner set out in clauses 20.3, 20.4 and 20.5.
- (c) If, despite clause 20.9(b), the Generator appoints a Related Company without first entering into a deed of the type described in clause 20.9(b), then the Generator will indemnify Evoenergy and its Associates from and against any Claims made against Evoenergy or its Associates by a Related Company as a result of any act or omission of Evoenergy and relating directly or indirectly to the provision of Services or the operation of the Distribution System generally to the extent that the amount claimed by that Related Company would not have been recoverable from Evoenergy if clause 20.9(b) had been complied with.

## 20.10 Survival of indemnities

The indemnities provided under this Agreement are continuing obligations, separate and independent from the other provisions of this Agreement, and survive the termination or expiry of this Agreement.

## Part 7 - Miscellaneous

### 21. Performance Security

#### 21.1 Request for Undertaking

- (a) For the purposes of this clause 21, an **Acceptable Credit Rating** means:
  - (i) a credit rating of BBB+ or better from Standard and Poor's (or an equivalent rating from another recognised credit rating agency); or
  - (ii) such other lower credit rating as Evoenergy may determine can be applied from time to time for the purposes of this clause 21.
- (b) Evoenergy may request the Generator to provide an undertaking under clause 21.2 at any time during the Term if:
  - (i) the Generator does not have, or ceases to have, an Acceptable Credit Rating; and
  - (ii) the Generator has not provided Evoenergy with a guarantee of the Generator's financial obligations under this Agreement by financial institution which has an Acceptable Credit Rating.
- (c) On or about 1 June in each year during the Term, the Generator must advise Evoenergy of the latest credit rating which has been assigned to the Generator or the entity who is guaranteeing the performance of the Generator's obligations under this Agreement.

#### 21.2 Undertaking

- (a) Evoenergy may request the Generator to provide an undertaking at any time during the Term if the conditions set out in clause 21.1(b) are being met at that time. The Generator must provide that undertaking within 10 Business Days of Evoenergy's request.
- (b) The undertaking must be given by a financial institution, the identity of which has been approved in writing by Evoenergy, for the Security Amount.
- (c) The undertaking must be on terms reasonably acceptable to Evoenergy. In particular, the undertaking must provide that the financial institution is unconditionally obliged to pay the entire guaranteed amount immediately upon receipt of a written demand by Evoenergy, without recourse to and despite any objection by the Generator.
- (d) If requested the Generator must provide to Evoenergy an undertaking which operates for a fixed duration which is at least 90 days greater than the agreed construction completion date. If the construction completion date is extended by mutual agreement, the undertaking must also be extended by the agreed extension period.

#### 21.3 Failure to provide the undertaking

- (a) If:
  - (i) Evoenergy requests an undertaking under clause 21.2 and the Generator fails to provide that undertaking within the time and in accordance with the other requirements of clause 21.2; or

- (ii) the Generator has provided Evoenergy with an undertaking for a fixed duration which is less than the Term and has failed to provide a replacement undertaking within the time and in accordance with the other requirements of clause 21.2(d),

Evoenergy may suspend the Connection Work or the provision of the Services (whichever is applicable) until the Generator provides the required undertaking.

- (b) If Evoenergy suspends the Connection Work and/or the provision of the Services under clause 21.3(a) Evoenergy will have no liability whatsoever to the Generator as a result of that suspension.

#### **21.4 Calling on the Undertaking**

- (a) Evoenergy may require the financial institution to pay the Security Amount to Evoenergy if the Generator is in default of any of its obligations under this Agreement (including, in particular, a failure to comply with clause 21.2(d)) and as a result the Generator has not paid an amount owing to Evoenergy under this Agreement. On receipt of such amount, the obligation of the Generator is reduced accordingly.
- (b) Evoenergy's right under clause 21.4(a) to require payment of the Security Amount exists, whether or not Evoenergy has any other rights under this Agreement in relation to that default by the Generator, or has exercised any of those rights.
- (c) Neither Evoenergy's rights under this clause 21, nor the receipt by Evoenergy of part or all of the Security Amount, prejudice any of Evoenergy's other rights or remedies under this Agreement.
- (d) Evoenergy is not required to account to the Generator for the expenditure of the Security Amount which has been paid to Evoenergy provided that Evoenergy applies the proceeds of the Security Amount towards satisfaction of Generator's obligations under this Agreement.
- (e) Evoenergy is not liable for any damages incurred by the Generator as a result of Evoenergy requiring the financial institution to pay the Security Amount to Evoenergy unless Evoenergy was not entitled to claim the Security Amount from the financial institution.

#### **21.5 No injunction**

The Generator must not take any steps to challenge, injunct or otherwise restrain:

- (a) Evoenergy from calling on or making a demand on the undertaking;
- (b) Evoenergy from using any money obtained from a call or demand on the undertaking; or
- (c) the financial institution which provided the undertaking, from paying money to Evoenergy under that undertaking.

#### **21.6 Return of undertaking**

Except to the extent that the undertaking has been earlier called upon by Evoenergy in accordance with this Agreement, Evoenergy must return the undertaking to the Generator:

- (a) if the Generator can demonstrate to Evoenergy's reasonable satisfaction, that the Generator has an Acceptable Credit Rating;



- (b) if the Generator provides to Evoenergy a guarantee of the Generator's obligations under this Agreement (on terms reasonably acceptable to Evoenergy) by an entity which has an Acceptable Credit Rating; or
- (c) when all moneys payable by the Generator to Evoenergy under this Agreement have been paid.

### 21.7 Voluntary Pay Out

If the issuer of the undertaking pays an amount to Evoenergy pursuant to that undertaking, but that amount was not called for or demanded by Evoenergy, Evoenergy will hold that amount on trust for the Generator to be paid to the Generator when the Generator provides an undertaking to Evoenergy for an amount equal to the amount held on trust.

### 21.8 Survival

The provisions of this clause 21 survive the expiry or any termination of this Agreement.

## 22. Dispute Resolution

### 22.1 NER Disputes – First stage dispute resolution

If any Dispute arises between the Parties under or in relation to this Agreement:

- (a) with respect to the application of the NER; or
- (b) in relation to which the dispute resolution regime provided for in clause 8.2(a) of the NER otherwise applies,

then the dispute resolution regime provided for in clause 8.2 of the NER will apply to that Dispute.

### 22.2 NER Disputes - Second stage dispute resolution

For the purposes of clause 8.2.5(c) of the NER, the Parties agree that the *Adviser* may attempt to resolve the dispute in accordance with clause 8.2.5(c) of the NER within such period as the *Adviser* considers reasonable.

