

Final Contract



1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement unless the contrary intention appears:

"AEMC" means the Australian Energy Market Commission.

"AEMO" means the Australian Energy Market Operator Limited.

"Agreement" means the contract between Aurora Energy and the Customer comprising:

- (a) these terms and conditions;
- (b) the Schedule entitled "Final Contract Energy Supply Agreement – Schedule 1"; and
- (c) any other Schedules provided to the Customer and stated to form part of the Agreement.

"Agreement Commencement Date", subject to the Customer correctly signing this Agreement where indicated in Schedule 1 and the signed copy being received by Aurora Energy as instructed on Schedule 1, means the later date specified in the signature panel on Schedule 1.

"Agreement End Date" means, in respect of a Site, the date on which the first to occur of any the following events occurs at the Site:

- (a) Aurora Energy ceases to be Responsible for the Site;
- (b) Aurora Energy enters into a new agreement for the Site (with the Customer or another person) and sale of electricity commences under that agreement; or
- (c) the Site is disconnected with no right of reconnection.

"Aurora Energy" means Aurora Energy Pty Ltd ABN 85 082 464 622.

"Billing Period" means one calendar month, except when the Agreement Commencement Date or Agreement End Date occurs part way through a month, in which case the Billing Period will reflect the relevant period within that month.

"Business Day" means a day (not being a Saturday or Sunday) on which banks are open for general banking business in Hobart.

"Code" means the Tasmanian Electricity Code as issued by the Regulator under the ESI Act pursuant to sections 6(1) and 49A of the ESI Act.

"Commencement Date" for a Site means the later of:

- (a) the date specified as the "Term Commencement Date" in Schedule 1;

- (b) if the Customer is an existing customer of Aurora Energy's for that Site, the date on which the last of the preconditions under clause 2.1 is satisfied or waived; and

- (c) if the Customer is transferring that Site to Aurora Energy from another retailer, the date on which Aurora Energy becomes Responsible for that Site.

"Connection Services" means the connection of the Point of Supply to the Network and the provision of associated services.

"Consumption", in respect of a Site, means the metered quantity of electricity recorded at the Point of Supply for that Site, multiplied by the relevant Loss Factor.

"Customer" means the customer specified in Schedule 1.

"Default Rate" means the standard default rate(s) (for electricity, Environmental Charges or other services as appropriate) determined from time to time by Aurora Energy as being applicable to its customers whose consumption is of a similar size to the Customer's.

"Early Termination Fee" means the fee that will be calculated by Aurora Energy and charged to the Customer based on Aurora Energy's exposure to pay for hedges referable to the National Electricity Market that have been secured to provide the Customer with electricity for the Total Contracted Volume for the Fixed Rate Period, or the then current Further Term (whichever is relevant), at the rates set out in Schedule 1.

"Electricity Law" means the ESI Act, the Code, the *Electricity – National Scheme (Tasmania) Act 1999 (Tas)*, the *National Electricity (Tasmania) Law*, the Rules, the *National Energy Retail Law (Tasmania) Act 2012 (Tas)*, the NERL, the NERR and any other statute, regulation, rule, ordinance, code, licence or other law (including the common law), whether state or federal, including any lawfully binding and relevant determination, decree, edict, declaration, ruling, order, procedure or other similar pronouncement applying to Aurora Energy or the Customer and relevant to this Agreement (whether or not specifically relating to electricity), validly issued by any Government Agency.

"Environmental Charges" are calculated under clause 6.

"Environmental Scheme" means any law which has as one of its purposes the reduction or limitation of greenhouse gases, the encouragement of renewable, low emissions or other forms of clean energy, or the minimisation of the impact of the electricity industry on the environment, including LRET and SRES.

Final Contract



"ESI Act" means the *Electricity Supply Industry Act 1995 (Tas)*.

"Event of Default" means the Customer:

- (a) fails to pay Aurora Energy an amount Aurora Energy has billed by the due date;
- (b) breaches any of the Customer's other obligations under this Agreement;
- (c) denies access to the Customer's metering equipment or otherwise damages or interferes with any metering equipment; or
- (d) refuses to provide, or does not provide, to Aurora Energy any security Aurora Energy has requested.

"Excess Load" is defined in clause 7.5.

"Fixed Rate Period" means the period specified as the "Fixed Rate Period" in Schedule 1, commencing on the Commencement Date (even if this is after the "Term Commencement Date" specified in Schedule 1) and ending on the date that Schedule 1 indicates that the Fixed Rate Period ends, or as earlier terminated in accordance with this Agreement.

"Force Majeure" in relation to a party, means any cause outside the affected party's control including an act of God, fire, lightning, explosion, flood, insurrection or civil disorder, war or military operation, terrorist attack, sabotage, vandalism, embargo, Government Agency action, or compliance in good faith with any law, regulation or direction by any Government Agency, any Network failure, or any failure on the part of the Network Operator and industrial disputes of any kind.

"Further Term" means a new Fixed Rate Period agreed between the Parties from time to time to replace the current or expired Fixed Rate Period (or as earlier terminated in accordance with this Agreement).

"Government Agency" means any government or any public, statutory, governmental (including a local government), semi-governmental or judicial body, entity, department, regulator or authority and includes and self-regulatory organisation established under statute.