### 22.3 Non-NER Disputes – First stage dispute resolution

- (a) If a Dispute, other than a Dispute referred to in clause 22.1, arises between the Parties a Party may, by Notice, refer the Dispute to resolution in accordance with this clause.
- (b) The Parties will use their reasonable endeavours to resolve the Dispute within a period of 20 Business Days from the service of the Notice under clause 22.3(a).
- (c) If the Dispute remains unresolved at the end of the period referred to in clause 22.3(b), then either Party may require that the Dispute be determined under clause 22.4.

### 22.4 Non-NER Disputes – reference to and appointment of Independent Expert

- (a) Where clause 22.3(c) applies, either Party may require that the Dispute be determined by an independent expert appointed in accordance with clause 22.4(b) ('**Independent Expert**').
- (b) The Party wishing to have the Dispute determined by an Independent Expert will give written Notice to that effect to the other Party specifying the nature of the Dispute. The Parties will meet and use all reasonable endeavours to agree upon the identity of the Independent Expert, but if they are unable to agree within 5

Business Days of the Notice, then either Party may refer the matter to the President for the time being of the Institution of Engineers Australia (or, if that body no longer exists, then to the President for the time being of such successor body or association as is then performing the function formerly carried out by the Institution of Engineers Australia), to nominate a suitably qualified person to act as the Independent Expert to determine the Dispute.

## **22.5 Non-NER Disputes – role of Independent Expert**

The Independent Expert will:

- (a) act as an expert and not as an arbitrator;
- (b) have no interest or duty which conflicts, or which may conflict, with his or her function as the Independent Expert;
- (c) not be a former or current employee or representative of either Party or of a Related Body Corporate of either of them; and
- (d) disclose fully to the Parties, before being appointed, any interest or duty which may conflict with his or her position.

Any Party may object to the appointment or continuation in office of a person proposed to be appointed or appointed as the Independent Expert before the expiration of 5 Business Days after that Party became aware of any matter which may reasonably be regarded as an interest or duty which conflicts, or which may conflict, with the functions of the Independent Expert. Upon receipt by the other Party of notice of such objection, the Parties shall act to remove the Independent Expert.

## **22.6 Non-NER Disputes – representation and evidence**

Each Party:

- (a) may be legally represented at any hearing before the Independent Expert;
- (b) will be entitled to produce to the Independent Expert any materials or evidence which that Party believes is relevant to the Dispute; and
- (c) will make available to the Independent Expert all materials requested by him or her and all other materials which are relevant to his or her determination.

## **22.7 Non-NER Disputes – rules of evidence**

The Independent Expert will not be bound by the rules of evidence.

## **22.8 Non-NER Disputes – power**

The Independent Expert may inform themselves independently as to the facts to which the Dispute relates and to take such measures as they think fit to expedite the determination of the Dispute.

## **22.9 Non-NER Disputes – determination**

The Independent Expert will make a determination on the Dispute and:

- (a) will determine what, if any, adjustments may be necessary between the Parties;  
or
- (b) if relevant, determine the amendments required to the terms of this Agreement.

The determination of the Independent Expert will be, in the absence of bias or manifest error, final and binding upon the Parties.

For the avoidance of doubt:

- (c) if this Agreement requires the Parties to negotiate in good faith to reach agreement concerning an issue; and
- (d) the Parties are unable to reach agreement within the time period allowed under this Agreement; and
- (e) the relevant clause of this Agreement requires that failure to agree to be resolved in accordance with this clause 22,

the Parties agree that the Independent Expert will have the power to resolve that failure to agree by specifying the terms and conditions which should apply between the Parties in relation to that issue.

#### **22.10 Non-NER Disputes – costs**

The costs in relation to a determination by the Independent Expert will be dealt with as follows:

- (a) the remuneration of the Independent Expert will be agreed by the Parties, and in default of agreement fixed by the person to whom a Party may refer a matter pursuant to clause 22.4(b);
- (b) unless the Parties otherwise agree, the Independent Expert will determine which Party will bear the costs of the determination and in what proportion, having regard to the degree to which he or she considers that Party was at fault or unreasonable in failing to agree to the matter under reference, and that Party will bear those costs accordingly; and
- (c) the Parties will bear their own costs incurred in the preparation and presentation of any submissions or evidence to the Independent Expert.

#### **22.11 Non-NER Disputes – obligations not suspended**

Except as otherwise provided by this Agreement, no Party is relieved from the performance of an obligation under this Agreement during investigation and determination of a Dispute by an Independent Expert.

#### **22.12 Non-NER Disputes – criteria for charges**

In making any determination as to the level of Charges that will apply under this Agreement, the Independent Expert must, without limitation, have regard to the following factors:

- (a) that the Charges must be fair and reasonable; and
- (b) without limiting the scope of item (a), the Charges must provide Evoenergy with a reasonable rate of return for the services which it provides to the Generator.

#### **22.13 Disputes generally**

- (a) Neither Party may have recourse to litigation in relation to a Dispute without first having complied with this clause 22.
- (b) This clause 22 does not prevent a Party seeking an urgent interlocutory injunction from a court of competent jurisdiction.

#### **22.14 Survival**

This clause 22 survives the termination or expiration of this Agreement.

## 23. Changes To Applicable Laws or Other Circumstances

### 23.1 Amendments to Agreement

If after the Commencement Date, an Applicable Law is introduced or commences operation or is modified, re-enacted or substituted, then subject to clauses 23.2 and 23.3 this Agreement will be interpreted (as far as possible) in such a way as to enable compliance with that Applicable Law.

### 23.2 Negotiation

Despite clause 23.1, if at any time after the date this Agreement is signed:

- (a) an Applicable Law is introduced, modified, re-enacted, substituted or commences operation;
- (b) the manner in which any Applicable Law is interpreted or applied materially changes;
- (c) the manner in which an Applicable Law, the Pricing Rules or any Authority regulates how any Charge is to be calculated, varied or applied or any Services are to be provided, materially changes;
- (d) the activities comprised within or the service standards applying to any Service materially change (provided such change is the result of a change in an Applicable Law); or
- (e) any other event, circumstance or change occurs which materially affects the way in which any of the Services are provided or either Party operates its Facilities (provided such event, circumstance or change is the result of a change in an Applicable Law),

and that change in circumstances or event will result in a material change in the commercial position of either Party, the Parties will consider and negotiate in good faith any specific amendment to this Agreement requested by a Party to take account of that change, event or circumstance so as to substantially return the Parties to their respective commercial positions under this Agreement prior to that change, event or circumstance.

If the Parties are unable to agree upon any such amendment within 28 days of commencing negotiations, either Party may refer that Dispute for resolution in accordance with clause 22.

### 23.3 Disputes

In determining a Dispute relating to a matter arising under this clause 23 (in accordance with clause 22), the Independent Expert will take into account (amongst other things) the following factors:

- (a) that the contents of this Agreement must be fair and reasonable having regard to the commercial interests of the Parties;
- (b) that at all times, any Service provided under this Agreement must be provided in accordance with *good electricity industry practice* and the other requirements of this Agreement and Applicable Laws; and
- (c) that this Agreement should be consistent with the prevailing practices and standards in the electricity industry at that time.

## 24. Assignment and Transfer

### 24.1 Restriction

- (a) **'Dispose'** means assign, transfer, lease, sub-lease, licence or otherwise dispose of any legal or equitable estate (either in whole or in part and whether by sale, lease, licence, declaration or creation of trust or otherwise) and **Disposal** will have a corresponding meaning. To avoid doubt, the creation by the Generator of a charge, mortgage or other security interest over some or all of its rights and obligations under this Agreement will not constitute a Disposal.”
- (b) Subject to clauses 24.1(c) and (d), Evoenergy may Dispose of its rights and obligations under this Agreement to a Related Body Corporate if that Related Body Corporate:
- (i) has been issued with a licence under the Act authorising operation of the Distribution System;
  - (ii) is actually operating the Distribution System; and
  - (iii) executes and delivers to the Generator a deed (in a form and substance satisfactory to the Generator) prior to the Disposal by which the Related Body Corporate agrees to assume obligations (whether arising before or after the Disposal) which are substantially equivalent to Evoenergy's obligations under this Agreement.
- (c) Other than in the circumstances set out in clause 24.1(b), no Party may Dispose of its rights and obligations under this Agreement to anyone, without the prior written consent of the other Parties to that Disposal, which consent must not be unreasonably withheld, delayed or made subject to unreasonable conditions. For the avoidance of doubt:
- (i) the conditions set out in clause 24.3 are considered by the Parties to be reasonable; and
  - (ii) it will be unreasonable for a Party to withhold its consent if the conditions set out in clause 24.3 are satisfied.
- (d) If a Party Disposes of its rights and obligations under this Agreement in the manner permitted by this clause 24, that Party will be released from its obligations under this Agreement from the date of the Disposal.

### 24.2 Generator's Warranty

- (a) The Generator represents and warrants to Evoenergy that as at the Date of Construction Completion it will be the owner, operator and controller of the Facility.
- (b) The Generator must give Evoenergy not less than 10 Business Days prior notice if it is proposing to transfer the ownership, operation or control of the Facility to a third party.
- (c) Without limiting the other items of this clause 24, the Generator will not appoint a third party to be the operator and/or controller of the Facility or to be an *Intermediary* under the NER in relation to the Generator and the operation and/or control of the Facility (**Third Party Operator**), without requiring the Third Party Operator to first enter into a deed with Evoenergy under which the Third Party Operator will agree to comply with the Operating Protocol and any additional conditions notified by Evoenergy (acting reasonably) at that time, relating to the

Third Party Operator's, the Generator's and Evoenergy's dealing with any Authority in relation to the Facility, the terms of this Agreement and the operation, switching and co-ordination of the Distribution System and the Facility.

### 24.3 Requirements for permitted Disposals

Without limiting clause 24.1 of this Agreement, a Party (**Disposing Party**) may Dispose of any or all of its rights and obligations under this Agreement to another person, if the person to whom the Disposal is made:

- (a) is a body corporate with substantial assets to which all or a material part of the assets of the Disposing Party are transmitted, transferred or vested as part of a reconstruction of the Disposing Party;
- (b) has, or an Associate of that person has, all licences, registrations and approvals necessary for that person or Associate to operate or control the Disposing Party's Facilities; and
- (c) executes and delivers to the Party that is not the Disposing Party a deed (in a form and substance satisfactory to the Party that is not the Disposing Party) prior to the Disposal by which that person agrees to assume obligations (whether arising before or after the Disposal) which are substantially equivalent to the Disposing Party's obligations under this Agreement.

### 24.4 Execution of documents

Each Party must execute all documents reasonably required to effect the Disposals contemplated by this clause 24.

### 24.5 Change in ownership of the Facility

- (a) If the Generator wishes to transfer the ownership of the Facility to a third party, the Generator may request Evoenergy to novate this Agreement to that third party at the same time as the transfer of the Facility takes place, by:
  - (i) the third party taking over all the rights and obligations of the Generator under this Agreement from the date of novation; and
  - (ii) Evoenergy releasing the Generator from all liabilities under this Agreement; and
  - (iii) the third party executing and delivering to Evoenergy:
    - (A) a deed (in a form and substance satisfactory to Evoenergy) by which that third party agrees to assume obligations arising after the Disposal which are the same as the Generator's obligations under this Agreement; and
    - (B) an undertaking in the form required under clause 21.2 and for the amount set out in clauses 21.4 which that third party would be required to provide under clause 21 if that clause applied to that third party immediately prior to the proposed date for the novation of this Agreement.
- (b) Evoenergy will provide its consent to a novation in accordance with clause 24.5(a) and will do all things necessary to give effect to that novation, provided that the following conditions are first satisfied:
  - (i) the proposed new party is capable of performing the obligations of the Generator under this Agreement;

- (ii) Evoenergy will not suffer any financial prejudice that is not capable of being remedied by provision of a guarantee or some other form of credit support by a third party; and
  - (iii) Evoenergy will not incur any additional risks or costs that could not adequately be compensated for.
- (c) If the Generator disputes Evoenergy's decision under clause 24.5(b) to not agree to a novation, the matter will be resolved in accordance with clause 22.

## 25. Notices

### 25.1 Giving of Notices

Subject to clause 25.2, all Notices, consents, requests, invoices or other communication (in this clause 25 each called a **Notice**) required, permitted or appropriate to be given by a Party to another Party under or in connection with this Agreement must be:

- (a) in writing (unless otherwise specified in the Operating Protocol for that type of Notice);
- (b) signed by and addressed to the person holding the office identified in the Operating Protocol for that type of Notice; and
- (c) sent in the manner identified in the Operating Protocol for that type of Notice.

### 25.2 Day-to-Day Notices

Subject to complying with the requirements of the Applicable Laws, any Notice given in the course of the day to day running of each Party's *facilities* or the national electricity market by or on behalf of a Party to the other Parties must be made in accordance with the requirements set out in the Operating Protocol.

### 25.3 Maintenance of Logs

Unless otherwise agreed, the Parties must ensure that logs are kept in which persons or electronic systems giving and receiving those communications record brief details of their substance and timing.