"Immediate Disconnection Event" means:

- (a) the Customer experiences an Insolvency Event;
- (b) the Customer is using electricity illegally or fraudulently;
- (c) there is an emergency; or
- (d) health and safety reasons necessitate disconnection.

"Insolvency Event" in relation to the Customer means an order is made for the Customer's bankruptcy, winding up or dissolution, a receiver, receiver and manager, trustee, administrator, liquidator or similar official is

appointed to all or part of the Customer's assets or undertaking, the Customer enters into, or resolves to enter into, any arrangement or composition or compromise with, or assignment for the benefit of, the Customer's members or creditors or the Customer becomes insolvent within the meaning of section 95A of the *Corporations Act 2001 (Cth)*.

"Interest Rate" means the rate equal to five (5) percent per annum over and above the interest rate charged from time to time by the banking institution selected by Aurora Energy on overdrafts of \$100,000.00.

"Large Customer" means a customer who consumes 150 MWh or more of electricity per year for a single business Site, or in the aggregate across multiple business Sites.

"Loss Factor" means the multiplier required to adjust for transmission network and distribution network losses relevant to the Point of Supply, as published by AEMO or another Government Agency (as applicable), and as may be changed from time to time.

"LRET" means the Large-scale Renewable Energy Target under the *Renewable Energy (Electricity) Act 2000 (Cth)*.

"LRET Charges" are calculated under clause 6.3.

"Market Charges" means a reasonable proportion (attributable to the Consumption of electricity at the Site) of any Participant Fees (as defined under the Rules) and other charges levied on Aurora Energy under Electricity Law by any authorised party.

"Metering Charges" are the charges payable under clause 5.

"MSF" means a merchant service fee charged by a bank in relation to each credit card payment received by Aurora Energy. For the purposes of this Agreement, the MSF shall be an amount equal to one (1) percent of the account rendered pursuant to clause 9.1. The percent applied may change at any time during this Agreement without notice.

"NERL" means the *National Energy Retail Law (Tasmania)*.

"NERR" means the National Energy Retail Rules under the NERL.

"Network" means the apparatus, equipment, plant and buildings used to control and operate the electricity distribution network or the electricity transmission network which will be or is connected to the Point of Supply (as applicable).

"Network Charges" are the charges payable under clause 8.

Final Contract



"Network Operator" means the entity, including its employees, representatives, contractors or agents, that controls and operates the Network at the Point of Supply.

"Other Environmental Charges" are calculated under clause 6.5.

"Parties" means Aurora Energy and Customer and **"Party"** means any one or both of the Parties, as the context requires.

"Personal Information" means any personal information coming within the definitions of that term defined in the Privacy Legislation.

"Point of Supply" means the point of connection between the assets of the Network Operator and the Customer's mains at a Site.

"Privacy Policy" means Aurora Energy's privacy policy which is available from Aurora Energy's website at www.auroraenergy.com.au.

"Privacy Legislation" means:

- (a) the *Privacy Act 1988 (Cth)*;
- (b) the *Personal Information Protection Act 2004 (Tas)*;
- (c) any legislation (to the extent that such legislation applies to Aurora Energy or the Customer or any other recipient of Personal Information) from time to time in force in any Australian jurisdiction (which includes the Commonwealth of Australia and any State or Territory of Australia) or non-Australian jurisdiction (to the extent that Aurora Energy, the Customer, or any Personal Information of the Customer is subject to the laws of that jurisdiction) affecting privacy, Personal Information or the collection, handling, storage, processing, use or disclosure of data; and
- (d) any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued thereunder, as amended from time to time.

"Reconciliation Date" means:

- (a) each anniversary of the Commencement Date;
- (b) the expiry or termination of the Fixed Rate Period or the then current Further Term (whichever is relevant); and
- (c) any other date determined by Aurora Energy to be a "Reconciliation Date".

"Reconciliation Period" means the period from the Commencement Date to the first Reconciliation Date and each subsequent period between one Reconciliation Date and the next Reconciliation Date.

"Responsible" in respect of the Site means financially responsible in the National Electricity Market for electricity supplied to the Site, and **"Responsibility"** has an equivalent meaning.

"Rules" means the National Electricity Rules under the *National Electricity (Tasmania) Law* as published by the AEMC from time to time (as applicable).

"Site" means each premises listed in Schedule 1. 'List of sites under this agreement' (in respect of which each National Metering Identifier (NMI) is regarded as a separate Site).

"Spot Price" means the wholesale electricity price in the National Electricity Market for the Regional Reference Node (as defined by the Rules) attributable to the Site.

"SRES" means the Small-scale Renewable Energy Scheme under the *Renewable Energy (Electricity) Act 2000 (Cth)*.

"SRES Charges" are calculated under clause 6.4.

"SRES Costs" means the proportion of costs incurred by Aurora Energy relating to the acquisition of sufficient Small-scale Technology Certificates by Aurora Energy, or the payment of the Small-scale Technology Shortfall Charge by Aurora Energy, required to satisfy Aurora Energy's liability under SRES, which are attributable to the Customer's electricity consumption under this Agreement.