### 25.4 Timing of Receipt

A Notice given to a Party in accordance with clause 25.1 or 25.2 will be treated as having been given and received:

- (a) if communicated by telephone, at the time at which the telephone communication ends;
- (b) if delivered, on the day of delivery if a Business Day, otherwise on the next Business Day;
- (c) if sent by pre-paid mail, on the second Business Day after posting;
- (d) if transmitted by facsimile and a correct and complete transmission report is received, at the time of transmission recorded on that transmission report; and
- (e) if sent electronically, on production of a report by the computer from which the electronic message was sent which indicates that the message was sent, received and acknowledged.

### 25.5 Addresses and Facsimile Numbers

A Party may change any details relating to that Party set out in the Contract Details by Notice to the other Party given in accordance with this clause 25.

## 26. Provision and use of Information

### 26.1 Obligation to Provide Information

The Generator will provide to Evoenergy (within 10 Business Days of being requested to do so) any information requested by Evoenergy which concerns the Facility or is referred to in Schedule 5.2, 5.4 or 5.5 of the NER and is reasonably necessary to enable Evoenergy to:

- (a) comply with its obligations under any Applicable Law; or
- (b) operate, develop, design and plan the Distribution System in accordance with *good electricity industry practice* and the requirements of all Applicable Laws.

### 26.2 Privileged Information

Subject to any Applicable Law, a Party is not obliged to provide to the other Party any information which is subject to legal professional privilege.

### 26.3 Disclosures required under Applicable Laws

Without limiting any other provision of this clause 26, the Generator consents to Evoenergy using any information concerning the Facility, its electricity usage, *metering* data and any related or similar information for the purpose of complying with Evoenergy's obligations under this Agreement or any Applicable Law (including the provision of that information to any relevant Authority).

## 27. Confidential Information and Intellectual Property

### 27.1 Confidential Information to be Kept Confidential

- (a) Each Party must keep confidential any Confidential Information which comes into the possession or control of that Party or of which the Party becomes aware as a result of the operation of this Agreement.
- (b) A Party:
  - (i) must not disclose Confidential Information to any person except as permitted by this Agreement;
  - (ii) must only use or reproduce Confidential Information for the purpose for which it was disclosed or another purpose contemplated by this Agreement; and
  - (iii) must not permit unauthorised persons to have access to Confidential Information.
- (c) Each Party must use its reasonable endeavours:
  - (i) to prevent unauthorised access to Confidential Information which is in the possession or control of that Party; and
  - (ii) to ensure that any person to whom it discloses Confidential Information observes the provisions of this clause 27.1 in relation to that information.

### 27.2 Exceptions

Clause 27.1 does not prevent:

- (a) **(public domain)**: the disclosure, use or reproduction of information if the relevant information is at the time generally and publicly available other than as a result of



breach of confidence by the Party who wishes to disclose, use or reproduce the information or any person to whom the Party has disclosed the information;

- (b) (**employees and advisers**): the disclosure of information by a Party or any person to whom the Party is permitted to disclose Confidential Information to:
  - (i) an employee or officer of the Party or a Related Body Corporate of the Party; or
  - (ii) a legal or other professional adviser, auditor or other consultant of the Party,
 which require the information for the purposes of this Agreement, the NER, or for the purpose of advising that Party;
- (c) (**contractors**): the disclosure of information by the Generator to a contractor engaged in relation to the Facility or by Evoenergy to a contractor engaged in relation to the Connection Work;
- (d) (**consent**): the disclosure, use or reproduction of information with the consent of the Party who provided the relevant information;
- (e) (**law**): the disclosure, use or reproduction of information to the extent required by law or by a lawful requirement of:
  - (i) any Authority having jurisdiction over a Party or its Related Bodies Corporate; or
  - (ii) any stock exchange having jurisdiction over a Party or its Related Bodies Corporate;
- (f) (**disputes**): the disclosure, use or reproduction of information if required in connection with legal proceedings, arbitration, expert determination or other Dispute resolution mechanism under this Agreement or the NER or for the purpose of advising a person in relation to such a matter;
- (g) (**trivial**): the disclosure, use or reproduction of information which is trivial in nature;
- (h) (**safety**): the disclosure of information if required to protect the safety of personnel or equipment;
- (i) (**potential investment**): the disclosure, use or reproduction of information by or on behalf of a Party to the extent reasonably required in connection with the Party's financing arrangements, investment in that Party or a Disposal of that Party's assets;
- (j) (**regulator**): the disclosure of information to the *AER*, the *AEMC* or any other Authority having jurisdiction over a Party;
- (k) (**reports**): the disclosure, use or reproduction of information of an historical nature in connection with the preparation and giving of reports under the NER; or
- (l) (**aggregate sum**): the disclosure, use or reproduction of information as an unidentifiable component of an aggregate sum;
- (m) (**profile**): the publication of a *profile*; or
- (n) (**Applicable Laws**): the disclosure, use or reproduction of that information is otherwise required or permitted from time to time under an Applicable Law.

In the case of a disclosure under clause 27.2(b), (c) or (j), prior to making the disclosure the Party who wishes to make the disclosure must inform the proposed recipient of the confidentiality of the information and must take appropriate precautions to ensure that the recipient keeps the information confidential in accordance with the provisions of clause 27.1 and this clause 27.2 and does not use the information for any purpose other than that permitted under clause 27.1(b).

### **27.3 Intellectual Property**

- (a) All Intellectual Property Rights which exist prior to the Commencement Date shall not be subject to any change in ownership as a result of the operation of this Agreement.
- (b) All Intellectual Property Rights in information, documents and materials created by Evoenergy as a result of and for the purposes of the performance of this Agreement will be owned by and vest in Evoenergy.
- (c) Subject to clause 27.3(a), all Intellectual Property Rights in information, documents and materials created by the Generator as a result of and for the purposes of the performance of this Agreement will be owned by and vest in the Generator.
- (d) Evoenergy grants to the Generator a perpetual, non-exclusive royalty free licence to use any Intellectual Property Rights referred to in clause 27.3(a) for any purpose related to the subject matter of this Agreement.
- (e) The Generator grants to Evoenergy a perpetual, irrevocable, non-exclusive royalty free licence to use any Intellectual Property Rights referred to in clause 27.3(c) for any purpose related to the subject of this Agreement.
- (f) If requested by Evoenergy, the Generator must do all things reasonably required, including prepare, sign, execute or otherwise deal with any document, which is required to give effect to clause 27.3(e).

### **27.4 Continuing Rights and Obligations**

The rights and obligations contained in this clause 27 shall survive termination of this Agreement.

## **28. Compliance with Applicable Laws**

### **28.1 Compliance**

Notwithstanding any other provision of this Agreement, each Party will comply with the obligations imposed on that Party by any Applicable Law. If such obligations are inconsistent with the obligations of that Party under this Agreement:

- (a) the provisions of this Agreement will prevail to the extent permitted by that Applicable Law; and
- (b) otherwise the provisions of that Applicable Law will prevail over the provisions of this Agreement to the extent of that inconsistency.

### **28.2 Reasonable Assistance**

Each Party will give to the other Party all reasonable assistance and co-operate with the other Party, so as to allow that other Party to comply with any obligations imposed upon that other Party under an Applicable Law or this Agreement.

### 28.3 Limitation

Nothing in this Agreement will limit any right either Party may have under an Applicable Law unless that right can be limited in accordance with the provisions of that Applicable Law by agreement between the Parties and this Agreement directly or indirectly limits that right.

## 29. Law and Jurisdiction

### 29.1 Governing Law

This Agreement is governed by the law in force stated in the Contract Details.

### 29.2 Jurisdiction

The Parties submit to the non-exclusive jurisdiction of the courts stated the Contract Details and any courts which may hear appeals from those courts in respect of any proceedings in connection with this Agreement.

## 30. General

### 30.1 Amendment and Waiver

- (a) Unless expressly stated to the contrary in this Agreement, this Agreement may only be amended or supplemented in writing signed by the Parties.
- (b) The non-exercise of or delay in exercising any power or right of a Party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. Unless expressly stated to the contrary in this Agreement, a power or right may only be waived in writing, signed by the Party to be bound by the waiver.
- (c) To the extent that a Party may be required by this Agreement to grant any approvals to the other Party or to comment on any of that other Party's activities the subject of this Agreement or to recommend any changes to this Agreement, it is recorded that by so doing that first mentioned Party shall not incur any liability under this Agreement.

### 30.2 Severance

Any provision in this Agreement which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

### 30.3 Entire Agreement

This Agreement constitutes the entire agreement between the Parties in relation to its subject matter and supersedes any previous arrangements between the Parties in relation to that subject matter. The only enforceable obligations and liabilities of the Parties in relation to the subject matter are those that arise out of the provisions contained in this Agreement. All representations, communications and prior agreements in relation to that subject matter are merged in and superseded by this Agreement.

### 30.4 Authority to enter into Agreement

Each Party (in this clause 30.4 called the **Representing Party**) represents and warrants to the other Party that each of the following statements relating to it is correct:

- (a) the Representing Party is duly constituted and validly existing under the laws of its jurisdiction of incorporation and has full corporate power and authority to enter into, perform and observe its obligations and duties under this Agreement;
- (b) the Representing Party has entered into this Agreement in its own right and not as trustee of any trust or as an agent or nominee on behalf of any other entity;
- (c) all corporate and other necessary action has been taken to authorise the signing and performance of this Agreement by the Representing Party, and this Agreement is a valid and binding agreement of the Representing Party and is enforceable against it, subject to the exercise of judicial discretion and laws concerning insolvency, in accordance with its terms; and
- (d) the entering into of this Agreement by the Representing Party does not, and the transactions contemplated by this Agreement will not result in a breach of any Applicable Law or any constituent documents of the Representing Party or any agreement to which the Representing Party is a party.

### **30.5 System Controller**

Nothing in this Agreement is intended to fetter or constrain Evoenergy in the performance of its functions as a System Controller.

### **30.6 Rights Cumulative**

Subject to any provision of this Agreement to the contrary, the rights and remedies provided in this Agreement do not exclude any rights or remedies provided by law.

### **30.7 Survival of Indemnities**

Each indemnity in this Agreement is a continuing obligation which survives termination of this Agreement.

### **30.8 Counterparts**

This Agreement may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

# Schedule 1 - Contract Details

Item	Issue	Detail
1	Date for Construction Completion (clause 3.1(a)(ii))	[Insert Date]
2	Maximum Permitted Output (clause 4.2(c))	[insert] Note: This is the maximum permitted generation level for the Facility as set out in the Generator Performance Standards. The maximum import capacity (in kVA) will be fixed by Evoenergy (and notified to the Generator) by reference to the Capacity and the expected maximum rate of electricity consumption within the Facility from time to time.
3	Public Liability Insurance – Generator (clause 6.1(a))	\$ 20 million per occurrence
4	Estimated Design and Construction charge (Schedule 6.1(a))	[insert]
5	<b>Base Rate</b> (Schedule 6 Clause 2.1)	[insert]
6	<b>WPI<sub>base</sub></b> (Schedule 6 Clause 2.1)	[insert]
7	Agreed Capability (clause 8.2(b)(i))	[insert] Note: This is the 'as built' maximum capability of the Connection Assets to receive electricity generated by the Facility (i.e. the export limit) and will be at least equal to the Maximum Permitted Output.

Item	Issue	Detail
8	Agreed Maximum Demand	[insert]
9	Construction Liability Cap (clause 20.4(a))	[insert] Note: This is a single lump sum amount for the entire construction period.
10	Operations Liability Cap (clause (b)20.4(b))	[insert] per event [insert] per Contract Year
11	Security Amount (clause 21.2(b))	Fifty (50) per cent of the estimated Design and Construction Charge notified by Evoenergy to the Generator in writing in accordance with the Preconditions noted in this Schedule .
12	Governing Law (clause 29.1)	Australia Capital Territory.
13	Non-Exclusive Jurisdiction (clause 29.2)	Australia Capital Territory.
14	Notice Details	As set out in the details for the Parties at the beginning of this Agreement.

## 1. Preconditions

### 1.1 Performance Undertaking Precondition

- (a) The Generator must on or before the Required Date for the satisfaction of this Precondition provide an unconditional undertaking under clause 21 to Evoenergy equal to the Security Amount.
- (b) The Required Date for the satisfaction of this Precondition is 20 Business Days after the Commencement Date.
- (c) The unconditional undertaking provided under this item 1.1 must be returned by Evoenergy in accordance with the provisions of clause 21.6.
- (d) The Precondition in this item 1.1 may only be waived by Evoenergy.

### 1.2 Design and Construction – Initial Payment Precondition

- (a) The Generator must, on or before the Required Date for the satisfaction of this Precondition, pay the amount referred to in Item 1(c)(i) of Schedule 6 to Evoenergy.
- (b) The Required Date for the satisfaction of this Precondition is 20 Business Days after the Commencement Date.
- (c) The Precondition in this item 1.2 may only be waived by Evoenergy.