"Total Contracted Volume" means the quantity per annum of electricity to be supplied to the Customer as specified in Schedule 1.

1.2 In this Agreement unless the contrary intention appears:

- (a) all dollar amounts are expressed in Australian dollars;
- (b) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (c) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (d) wherever "include", "for example" or any form of those words or similar expressions is used, it must be constructed as if it were followed by "(without being limited to)";
- (e) a reference to a body includes that body's successors and permitted assigns; and
- (f) a reference to a statute includes all regulations and amendments to that statute and any statute passed in substitution for it or incorporating any of its provisions to the extent that they are incorporated.

Final Contract



1.3 Capitalised words which are not defined in this Agreement have the same meaning as in the Rules.

2 SUPPLY OF ELECTRICITY

2.1 Prior to any supply of electricity under this Agreement:

- (a) all necessary Connection Services to the Site must have been arranged and provided, and the Customer must have a connection contract in place with the relevant Network Operator;
- (b) all necessary metering equipment must have been installed (and, if necessary, upgraded) at the Point of Supply, there must be safe and unhindered access to the metering equipment, and metering services providers must have been engaged;
- (c) interval data must be available to Aurora Energy after an interval meter has been installed at the Point of Supply (or elsewhere as agreed between the Parties);
- (d) Aurora Energy must be satisfied that the Customer has a satisfactory credit rating or the ability to meet its payment obligations under this Agreement;
- (e) the Customer must have provided any requested security;
- (f) there must not be any outstanding payments owed by the Customer to Aurora Energy; and
- (g) Aurora Energy must be satisfied that the Customer is a Large Customer.

2.2 Aurora Energy may, by notice to the Customer, terminate the Agreement before the Commencement Date if it is not satisfied that the Customer has a satisfactory credit rating or has not provided requested security and in such circumstances:

- (a) the Agreement will end on the date specified in the notice; and
- (b) Aurora Energy may charge an Early Termination Fee (if Aurora Energy has the exposure as contemplated in the definition of that term), but neither Party will otherwise have any liability to the other in respect of such termination.

2.3 The preconditions in clause 2.1 are for the benefit of Aurora Energy and may only be waived by Aurora Energy. If the Commencement Date occurs before all the preconditions in clause 2.1 are satisfied, Aurora Energy may still require those conditions to be satisfied after the Commencement Date. Unless Aurora Energy expressly states otherwise, any waiver of the preconditions by Aurora Energy is only a waiver of Aurora Energy's rights to have those preconditions satisfied before the Commencement Date, rather than a waiver of Aurora Energy's rights to have them satisfied at all.

2.4 Aurora Energy agrees to sell electricity to the Customer and the Customer agrees to purchase electricity up to the Total Contracted Volume from Aurora Energy at the Point of Supply on the terms and conditions of this Agreement.

2.5 The Customer acknowledges that it is not contracting with Aurora Energy as a Network Operator and accordingly (subject to the *Competition and Consumer Act 2010 (Cth)*):

- (a) Aurora Energy assumes no responsibility to the Customer for the quality and quantity of electricity provided; and
- (b) the Customer agrees that Aurora Energy is not liable to the Customer under this Agreement or to any person claiming through the Customer for any costs, expenses, losses, damages, or claims for any partial or total failure or defect in the supply of electricity to the Site and any such warranty is expressly excluded, to the full extent permitted by law.

2.6 The Customer acknowledges that the physical delivery of electricity to the Site is made by the Network Operator and for that reason the Customer agrees that the quality and quantity of electricity supply can be addressed more appropriately in the connection contract it has with the Network Operator.

3 CUSTOMER'S OBLIGATIONS

3.1 The Customer must ensure that the Site is and remains physically connected to the Network and that the Customer is able to take the electricity purchased under this Agreement.

3.2 The Customer must sign any forms or other documents necessary to effect registration of Aurora Energy as the Customer's chosen retailer under the Rules.

3.3 The Customer:

- (a) warrants that the Customer is, and will remain at all times during this Agreement, a Large Customer; and
- (b) must advise Aurora Energy promptly if the Customer ceases to be, or anticipates it will cease to be, a Large Customer.

4 CHARGES

4.1 The Customer shall pay Aurora Energy:

- (a) the Electricity Charges, which are to be calculated by multiplying the Consumption during the relevant Billing Period by the following applicable rates:
 - (i) during the Fixed Rate Period, the rates specified as "Electricity Charges" in Schedule 1 (as applicable to Peak or Off-Peak

Final Contract



Consumption respectively, as those periods are defined in Schedule 1);

- (ii) during the Further Term, the relevant electricity consumption rates specified in the communications from Aurora Energy in relation to the Further Term; and
- (iii) after the Fixed Rate Period or the then current Further Term (whichever is relevant), the relevant Default Rate;

- (b) the Metering Charges;
- (c) the Network Charges;
- (d) the Market Charges;
- (e) the Environmental Charges;
- (f) any other charges permitted by this Agreement; and
- (g) any goods and services tax attributable to the supplies made to the Customer under this Agreement as reasonably determined by Aurora Energy.

4.2 Market Charges, SRES Charges, Other Environmental Charges, Network Charges, Loss Factor and Metering Charges may change at any time without notice to the Customer. Any amounts for such charges are set out in Schedule 1 are estimates only.