### 1.3 Development Application Approval Precondition

- (a) The Generator must, on or before the Required Date for the satisfaction of this Precondition, obtain the Approval identified in item 2.2 below.
- (b) The Required Date for the satisfaction of this Precondition is 20 Business Days after the Commencement Date.
- (c) The Precondition in this item 1.3 may only be waived jointly by both Parties.
- (d) Without limiting clause 2.2 and this Item 1.2 of Schedule 1, the Generator acknowledges and agrees that Evoenergy is under no obligation to commence the Connection Work until the Generator has complied with Item 1(c) of Schedule 6.

## 2. Approvals

### 2.1 Approvals to be obtained by Evoenergy

- (a) Evoenergy is not required to obtain any Approvals under this Agreement.

### 2.2 Approvals to be obtained by Generator

- (a) Development Application approval in respect of the Generator Connection Works and Connection Works (including Connection Point, access roads and all cable routes).
- (b) Any other Approvals which the Generator is required to obtain to connect the Facility to Evoenergy's Distribution System.

## Schedule 2 - Plan

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***[Note: Insert a copy of the site plan (provided by the Generator) identifying for example, the Land , Evoenergy Land and where the Connection Assets and Network Assets will be located in relation to the Facility]***



## Schedule 3 - Block Diagram

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***[Note: Insert a block diagram (provided by the Generator) showing the connection arrangement and identifying for example, the Connection Assets, Network Assets, Connection Points]***

# Schedule 4 - Scope of Works

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**[Note 1: Evoenergy to complete this section with information from both Evoenergy and the Generator.]**

**[Note 2: It is critical that the terminology and concepts used in the Scope of Works align with the terminology and concepts used in the general terms and conditions of this document. Evoenergy and the Generator to obtain suitable review from appropriate personnel e.g. Legal representation.]**

**[Note 3: The Scope of Works must clearly identify these requirements defined by reference to the Scope of Works in the substantive body of this document. See template headings below for example.]**

## 1. Assumptions

- (a) [Insert].
- (b) [Insert].

## 2. Connection Work

### 2.1 [Insert Sub heading]

- (a) [Insert].
- (b) [Insert].

### 2.2 [Insert Sub heading]

- (a) [Insert].
- (b) [Insert].

## 3. Generator's Work

### 3.1 [Insert Sub heading]

- (a) [Insert].
- (b) [Insert].

### 3.2 [Insert Sub heading]

- (a) [Insert].
- (b) [Insert].

**[Note: Only those works being performed by the Generator that impact on and/or interface with Evoenergy's performance of the Connection Work need to be identified here].**

## 4. Connection Assets

### 4.1 Description of Connection Assets

- (a) [Insert].
- (b) [Insert].

## 5. Network Assets

### 5.1 Description of Network Assets

- (a) [Insert].
- (b) [Insert].

## 6. Construction Completion / Final Completion Criteria

### 6.1 Construction Completion Criteria

- (a) [Insert].
- (b) [Insert].

**[Note: Construction Completion is a key milestone as Evoenergy is entitled to start billing the Generator for the Charges from the Date of Construction Completion i.e. Evoenergy does not need to wait until Final Completion to do so].**

### 6.2 Final Completion Criteria

- (a) [Insert].
- (b) [Insert].

# Schedule 5 - Program of Works

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***[Note: Insert Indicative program of works (provided by the Generator including Evoenergy's program of works and any network augmentation work) setting out key milestones and dates by which milestones are to be achieved]***

# Schedule 6 - Pricing Schedule

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## 1. Design and Construction Charge

- (a) The 'Design and Construction Charge' payable by the Generator to Evoenergy is shown in Schedule 1- Contract Details.
- (b) Evoenergy will provide regular updates to the Generator of the costs incurred under Item 1(a) of this Schedule 6 as the Connection Works progress, when requested by the Generator (such requests not to be more frequent than monthly).
- (c) The Design and Construction Charge will be payable by the Generator as follows:
  - (i) fifty (50) per cent of the estimated Design and Construction Charge upfront
  - (ii) fifty (50) per cent of the estimated Design and Construction Charge on completion (secured by bank guarantee).
  - (iii) 100% of amount (costs + risk margin) in excess of estimated Design & Construction charge on invoice (20 days from receipt of invoices).
- (d) If prior to the Date of Construction Completion Evoenergy forms the view on reasonable grounds that actual Design and Construction Charge that will be determined in accordance with Item 1(a) of this Schedule 6 is likely to exceed the Estimated Design and Construction Charge, subject to Item 1(e) below, the Generator must pay the amount of the likely excess determined by Evoenergy within 20 Business Days of receipt of an invoice for that amount from Evoenergy setting out the reasons for that view and the manner in which the amount has been determined.
- (e) For the avoidance of doubt, any Variation Costs or Delay Costs which are determined after the Date of Final Completion will be payable by the Generator to Evoenergy in accordance with clause 14.3.
- (f) Without limiting clause 2.2 and Item 1.2 of Schedule 1, the Generator acknowledges and agrees that Evoenergy is under no obligation to commence the Connection Work until the Generator has complied with Item 1(c)(i) of this Pricing Schedule.

## 2. Entry Charge

### 2.1 Calculation of annual Entry Charge

The annual 'Entry Charge' for each Contract Year will be calculated in accordance with the following formula:

$$\text{Entry Charge} = \text{Base Rate} \times (\text{WPI}_n / \text{WPI}_{\text{base}}) \times (\text{X Days} / \text{CY Days})$$

Where:

**Base Rate** is payable by the Generator to Evoenergy and is shown in Schedule 1- Contract Details

**WPI<sub>n</sub>** means the last quarterly WPI published before the Review Date or WPI<sub>base</sub> (whichever is the greater amount);

**WPI<sub>base</sub>** is shown in Schedule 1- Contract Details. It means the WPI for the quarter ending immediately prior to the Reference Date;

**Review Date** means the Date of Construction Completion and each anniversary of the Date of Construction Completion during the Term;

**X Days** means:

- (a) for the First Contract Year, the number of days from the Date of Construction Completion to 30 June immediately following the Date of Construction Completion (inclusive of both dates);
- (b) for the Last Contract Year, the number of days from 1 July immediately preceding the Termination Date to the Termination Date (inclusive of both dates); and
- (c) for every other Contract Year, 365.

**CY Days** means 365.

## 2.2 Calculation of Entry Charge for each Billing Period

The annual Entry Charge for a Contract Year determined in accordance with item 2.1 above will be allocated to each Billing Period for the relevant Contract Year in accordance with the following formula:

BP Entry Charge Instalment = CY Entry Charge x (BP Factor / Annual Factor)

Where:

**BP Entry Charge Instalment** means the portion of the CY Entry Charge that will be payable for the relevant Billing Period.

**CY Entry Charge** means annual Entry Charge for the relevant Contract Year determined in accordance with item 2.1 above.

**Annual Factor** means:

- (a) for the First Contract Year, the number of days from the Date of Construction Completion to 30 June immediately following the Date of Construction Completion (inclusive of both dates); and
- (b) for the Last Contract Year, the number of days from 1 July preceding the Termination Date to the Termination Date (inclusive of both dates); and
- (c) for every other Contract Year, the number of days in that year.

**BP Factor** means:

- (a) for the Quarter in which the Date of Construction Completion occurs, the number of days from the Date of Construction Completion to the last day of that Quarter (inclusive of both dates);
- (b) for each Quarter in the First Contract Year (other than the Quarter in which the Date of Construction Completion occurs), the number of days in that Quarter;
- (c) for each Quarter in the Last Contract Year (other than the Quarter in which the Termination Date occurs), the number of days in that Quarter;

- (d) for the Quarter in which the Termination Date occurs, the number of days from first day of that Quarter to the Termination Date (inclusive of both dates); and
- (e) for every other Quarter during the other Contract Years, the number of days in that quarter.

### 3. Billing Period

- (a) The first Billing Period will be the period from the Date of Construction Completion to the last day of the Quarter in which the Date of Construction Completion (inclusive of both dates).
- (b) The last Billing Period will be the period from the first day of the Quarter in which the Termination Date occurs to the Termination Date (inclusive of both dates).
- (c) All other Billing Periods will be Quarterly.

### 4. Pass Through

- (a) If a Pass Through Event occurs:
  - (i) Evoenergy may recover from the Generator (either by way of a separate item in each subsequent invoice or by adjusting the Charge for the relevant Service) a Pass Through Amount being such amount as Evoenergy reasonably considers is necessary to compensate Evoenergy for the increase in the cost to Evoenergy of providing that Service as a result of that Pass Through Event; or
  - (ii) Evoenergy will refund to the Generator (either by way of a separate item in each subsequent invoice or by adjusting the Charge for that Service) a Pass Through Amount being such amount as Evoenergy reasonably considers is necessary to compensate the Generator for the decrease in the cost to Evoenergy of providing that Service as a result of that Pass Through Event.
- (b) Any Dispute between the Parties in relation to a Pass Through Amount will be resolved in accordance with clause 22.
- (c) This Item 4 applies to all the Charges but in the case of the Design and Construction Charge this Item 5 will only apply if the Pass Through Event and the related Pass Through Amount has not been recovered or will not be recovered via the Design and Construction Charge or the Variation Costs.

### 5. Avoided Transmission Use of System (TUOS) Charges

#### (a) **Acknowledgment of Avoided TUOS Charges**

Evoenergy and the Generator acknowledge that as a result of the *generation* and transfer of electricity from the Facility into Evoenergy's Distribution Network, Evoenergy may avoid paying the following variable *transmission use of system* charges ("**TUOS Charges**") for that electricity:

- (i) energy related charges; and
- (ii) demand related charges.

These variable TUOS Charges are referred to as "**Avoided TUOS Charges**".

#### (b) **Limit on Payment Obligation**

Notwithstanding any other provision of this Agreement, any obligation of Evoenergy to pay Avoided TUOS Charges to the Generator under this Agreement only applies to the extent that, and for so long as, Evoenergy is



subject to a legally binding obligation to do so under the NER or any other  
Applicable Laws.

(c) **Payment of Avoided TUOS Charges**

Subject to item (b) above, Evoenergy must pass through and pay to the Generator or its nominated agent, Avoided TUOS Charges as required under clause 5.5(h) of the NER.

(d) **Loss Adjustments**

For the purposes of calculating Avoided TUOS Charges as outlined above, the energy and demand components of Avoided TUOS Charges will be adjusted by a cost reflective *distribution loss factor* determined by Evoenergy in accordance with the NER.

The *distribution loss factor* reflects the actual electrical losses for electricity transmitted on a *Distribution Network* between a *Distribution Network Connection Point* and *transmission network Connection Point*. The application of this *loss factor* will have the effect of adjusting energy and demand components of Avoided TUOS Charges at the *Distribution Network Connection Point* to the equivalent of those components as if they were metered at the *transmission network Connection Point* for the Generator.

# Schedule 7 - Generator Performance Standards

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***[Note: Insert Generator Performance Standards provided by the Generator and approved by AEMO & Evoenergy here]***

# Schedule 8 - System Study

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***[Note: Insert Generator Performance Standards provided by the Generator and approved by AEMO & Evoenergy here]***

# Schedule 9 - Operating Protocol

## 1. Indicative Operating Protocol

This Schedule 9 summarises the high level operational procedures that Evoenergy and the Generator must use to ensure that the Evoenergy Network and the Facility, including associated plant and equipment, are operated:

- (a) safely;
- (b) efficiently;
- (c) in a coordinated manner between the parties;
- (d) so as to optimise the provision of the Services provided under this Agreement; and
- (e) in accordance with the NER and this Agreement.

A detailed Operating Protocol generally in accordance with the principles set out in this Schedule 9 will be developed and agreed by the Parties in accordance with clause 7.4. That Operating Protocol may be amended by the Parties to take into account:

- (f) the outcome of the compliance testing and commissioning which is performed in accordance with clauses 7.1 and 7.2 of this Agreement;
- (g) any relevant technical requirements set out in the Scope of Works and/or Applicable Laws; and
- (h) any relevant Directives and the development of national industry standards or requirements.

<p><b>Requirement to make available operational information</b></p>	<p>Evoenergy and the Generator must:</p> <ul style="list-style-type: none"> <li>(a) maintain and update its operational information;</li> <li>(b) make available to the other Party on its reasonable request, any operational information that relates to the other Party's assets and associated plant and equipment; and;</li> <li>(c) advise the other as soon as practicable of any changes to operational information that relates to the other Party's assets and associated plant and equipment.</li> </ul>
<p><b>Switching</b></p>	<p><b><i>Switching requests for Planned Works</i></b></p> <p>Each Party must use reasonable endeavours to carry out switching, as reasonably requested by the other Party, to allow that other Party to carry out Planned Works that will or are likely to affect the provision of the Services under this Agreement, the Evoenergy Network and the Facility.</p> <p><b><i>Safe system of work</i></b></p> <p>Each Party must have a documented safe system of work to ensure the maintenance of safe access for appropriately authorised persons to all operating plant owned or operated by that Party.</p>