4.3 If after the Agreement is offered to the Customer

- (a) any tax, levy or duty is imposed or passed on to Aurora Energy by any Government Agency, including, without limitation, goods and services tax, sales tax, production tax, energy tax, carbon tax, environmental tax or any similar tax, levy or duty, of similar purpose or effect;
- (b) Aurora Energy incurs any liability, cost or reduction in benefit due to or arising from the introduction of a new Electricity Law, a change to an Electricity Law or a change to the interpretation of an Electricity Law;
- (c) any renewable, carbon or other environmental fee or charge is imposed or passed on to Aurora Energy by any Government Agency, generator, Network Operator or other third party;
- (d) any cost, levy, fee or charge is imposed on Aurora Energy in connection with acquiring electricity, including costs passed on to Aurora Energy by any third party under a contract to hedge the wholesale price of electricity in order to reflect matters in the nature of those described in clauses 4.3(a), 4.3(b) or 4.3(c) being imposed or passed on to that third party,

Aurora Energy shall be entitled to pass on to and recover from the Customer an amount which Aurora

Energy reasonably determines represents the tax, levy, duty, cost, fee or charge applicable to the Customer's Consumption under this Agreement that is not being recovered via the charges listed pursuant to clause 4.1.

4.4 If the metering equipment at the Site malfunctions or metering data is not available for any reason, the Customer's Consumption will be substituted in accordance with the procedure set by AEMO under the Rules.

4.5 For the avoidance of doubt, unless otherwise expressly stated, all prices stated in Schedule 1 are exclusive of GST and GST will be recoverable from the Customer in addition to those prices.

4.6 At any time during this Agreement Aurora Energy may determine to pass on to the Customer an amount equal to the MSF when the Customer makes a payment under this Agreement using a credit card.

5 METERING AND METERING CHARGES

5.1 Unless otherwise agreed with the Customer, Aurora Energy agrees to arrange:

(a) for an interval meter and associated metering equipment required by the Rules to:

- (i) be installed at the Point of Supply, or elsewhere as agreed between the Parties; and
- (ii) be maintained in accordance with the Code or the Rules as relevant; and

(b) for data from the metering equipment to be collected and forwarded as required by the Rules or as requested by the Customer consistent with the Rules.

5.2 The Customer agrees to pay or reimburse Aurora Energy for all costs in relation to the provision of metering services set out in this clause 5 at the rates levied on Aurora Energy by a third party metering provider or metering data providers.

5.3 The Customer agrees to co-operate with Aurora Energy in relation to all reasonable requirements relating to the metering equipment's installation, maintenance and data reading.

5.4 The Customer acknowledges that the metering equipment supplied by or on behalf of Aurora Energy remains the property of the person supplying it.

5.5 The Customer agrees to report any damage to the metering equipment immediately by written notice to Aurora Energy specifying which meter has been damaged.

5.6 The Customer agrees to be bound by the outcome of procedures under the Rules in relation to metering data.

Final Contract



5.7 The Customer may request Aurora Energy to arrange a pulse output function to be emitted from the interval meter installed at the Point of Supply for the purpose of, inter alia, monitoring the Customer's Total Contracted Volume. Where the Customer has elected for a pulse output function to be emitted from its interval meter pursuant to this clause, it agrees that Aurora Energy (or a third party metering provider where Aurora Energy does not provide the metering services) is not liable to the Customer for any loss, liability or expense which the Customer may suffer or incur as a result of the pulse output failure, including inconsistent emission frequencies or error in pulse outputs being emitted from the interval meter installed at the Point of Supply.

6 ENVIRONMENTAL CHARGES

6.1 This clause 6 applies in respect of the supply of electricity to the extent that Aurora Energy's acquisitions of electricity for supply to the Customer at the Site are not exempt from liability under the relevant Environmental Scheme.

6.2 Environmental Charges are LRET Charges, SRES Charges and Other Environmental Schemes Charges, calculated under this clause 6.

6.3 LRET Charges are to be calculated by multiplying the Consumption during the relevant Billing Period by the following applicable rates:

- (a) during the Fixed Rate Period, the relevant LRET Rate set out in Schedule 1;
- (b) during the Further Term, the relevant LRET Rate specified in the communications from Aurora Energy in relation to the Further Term; and
- (c) after the Fixed Rate Period or the then current Further Term, the relevant Default Rate.

6.4 SRES Charges are calculated by multiplying the Consumption during the relevant Billing Period by such rate that Aurora Energy considers reasonable in order to recover its SRES Costs, as that rate may be amended by Aurora Energy from time to time.

6.5 Other Environmental Charges (if any) are such charges that Aurora Energy considers reasonable in order to recover its costs of complying with any Environmental Schemes other than LRET and SRES (whether those schemes were in existence before or after the Agreement Commencement Date).

7 LOAD VARIATION

7.1 Aurora Energy accepts that the Customer's demand for energy is variable to the extent permitted by virtue of this clause 7.

7.2 A load variation of -15% to +15% of the Total Contracted Volume is allowed for the duration of the Fixed Rate Period and any applicable Further Term.

7.3 Aurora Energy may conduct a reconciliation for the Site of the actual Consumption at the Site during the Reconciliation Period against the Total Contracted Volume on each Reconciliation Date. In the case of the Reconciliation Period being less than a 12 month period, the Total Contracted Volume shall be apportioned across the relevant time period in a manner which reasonably reflects the average monthly consumption for the Site during the particular months comprising the relevant time period.

7.4 If actual Consumption across all Sites is between 85% and 115% of the Total Contracted Volume then no additional amount will be payable by the Customer under this clause 7 (and for the avoidance of doubt the Customer will be charged for actual Consumption at the rates applicable for the Fixed Rate Period or the then current Further Term (whichever is relevant).

7.5 If the Consumption across all Sites in a Reconciliation Period exceeds 115% of the Total Contracted Volume, the load in excess of the 115% of the Total Contracted Volume ("**Excess Load**") will be charged at the rates specified in Schedule 1 for "Electricity Charges" and "Environmental Charges" unless clause 7.6 or 7.7 applies.

7.6 If, during a Reconciliation Period, Aurora Energy is exposed to Spot Prices that, in Aurora Energy's opinion and taken overall, do not support the rates specified in Schedule 1 for "Electricity Charges", Aurora Energy may charge the Excess Load or any part of it at a rate which is calculated as the relevant Spot Price plus a reasonable margin (such margin to be determined by Aurora Energy). If Aurora Energy does so, Aurora Energy will make due adjustment (by credit to the Customer) for any periods in which the Spot Price is less than \$0 (after deducting a reasonable margin determined by Aurora Energy).

7.7 If, during a Reconciliation Period Aurora Energy is unable to source Environmental Products at a price that, in Aurora Energy's opinion and taken overall, supports the rates specified in Schedule 1 for "Environmental Charges", Aurora Energy may charge the Excess Load or any part of it at the relevant Default Rates for Environmental Charges.

7.8 If, during a Reconciliation Period, the Consumption for the Site is below 85% of the Total Contracted Volume, the Customer shall pay for the under Consumption to 85% of the Total Contracted Volume at the rates specified for "Electricity Charges" and "Environmental Charges" in Schedule 1. The Electricity Charge rates for Peak and Off Peak will be applied based on historical data. Where no historical data is available, Aurora Energy will determine, at its discretion, the proportions of the under Consumption to be applied to the Peak and Off Peak rates.

Final Contract



7.9 In the event that an amount is owing under clause 7.5, 7.8, 7.7 or 7.8, Aurora Energy will issue an account to the Customer for the amount calculated pursuant to this clause 7 and the Customer will pay the account in full within fourteen (14) days after the said account is issued pursuant to this clause ("**Payment Date**"). Payment must be made to Aurora Energy without deduction or set off. Any amounts unpaid by the Payment Date bear interest at the Interest Rate capitalising monthly on the last day of the month.

7.10 This clause 7 will survive termination.

8 NETWORK CHARGES

8.1 Customer agrees to pay or reimburse Aurora Energy all charges payable to the Network Operator by Aurora Energy in respect of the Site(s) including, without limitation, any costs of connecting the Site to the Network and use of the Network.

9 PAYMENT

9.1 Aurora Energy will issue accounts to the Customer at the end of each Billing Period for all charges due under this Agreement and the Customer will pay the account in full by the date specified in Schedule 1 or such later date as may be specified in the account ("**Due Date**"). Any amounts unpaid by the Due Date bear interest at the Interest Rate capitalising monthly on the last day of the month.

9.2 If the Customer disputes an invoice it shall pay by the Due Date, at its election:

- (a) the amount on the invoice; or
- (b) where at least three (3) invoices have previously been issued by Aurora Energy under this Agreement, the average amount payable under the last 3 invoices issued.

9.3 The Parties shall deal with any disputes contemplated by clause 9.2 in accordance with the procedure specified at clause 20. Following the resolution of the dispute, the Customer must immediately pay any amounts determined to be payable by the Customer.

9.4 If a Party ("**first Party**") becomes aware that the other Party has made an error in an amount invoiced or paid under this Agreement:

- (a) the first Party shall notify the other Party within seven (7) days of becoming aware of that fact; and
- (b) Aurora Energy shall credit or debit the Customer's next account with the amount necessary to rectify the error.

9.5 For the avoidance of doubt should meter data for the Site(s) be replaced, amended or changed in accordance with the Rules, Aurora Energy will issue a new account

to reflect the new data, and the Customer will pay the account under this clause 9.

10 EVENT OF DEFAULT

10.1 If there is an Event of Default, Aurora Energy may give the Customer notice which:

- (a) details the Event of Default which has occurred; and
- (b) provides the Customer with ten (10) Business Days' notice to rectify the Event of Default.

10.2 If the Event of Default is not rectified as required by the notice in clause 10.1, Aurora Energy may do either or both of the following:

- (a) request the Network Operator to disconnect any or all of the Customer's Sites;
- (b) terminate the Fixed Rate Period (or Further Term as applicable) under clause 13.4.

11 DISCONNECTION

11.1 Aurora Energy may arrange disconnection of any or all of the Customer's Sites:

- (a) in accordance with clauses 10.2(a), 13.5(b) or 13.6;
- (b) immediately upon the occurrence of an Immediate Disconnection Event; or
- (c) if there are other grounds under the Electricity Law on which disconnection is permitted.

11.2 The Customer may request disconnection of a Site and if it does so, Aurora Energy will arrange disconnection as requested.

11.3 The Network Operator may also disconnect the Customer's Site.

11.4 The Customer must co-operate with and assist the Network Operator's and Aurora Energy's personnel in respect of any disconnection.

11.5 Disconnection of one or more Sites does not, of itself, automatically end the Fixed Rate Period (or Further Term as applicable) or the Agreement.

12 RECONNECTION

12.1 Where the Customer's Site has been disconnected under clause 11 and the Fixed Rate Period (or Further Term as applicable) with respect to that Site has not ended (including because Aurora Energy has not exercised a right of termination under clause 13.4), if the Customer:

- (a) rectifies the Event of Default or Immediate Disconnection Event as required by Aurora Energy; and
- (b) pays any relevant charges including any connection or reconnection fees charged by the Network Operator,

Final Contract



Aurora Energy will, if requested by the Customer, arrange for the Customer's Site to be reconnected.

13 TERM AND TERMINATION

13.1 This Agreement shall commence on the Agreement Commencement Date and continues in full force and effect until the Agreement End Date (save for accrued obligations, such as the obligation of the Customer to pay for electricity supplied until the Agreement End Date, which continue after the Agreement End Date until fulfilled).

13.2 If at the end of the Fixed Rate Period or then current Further Term (whichever is relevant) the Customer (or another person) continues to consume electricity at the Site and Aurora Energy:

- (a) remains Responsible for the Site; and
- (b) has not entered into a new contract for the Site (with the Customer or another person) under which sale of electricity to the Site has commenced,

the Customer will be responsible for all charges in relation to electricity consumed at the Site, on the basis of the Default Rate, from the day after the date the Fixed Rate Period (or Further Term as applicable) ends until the Agreement End Date.

13.3 The Customer may terminate this Agreement at any time prior to the expiry of the Fixed Rate Period or Further Term as applicable (including, for the avoidance of doubt, prior to the Commencement Date) by providing Aurora Energy with at least thirty (30) Business Days' written notice. If the Customer does so, clause 13.5 will apply.

13.4 Aurora Energy may terminate this Agreement at any time prior to the expiry of the Fixed Rate Period or Further Term (as applicable) by notice to the Customer if:

- (a) an Event of Default occurs which is not rectified in accordance with a notice under clause 10.1;
 - (b) the Customer experiences an Insolvency Event;
 - (c) the Customer is using electricity illegally or fraudulently;
 - (d) the Customer requests disconnection of the Customer's Site and that Site remains disconnected for thirty (30) days;
 - (e) the Customer ceases to be a Large Customer in breach of the warranty under clause 3.3(a), gives a notice to Aurora Energy under clause 3.3(b) or Aurora Energy reasonably believes that the Customer will breach the warranty under clause 3.3(a) reasonably soon;
 - (f) the Customer transfers the Site to another retailer;
- or

- (g) a force majeure event under clause 14 affects Aurora Energy for a continuous period of at least 6 months.

If Aurora Energy does so, clause 13.5 will apply.

13.5 If the Fixed Rate Period or then current Further Term (whichever is relevant) is terminated by the Customer under clause 13.3 or by Aurora Energy under clause 13.4, the Customer acknowledges:

- (a) the Customer must pay Aurora Energy the Early Termination Fee;
- (b) Aurora Energy may disconnect the Customer's Sites;
- (c) this Agreement will end on the Agreement End Date relevant to each Site; and
- (d) any supply of electricity between the end of the Fixed Rate Period or the then current Further Term (whichever is relevant) and the Agreement End Date will be charged at the Default Rate.

13.6 Either Party may terminate this Agreement following the expiry of the Fixed Rate Period or the then current Further Term (whichever is relevant):

- (a) by providing the other Party with thirty (30) Business Days' written notice of its intent to do so; or
- (b) immediately if there is an Immediate Disconnection Event,

following which Aurora Energy may request the Network Operator to disconnect the Customer's Sites. The effective date of such termination for each Site will be the Agreement End Date for that Site.

13.7 The Customer is also obliged to pay Aurora Energy any amounts owing up to the Agreement End Date, including connection, reconnection, disconnection fees and any cost of collection of any outstanding debt not paid in full. The obligation to pay these amounts must be done so in accordance with terms specified in clause 9.1.

14 LIABILITY

14.1 Consumer protection legislation implies terms into contracts for the supply of certain services that cannot be excluded ("Implied Terms") but permits a supplier to limit its liability in respect of those Implied Terms in certain circumstances. Aurora Energy's liability for breach of an Implied Term applying to the services to be provided under this Agreement is limited at Aurora Energy's option to one of the following remedies:

- (a) the supplying of the services again; or
- (b) the payment of the cost of having the services supplied again.

Final Contract



14.2 The only terms, conditions or warranties which apply to services to be provided under this Agreement are:

- (a) any Implied Terms, but subject to the limit set out in clause 14.1 above; and
- (b) the express terms of this Agreement,

and all other terms, conditions or warranties implied by law (including statute), custom or usage are excluded to the fullest extent permitted by law.

14.3 Subject to this clause 14:

- (a) Aurora Energy is not liable for any loss of profits, business or anticipated savings, or for any indirect or consequential loss, arising out of or in connection with Aurora Energy's performance (including any breach) of this agreement, whether in contract, tort (including negligence) or otherwise;
- (b) any liability Aurora Energy has to the Customer arising out of or in connection with Aurora Energy's performance (including any breach) of this agreement, whether in contract, tort (including negligence) or otherwise is limited to an aggregate amount of \$250,000 in respect of all claims relating to events occurring in a calendar year and is reduced to the extent that the Customer caused or contributed to the breach;
- (c) Aurora Energy will not be liable to the Customer for any loss or damage suffered by the Customer which results from disconnection of the Point of Supply in accordance with this Agreement; and
- (d) full details of any claim by the Customer must have been given by the Customer to Aurora Energy within twelve (12) months of the occurrence giving rise to the claim.

15 FORCE MAJEURE

15.1 An obligation of a Party under this Agreement, other than:

- (a) the Customer's obligation to pay money, as outlined in clause 9; or
- (b) the Customer's obligation to provide security if requested by Aurora Energy, as outlined in clause 19;

shall be suspended during the time and to the extent that the Party is prevented from or delayed in complying with that obligation by Force Majeure, provided that Party complies with its obligations under clause 15.2 in respect of that Force Majeure.

15.2 A Party affected by Force Majeure must give to the other Party particulars of the Force Majeure and take reasonable steps to promptly remove or mitigate the relevant Force Majeure, except that the Party will not be

obliged to settle a strike, lockout, boycott or other industrial dispute.

16 CONFIDENTIALITY

16.1 Unless otherwise specifically provided for under this Agreement, all commercially sensitive information exchanged under this Agreement is strictly confidential between the Parties and must not be disclosed to any other person except:

- (a) with the consent of the Party who supplied the information; or
- (b) if required by law, or any Government Agency having jurisdiction over either Party or this Agreement, or in connection with legal proceedings relating to this Agreement; or
- (c) if the information is generally and publicly available other than as a result of breach of confidentiality by the person receiving the information.

This clause 16 shall survive termination of the Agreement.

17 PRIVACY

17.1 Permitted processing of Personal Information

- (a) Aurora Energy must use reasonable efforts to handle Personal Information held in connection with this Agreement only to the extent necessary to fulfil its obligations under this Agreement.
- (b) Aurora Energy undertakes to use all reasonable efforts to comply with:
 - (i) the Privacy Legislation in relation to Personal Information it holds in connection with this Agreement; and
 - (ii) in accordance with any privacy policies or statements issued by Aurora Energy from time to time in relation to Personal Information.
- (c) The obligations of this clause 17 (Privacy) apply notwithstanding any permitted processing of Confidential information in accordance with the terms of this Agreement.
- (d) In order for Aurora Energy to fulfil its obligations under this clause 17, the Customer:
 - (i) warrants that, in relation to Personal Information the Customer discloses to Aurora Energy, the Customer has the authority to disclose such Personal Information;
 - (ii) will ensure that any individual to which Personal Information disclosed by the Customer to Aurora Energy relates is notified of matters contained in Aurora Energy's privacy policies, statements or privacy consents issued by Aurora Energy from time

Final Contract



to time and will promptly give copies of those policies, statements or privacy consents to individuals as directed by Aurora Energy from time to time;

- (iii) otherwise take all reasonable steps to ensure that Aurora Energy does not breach relevant Privacy Legislation in its handling of Personal Information disclosed in connection with this Agreement; and
- (iv) the Customer undertakes to take all reasonable action directed by Aurora Energy to facilitate Aurora Energy's compliance with its obligations under this clause and the Privacy Legislation in connection with this Agreement.

18 WARRANTIES AND COVENANTS

18.1 Each Party represents and warrants to the other Party:

- (a) that execution of and performance of that Party's obligations under this Agreement will not amount to a breach of any contractual or other obligation owed by that Party to a third party; and
- (b) that the execution of and performance of that Party's obligations under this Agreement have been duly authorised by all necessary or appropriate actions of that Party.

19 SECURITY

19.1 Aurora Energy will conduct credit assessments on the Customer prior to the execution of this Agreement and during the term of the Agreement. If:

- (a) in the opinion of Aurora Energy the Customer's credit position is materially weaker than as at the Agreement Commencement Date; or
- (b) the Customer does not comply with the terms of payment under clause 9 of this Agreement (including clause 9.2 in the event of a dispute); or
- (c) Aurora Energy becomes aware, through credit reporting bodies; of a risk to Aurora Energy's financial portfolio,

the Customer, if requested, must provide security to Aurora Energy in respect of the Customer's payment obligations contained in this Agreement.

19.2 For the purposes of this clause "materially weaker" means a material change in the financial position or prospects of the Customer which, in the opinion of Aurora Energy, may adversely affect the Customer's ability to perform its obligations under this Agreement.

19.3 Aurora Energy may require the Customer to satisfy its security obligations by one, or a combination, of the following methods:

- (a) a bank guarantee for the amount stated in Schedule 1 or as advised by Aurora Energy; or
- (b) a direct debit for the full amount owing on the account by the due date; or
- (c) a cash security deposit.

19.4 Where the Customer is required to satisfy its security obligation by the method prescribed in clause 19.3(b):

- (a) the Customer must complete the direct debit authority form within the time frame specified by Aurora Energy; and
- (b) should the Customer fail to adhere to the requested direct debit terms Aurora Energy reserves the right to bill the Customer a security deposit or accept a bank guarantee at its discretion.

The Customer may request an annual review of the security requirements during the term of the Agreement.

19.5 Any cash deposit and payments made in advance are not held on trust for the Customer and the Customer is not entitled to any interest on them.

19.6 Where the Customer satisfies its security obligation by providing Aurora Energy with a security deposit or bank guarantee, Aurora Energy shall be entitled to draw on the guarantee or security deposit (as the case may be) at any time when any amount owing by the Customer becomes overdue.

20 DISPUTE RESOLUTION

20.1 If a dispute arises between the Parties in connection with this Agreement, the Parties undertake in good faith to use all reasonable endeavours to settle the dispute.

20.2 If the dispute is not resolved within twenty (20) Business Days of the dispute arising and notification having been given to the other Party, either Party may request the President of the Law Society of Tasmania to appoint an appropriately qualified independent expert within Tasmania to determine the dispute and the procedure to be adopted.

20.3 In the case of a disputed invoice the amount determined as an underpayment or overpayment will be credited or debited as applicable to the Customer's next account.

20.4 Nothing in this clause 20 will prevent a Party from seeking urgent injunctive or declaratory relief.

21 MISCELLANEOUS

Waiver

21.1 Any waiver by either Party of a breach of this Agreement must be in writing and shall not be construed as a waiver of any further breach of the same or any other provision.

Final Contract



Amendment

21.2 Unless otherwise specifically provided for under this Agreement, any variation to the Agreement, including any variation to the Schedules, must be in writing and signed by both Parties.

Assignment

21.3 Aurora Energy may assign the whole or part of its rights and obligations under this Agreement without the consent of the Customer to any entity permitted to sell electricity in Tasmania. The Customer may assign its rights and obligations under this Agreement with Aurora Energy's prior written consent. Written consent will be provided at the sole discretion of Aurora Energy.

Entire Agreement

21.4 The Agreement shall constitute the entire agreement between the Parties. For the avoidance of doubt, any item not included within this Agreement that may have been discussed or requested by the Customer is not part of this Agreement.

Severability

21.5 If any part of this Agreement is prohibited, void, voidable, illegal or unenforceable, then that part is severed from this Agreement but without affecting the continued operation of the remainder of the Agreement.

Notices

21.6 All notices and accounts issued under this Agreement shall be sent to the address indicated in Schedule 1 or such other address as may from time to time be notified in writing by the Parties to each other. Notices and accounts shall be deemed to be received:

- (a) in the case of delivery by post, two (2) Business Days after the date of posting;
- (b) in the case of fax, on receipt by the sender of a transmission report from the despatching machine showing the relevant number of pages and the correct destination fax machine number and indicating that the transmission has been made without error, unless the recipient notifies the sender within 24 hours of the fax being sent that the fax was not received in its entirety in legible form;
- (c) where Aurora Energy elects to issue notices via email, to the Customer's nominated email address, the email will be deemed to be received by the Customer 24 hours from the email being sent.

Emergency

21.7 In the case of emergency, the Parties may contact one another as provided for in Schedule 1.

Governing Law

21.8 This Agreement shall be governed and construed in accordance with the laws of the State of Tasmania (and the laws of the Commonwealth in relation to Privacy Law) and the Parties agree to submit to the jurisdiction of the courts of Tasmania at first instance.

Retailer of Last Resort Event

21.9 If Aurora Energy is no longer entitled by law to sell energy to the Customer due to a retailer of last resort (RoLR) event (as contemplated by the Electricity Law) occurring in relation to Aurora Energy, Aurora Energy is required under the NERL and the NERR to provide relevant information (including the Customer's name, billing address and metering identifier) to the entity appointed as the relevant designated retailer for the RoLR event and this Agreement will come to an end.

For sites classified as small

21.10 By entering into this Agreement the Customer gives its explicit informed consent that if the Customer consumes less than, or is classified by the Network Operator as consuming less than, 150 MWh of electricity per year for a single business Site, then:

- (a) that Site may be treated as aggregated with other business Sites for the purposes of the NERL and the NERR; and
- (b) accordingly, any provisions of the NERL and the NERR which may be excluded by agreement (including Part 2 of the NERL (other than Division 12), Division 3 of Part 1 and Part 2 of the NERR) will not apply to this Agreement.

Adding or removing sites from this Agreement

21.11 Adding and removing sites listed in Schedule 1 'List of sites under this agreement' must be requested by the Customer and approved by Aurora Energy. Approval is at the discretion of Aurora Energy. Changes to Sites included within this Agreement does not change the 'Total Contracted Volume' listed on Schedule 1 or any of the obligations described at clause 7 of this Agreement.