	<p>Either Party may request proof of the safe system of work from the other Party at any time.</p> <p>The application of the safe system of work access at the asset boundary must be mutually agreed by both Parties.</p> <p>Each Party must comply with the applicable safe system of work.</p> <p><b>Emergency switching</b></p> <p>If a Party reasonably considers that switching must be carried out urgently to avoid a serious risk of damage to property or to avoid risk of injury or death to any person, that Party may, with as much notice as is reasonably practicable in the circumstances:</p> <ul style="list-style-type: none"><li>(a) request the other Party to carry out switching on that Party's assets; and/or</li><li>(b) carry out switching on its own assets that may affect the other Party's assets.</li></ul> <p>A Party must use all reasonable endeavours to comply with any quest for emergency switching.</p> <p><b>Unilateral emergency switching</b></p> <p>Regardless of anything else in the Agreement, in an emergency, for the purposes of saving human life or preventing serious risk to plant or property owned or operated by either Party, any competent person, authorised by a Party may operate the Party's assets, plant or equipment without prior direction or notice to the other Party to de-energise having due regard to their own safety.</p> <p>A Party must give notice to the other Party of any action undertaken in connection with unilateral emergency switching as soon as possible after the event.</p>
<p><b>Planned interruptions</b></p>	<p><b>Planned interruptions plan</b></p> <p>The Parties must maintain a plan for management of planned outages that supports the following principles:</p> <ul style="list-style-type: none"><li>(a) planned outages are required from time to time to undertake essential maintenance to Evoenergy's Distribution Network. The decision to undertake any such maintenance will be governed by Evoenergy's current maintenance strategy. The relative impact of Evoenergy's maintenance on the Generator will be determined by the:<ul style="list-style-type: none"><li>i. the current <i>network</i> configuration; and</li><li>ii. Generator's connection configuration.</li></ul></li></ul>

- (b) subject to item (a), planned outages are to be co-ordinated between the Parties;
- (c) the number and duration of planned outages are to be minimised as far as practicable, including wherever feasible, to take place outside of day light; and
- (d) Parties must use all reasonable endeavours to accommodate scheduled planned interruptions in accordance with the planned interruptions plan.

***Content of planned interruption plan***

As a minimum, the planned interruption plan must include, the following:

- (a) proposed scheduled planned interruptions and dates on which planned interruptions will occur for at least 8 months in advance;
- (b) the items of the Distribution Network or the Facility that will be unavailable during the planned interruption;
- (c) a description of the maintenance or other work that will be carried out on the relevant assets, plant or equipment;
- (d) the anticipated duration of the planned interruption;
- (e) any necessary activities that a Party must carry out in relation to a planned interruption;
- (f) restoration plan if restoration time is greater than two (2) hours; and
- (g) any contingency plans.

***Timing and review of planned interruption plan***

Evoenergy (in consultation with the Generator):

- (a) develop a planned interruption plan within 30 days of the Date for Construction Completion;
- (b) review the planned interruption plan at regular intervals during the term of this Agreement (and at least annually); and
- (c) (acting reasonably) make any necessary changes to the planned interruption plan resulting from its review.

***Planned interruption request***

A Party may request a change to a scheduled planned interruption with at least 28 days' notice to the other Party. The notice period may only be reduced or waived with the agreement of both Parties.

<b>Communications</b>	All operational communications issued between the Parties must be issued in accordance with the requirements set out in Item 2 of this Schedule 9 (Operational Notices).
<b>Routine testing of protection equipment</b>	The Parties must maintain an asset management plan for the routine testing of protection equipment that supports the following principles:  (a) testing is to be co-ordinated between the Parties;  at a mutually agreed time that provides the least impact on the Generator's ability to generate.

## 2. Operational Notices

Type of Notice	Permitted Service Method	Evoenergy Description of Person to whom Notice must be sent	Generator Description of Person to whom Notice must be sent
Emergencies	Any method	<b>Position: Emergency Services Officer</b> <b>Address: 16 Lithgow Street, Fyshwick</b> <b>Phone: 13 10 93 (24 hours)</b>	<b>Position: [insert]</b> <b>Address: [insert]</b> <b>Phone: [insert]</b> <b>Email: [insert]</b>
Technical	Any method	<b>Position: [insert]</b> <b>Address: GPO Box 366 Canberra ACT 2601</b> <b>Phone: [insert]</b> <b>Email: [insert]</b>	<b>Position: [insert]</b> <b>Address: [insert]</b> <b>Phone: [insert]</b> <b>Email: [insert]</b>
Operational	Any method	<b>Position: Branch Manager - Asset and Network Performance</b> <b>Address: GPO Box 366 Canberra ACT 2601</b> <b>Phone: 02 6270 7474</b> <b>Email: <a href="mailto:SSR@Evoenergy.com.au">SSR@Evoenergy.com.au</a></b>	<b>Position: [insert]</b> <b>Address: [insert]</b> <b>Phone: [insert]</b> <b>Email: [insert]</b>
Billing	Written only	<b>Position: [insert]</b> <b>Address: [insert]</b> <b>Phone: [insert]</b> <b>Email: [insert]</b>	<b>Position: [insert]</b> <b>Address: [insert]</b> <b>Phone: [insert]</b> <b>Email: [insert]</b>
Disputes	Written only	<b>Position: [insert]</b>	<b>Position: [insert]</b>



Type of Notice	Permitted Service Method	Evoenergy Description of Person to whom Notice must be sent	Generator Description of Person to whom Notice must be sent
		<b>Address:</b> <i>[insert]</i> <b>Phone:</b> <i>[insert]</i> <b>Email:</b> <a href="mailto:embeddedgeneration@Evoenergy.com.au">embeddedgeneration@Evoenergy.com.au</a>	<b>Address:</b> <i>[insert]</i> <b>Phone:</b> <i>[insert]</i> <b>Email:</b> <i>[insert]</i>

Signing page

**EXECUTED** as an agreement

EXECUTED for )  
**Icon Distribution Investments Limited** )  
**ABN 83 073 025 224 and Jemena** )  
**Networks (ACT) Pty Limited ABN 24** )  
**008 552 663** )

by **Michael Costello** as their attorney )  
under power of attorney ACT registered )  
no. 0138518 in the presence of )

..... )  
Signature of witness )

..... )  
Name of witness )

..... )  
Date )

.....  
By executing this agreement the  
attorney states that the attorney  
has received no notice of  
revocation of the power of  
attorney.

SIGNED by **[insert name]** ABN **[insert ABN]** in accordance with section 127 of the  
*Corporations Act 2001* (Cth):

.....  
Signature of Director

.....  
Signature of witness

.....  
Name of Director (Print)

.....  
Name of witness (Print)

.....  
Date: