

# Electricity Supply Contract for Large Business Customers

Terms and Conditions of this Agreement





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# 1. Preconditions to Sale

- 1.1 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 a Metering Coordinator must have been appointed;
  - (c) interval data must be available to Aurora Energy after an interval meter has been installed at the Point of Supply (or elsewhere as required by the Rules or agreed between the Parties consistent with the rules);
  - (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.
- 1.2 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 credit standing 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.
- 1.3 The preconditions in clause 1.1 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 1.1 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. Sale of Electricity

- 2.1 Aurora Energy agrees to sell electricity to the Customer and the Customer agrees to purchase electricity from Aurora Energy at the Point of Supply from the Commencement Date on the terms and conditions of this Agreement.
- 2.2 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.
- 2.3 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 affect 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.
- 3.4 The Customer will promptly notify Aurora Energy if the Customer plans to materially change its consumption levels or load profile, or does in fact do so, including by the installation of any new equipment or as a result of a material change to its operations.
- 3.5 The Customer will promptly advise Aurora Energy or the Network Operator if an occupant or intending occupant at a Site requires life support equipment
- 3.6 By entering into this Agreement, the Customer gives its explicit informed consent that if this Contract applies to more than one business Site and the Customer consumes less than, or is classified by the Network Operator as consuming less than, 150 MWh

of electricity per year for one or more of those business Sites, then:

- (a) that Site may be treated as aggregated with other business Sites for the purposes of the NERL and the NERR and the aggregated consumption of electricity at all Sites will be used for determining whether the Customer is a Large Customer; and
- (b) the Customer acknowledges and agrees that:
  - (i) by providing its explicit informed consent, the Customer will not receive the additional protections that would otherwise apply under the NERR and NERL at any business Site consuming less than 150MWh of electricity per year (“**Upper Consumption Threshold**”) if the aggregate usage for the aggregated Sites exceeds the Upper Consumption Threshold;
  - (ii) without limiting (i) above, the following provisions will not apply to any Site below the upper consumption threshold: Part 2 of the NERL (other than Division 12); Division 3 of Part 1 and Part 2 of the NERR; and clauses 7.8.10A, 7.8.10B and 7.8.10C of the Rules; and
  - (iii) Aurora Energy clearly, fully and adequately disclosed all matters relevant to the consent, including the use and purpose of the consent.

**3.7** If the aggregate usage under this Agreement for the aggregated Sites falls below the Upper Consumption Threshold, this Agreement will terminate.

**3.8** Aurora Energy may also terminate this Agreement at any time if, at any time, it reasonably believes that the aggregated consumption at the Sites will not exceed the Upper Consumption Threshold for in a year.

**3.9** If:

- (a) Aurora Energy is financially responsible for the Site under Electricity Laws; and
- (b) this Agreement terminates under clause 3.7 or 3.8,

Aurora Energy will continue to supply electricity to the Customer at the Point of Supply under the terms and conditions of Aurora Energy's Standard Retail Contract until the Customer transfers to another retailer or enters into a market retail contract with Aurora Energy.

## 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 Consumption respectively, as those periods

are defined in Schedule 1); and

- (ii) after the Fixed Rate Period, 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, Other Environmental Charges, Network Charges and Loss Factors 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** 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. GST

**5.1** Unless otherwise expressly stated, all prices and credits stated in Schedule 1 are exclusive of GST. If GST is imposed on any Supply made under or in accordance with this Agreement, the Recipient of the Taxable Supply must pay to the Supplier an additional amount equal to the GST payable on or for the Taxable Supply, subject to the Recipient receiving a valid Tax Invoice in respect of the Supply at or before the time of payment. If GST is applicable under the Feed-in Credit Schedule, Aurora Energy will issue a Recipient Created Tax Invoice to the Customer. The terms Recipient, Recipient Created Tax Invoice, Supply, Tax Invoice and Taxable Supply have the meanings given to those expressions in the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act). Supplier means any Party treated under the GST Act as making a Supply under this Agreement.

## 6. Variation to Charges

**6.1** 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) there is a Material Change to an Environmental Scheme; or
- (e) 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 6.1(a), 6.1(b), 6.1(c) or 6.1(d) 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 or that was not taken into account in calculating any credit, whether by introducing additional charges or varying existing charges or credits.

## 7. Metering and Metering Charges

- 7.1** Unless otherwise agreed with the Customer, Aurora Energy agrees to appoint a Metering Coordinator to arrange:
- (a) for an interval meter and associated metering equipment required by the Rules to be:
    - (i) installed (if required) at the Point of Supply, or elsewhere as required by the Rules or agreed between the Parties, consistent with the Rules; and
    - (ii) maintained in accordance with the Rules; 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.
- 7.2** The Customer must pay Aurora Energy the Metering Charges in relation to the provision of metering services set out in this clause 7.
- 7.3** Clauses 7.1 and 7.2 will not apply if Schedule 1 states that the Customer will appoint its own Metering Coordinator, and the Customer does so, from the Commencement Date. However, if that appointment does not occur on the Commencement Date, or expires or is terminated prior to the Agreement End Date, Aurora Energy's Default Rate for metering services will apply, during any period of this Agreement for which the Customer has not appointed its own Metering Coordinator. Aurora Energy's Default Rate will also apply for any metering services not performed by that Metering Coordinator.

- 7.4** If, after the Agreement Commencement Date, the Customer wishes to appoint its own Metering Coordinator, the Customer must notify Aurora Energy of this as soon as practicable before entering into such arrangements and provide all relevant details.
- 7.5** If clause 7.4 applies, or Aurora Energy otherwise becomes aware that the Customer wishes to appoint or has appointed its own Metering Coordinator, Aurora Energy may notify the Customer of the additional costs (if any) which the Customer will be required to pay if Aurora Energy appoints its own Metering Coordinator, as a result of the termination of an arrangement that Aurora Energy has with an existing Metering Coordinator.
- 7.6** If a Customer appoints its own Metering Coordinator after the Agreement Commencement Date, then on and from the date that the services commence under that arrangement ("**MC Commencement Date**"):
- (a) clause 7.1 will no longer apply;
  - (b) the Metering Charges will no longer apply, and the Customer will instead be responsible for paying its Metering Coordinator directly the fees agreed between the Customer and the Metering Coordinator;
  - (c) Aurora Energy may charge, and the Customer must pay, the additional costs (if any) under clause 7.5;
  - (d) the Customer must indemnify Aurora Energy from any payments, costs, damages or losses that Aurora Energy incurs as a result of the Customer not complying with this clause 7 or as a result of any Metering Coordinator the Customer engages not complying with its obligations under the Rules; and
  - (e) if the Customer's appointment of a Metering Coordinator expires or is terminated prior to the Agreement End Date, Aurora Energy's Default Rate for metering services will apply from the date that the Customer's Metering Coordinator agreement expires or terminates. Aurora Energy's Default Rate will also apply for any metering services not performed by that Metering Coordinator.
- 7.7** 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.
- 7.8** The Customer acknowledges that the metering equipment supplied by or on behalf of Aurora Energy or a Metering Coordinator remains the property of the person supplying it.
- 7.9** The Customer agrees to report any damage to the metering equipment immediately by written notice to Aurora Energy specifying which meter or other equipment has been damaged.
- 7.10** The Customer agrees to be bound by the outcome of procedures under the Rules in relation to metering data.
- 7.11** 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 electricity consumption. Where the Customer has elected for a pulse output function to be emitted from its interval meter pursuant to this clause and Aurora Energy agrees to arrange to provide it, the Customer agrees that neither Aurora Energy nor any third party provider is 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.

- 7.12 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.

## 8. Environmental Charges

- 8.1 This clause 8 will not apply in respect of any Environmental Scheme and Site if or to the extent that:
- (a) Aurora Energy's acquisitions of electricity for supply to the Customer at the Site are exempt from liability under the relevant Environmental Scheme;
  - (b) the Customer provides or otherwise makes available to Aurora Energy all certificates, including any exemption certificates under the Renewable Energy Act, and other evidence reasonably required by Aurora Energy to claim the exemption under the relevant Environmental Scheme; and
  - (c) any such certificates and other evidence are accepted by Aurora Energy. Aurora Energy will accept them provided that they are received by Aurora Energy in sufficient time, having regard to Aurora Energy's compliance and trading requirements under the Environmental Scheme.
- 8.2 Environmental Charges are LRET Charges, SRES Charges and Other Environmental Charges, calculated under this clause 8 and Schedule 2.
- 8.3 The terms and conditions set out in Schedule 2 also apply in relation to Environmental Charges in respect of the Fixed Rate Period.
- 8.4 LRET Charges and SRES Charges after the Fixed Rate Period are to be calculated by multiplying the Consumption during the relevant Billing Period by the relevant Default Rate.
- 8.5 Other Environmental Charges (if any), both during the Fixed Rate Period and after, 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).

- 8.6 Any reduction in liability pursuant to exemptions under clause 8.1 will, as far as practicable, be applied evenly over the calendar year.

## 9. Network Charges

- 9.1 The 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.

## 10. Payment

- 10.1 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.
- 10.2 If the Customer disputes an account it shall pay by the Due Date, at its election:
- (a) the amount on the account; or
  - (b) where at least three (3) accounts have previously been issued by Aurora Energy under this Agreement, the average amount payable under the last 3 invoices issued.
- 10.3 The Parties shall deal with any disputes contemplated by clause 10.2 in accordance with the procedure specified in clause 22. Following the resolution of the dispute, the Customer must pay immediately any amounts determined to be payable by the Customer.
- 10.4 If a Party ("**first Party**") becomes aware that there is an error in an amount invoiced or paid under this Agreement the first Party shall notify the other Party within seven (7) days of becoming aware of that fact.
- 10.5 Subject to clause 10.6, if Aurora Energy has overcharged the Customer, Aurora Energy will credit the overcharged amount against any amount that the Customer owes to Aurora Energy or pay the Customer the overcharged amount as soon as reasonably practicable after Aurora Energy determines the amount that has been overcharged.
- 10.6 If the overcharging is a result of the fault or unlawful act or omission of the Customer, the amount to be credited shall be limited to the amount overcharged in the 12 months before Aurora Energy or the Customer is notified of the overcharging.
- 10.7 Subject to clause 10.8 and 10.9, if Aurora Energy has undercharged the Customer, then the amount undercharged ("**Undercharged Amount**") will be invoiced to the Customer as soon as reasonably practicable after Aurora Energy determines the amount that has been undercharged.
- 10.8 If the undercharging is a result of the fault or unlawful

act or omission of Aurora Energy, the amount to be invoiced shall be limited to the amount undercharged in the 12 months before Aurora Energy or the Customer is notified of the undercharging.

- 10.9** If Aurora Energy invoices an Undercharged Amount to the Customer:
- (a) no interest will be charged on the Undercharged Amount; and
  - (b) the Customer may pay the Undercharged Amount in instalments over the same period of time which the Customer was undercharged.
- 10.10** For the avoidance of doubt, should metering 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 must pay the new account under this clause 10.

## 11. Adding or Removing Sites

- 11.1** Adding and removing Sites listed in Schedule 1 'List of sites under this agreement' may only be done if requested by the Customer (no less than 30 days prior to the date of the proposed addition or removal of a Site) and approved by Aurora Energy.
- 11.2** The Customer must, in respect of any proposed site to be added to this Agreement as an additional Site, provide to Aurora Energy:
- (a) the expected date the Site will be added;
  - (b) if available, half hourly metering data for the previous 12 months for the Site;
  - (c) an estimate of the load shape and the electricity consumption for the Site for the following 12 months; and
  - (d) all identifier and other necessary information relating to the Site.
- 11.3** Aurora Energy may grant approval under clause 11.1 subject to reasonable conditions or variation of Charges.
- 11.4** A request to remove a Site will not be unreasonably refused if Aurora Energy is satisfied the forecast aggregate consumption of electricity to be consumed in each Contract Year following removal of the Site will not be less than the Upper Consumption Threshold or the Roll-Out Percentage Limit.
- 11.5** A request to add a Site will not be unreasonably refused if Aurora Energy is satisfied that:
- (a) the preconditions to sale set out in Clause 1.1 have been met in respect of the site, and
  - (b) the forecast aggregate consumption of electricity to be consumed in each Contract Year following addition of the Site will not be greater than the Roll-in Percentage Limit.
- 11.6** If Aurora Energy agrees to add or remove further Sites to this Agreement, or this Agreement is terminated in respect of only some Sites, Aurora Energy will, by notice to the Customer, amend Schedule 1 to incorporate or remove those Sites

and correspondingly adjust the Total Contracted Volume.

- 11.7** If this Agreement applies to multiple Sites, clause 13 and clause 15 applies to each Site separately, and this Agreement may be terminated in respect of one or more Sites without affecting the continued operation of this Agreement.

## 12. Event of Default

- 12.1** 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.
- 12.2** If the Event of Default is not rectified as required by the notice in clause 12.1, 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; or
  - (b) terminate the Fixed Rate Period under clause 15.4.

## 13. Disconnection

- 13.1** Aurora Energy may arrange disconnection of any or all of the Customer's Sites:
- (a) in accordance with clauses 12.2(a), 15.5(b) or 15.6;
  - (b) immediately upon the occurrence of an Immediate Disconnection Event; or
  - (c) if there are other grounds under the Electricity Law on which disconnection (including de-energisation or interruption of supply) is permitted.
- 13.2** The Customer may request disconnection of a Site and if it does so, Aurora Energy will arrange disconnection. If the Customer enters into an electricity sale agreement with a different retailer for any Sites disconnected under clause 13.2, the Customer must pay the Early Termination Fee.
- 13.3** The Network Operator may also disconnect the Customer's Site.
- 13.4** The Customer must co-operate with and assist the Network Operator's and Aurora Energy's personnel in respect of any disconnection.
- 13.5** Disconnection of one or more Sites does not, of itself, automatically end the Fixed Rate Period or the Agreement.

## 14. Reconnection

- 14.1** Where the Customer's Site has been disconnected under clause 13 and the Fixed Rate Period with respect to that Site has not ended (including because Aurora Energy has not exercised a right of



termination under clause 15.4), 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,

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

- (e) the Customer transfers the Site to another retailer; or
- (f) a Force Majeure event under clause 17 affects Aurora Energy for a continuous period of at least six (6) months.

If Aurora Energy does so, clause 15.5 will apply.

**15.5** If the Fixed Rate Period is terminated by the Customer under clause 15.3 or by Aurora Energy under clause 15.4, 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 and the Agreement End Date will be charged at the Default Rate.

**15.6** Either Party may terminate this Agreement following the expiry of the Fixed Rate Period:

- (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 Agreement will come to an end for each Site on the Agreement End Date for that Site.

**15.7** 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 10.1.

## 15. Term and Termination

**15.1** 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).

**15.2** If at the end of the Fixed Rate Period 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 ends until the Agreement End Date.

**15.3** The Customer may terminate this Agreement at any time prior to the expiry of the Fixed Rate Period (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 15.5 will apply.

**15.4** Aurora Energy may terminate this Agreement at any time prior to the expiry of the Fixed Rate Period by notice to the Customer if:

- (a) an Event of Default occurs which is not rectified in accordance with a notice under clause 12.1; the Customer experiences an Insolvency Event;
- (b) the Customer is using electricity illegally or fraudulently;
- (c) the Customer requests disconnection of the Customer's Site and that Site remains disconnected for thirty (30) days;
- (d) 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;

## 16. Liability

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

- (a) any terms implied by law that cannot be excluded; 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.

**16.2** Subject to this clause 16:

- (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.

## 17. Force Majeure

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

- (a) the Customer's obligation to pay money, as outlined in clause 10; or
- (b) the Customer's obligation to provide security if requested by Aurora Energy, as outlined in clause 21,

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 17.2 in respect of that Force Majeure.

**17.2** 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.

## 18. Confidentiality

**18.1** 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.

**18.2** This clause 18 shall survive termination of the Agreement.

## 19. Privacy

**19.1** Aurora Energy must use reasonable efforts to handle, disclose and use Personal Information collected or held in connection with this Agreement only to the extent necessary to fulfil its obligations under this Agreement or Electricity Laws.

**19.2** Aurora Energy undertakes to use all reasonable efforts to comply with:

- (a) the Privacy Legislation in relation to Personal Information it holds in connection with this Agreement; and
- (b) any privacy policies or statements issued by Aurora Energy from time to time in relation to Personal Information.

**19.3** The obligations of this clause 19 apply notwithstanding any permitted processing of confidential information in accordance with the terms of this Agreement.

**19.4** In order for Aurora Energy to fulfil its obligations under this clause 19, the Customer:

- (a) warrants that, in relation to Personal Information the Customer discloses to Aurora Energy, (including all sensitive information, such as if Life Support Equipment is used at a Site) the Customer has the authority to disclose such Personal Information;
- (b) 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 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;
- (c) will otherwise take all reasonable steps to ensure that its acts or omissions do not cause Aurora Energy to breach relevant Privacy Legislation in its handling of Personal Information disclosed in connection with this Agreement; and
- (d) 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.

## 20. Warranties and Covenants

**20.1** Each Party represents and warrants to the other Party:

- (a) that the 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.

## 21. Security

- 21.1 Aurora Energy will conduct credit assessments on the Customer prior to the execution of this Agreement and during the term of the Agreement. If:
- in the opinion of Aurora Energy the Customer's credit position is insufficient having regard to its obligations under this Agreement, or becomes materially weaker than as at the Agreement Commencement Date; or
  - the Customer does not comply with the terms of payment under clause 10 of this Agreement (including clause 10.2 in the event of a dispute); or
  - Aurora Energy becomes aware, through credit reporting bodies; of a risk to Aurora Energy's financial portfolio,
- then the Customer, if requested, must provide security to Aurora Energy in respect of the Customer's payment obligations contained in this Agreement.
- 21.2 For the purposes of this clause 21 "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.
- 21.3 Aurora Energy may require the Customer to provide security by one, or a combination, of the following methods:
- a bank guarantee for the amount stated in Schedule 1 or as advised by Aurora Energy; or
  - a direct debit for the full amount owing on an account by the due date; or
  - a cash security deposit for the amount stated in Schedule 1 or as advised by Aurora Energy.
- 21.4 Where the Customer is required to satisfy its security obligation by the method prescribed in clause 21.3(b):
- the Customer must complete the direct debit authority form within the time frame specified by Aurora Energy; and
  - 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.
- 21.5 The Customer may request an annual review of the security requirements during the term of the Agreement.
- 21.6 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.
- 21.7 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.

## 22. Dispute Resolution

- 22.1 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.
- 22.2 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.
- 22.3 In the case of a disputed account the amount determined as an underpayment or overpayment will be credited or debited as applicable to the Customer's next account.
- 22.4 Nothing in this clause 22 will prevent a Party from seeking urgent injunctive or declaratory relief.

## 23. Retailer of Last Resort Event

- 23.1 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.

## 24. Miscellaneous

### Waiver

- 24.1 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.

### Amendment

- 24.2 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.
- 24.3 Aurora Energy may vary this Agreement from time to time by written notice to the Customer in order to comply with any new, or changes to Electricity Laws after the Agreement Commencement Date.

### Assignment

- 24.4 Aurora Energy may assign or novate 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 or novate 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

**24.5** 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

**24.6** 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

**24.7** 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; or
- (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

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

### Governing Law

**24.9** This Agreement shall be governed and construed in accordance with the laws of the State of Tasmania and the laws of the Commonwealth and the Parties agree to submit to the jurisdiction of the courts of Tasmania at first instance.

## 25. Definitions and Interpretation

**25.1** 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) Schedule 1: Customer Details;
- (c) Schedule 2: LRET and SRES Charges; and
- (d) any other Schedules provided to the Customer and stated to form part of the Agreement (for example, Feed-in Credits or Special Conditions).

**Agreement Commencement Date** means the date on which Aurora Energy receives a copy of this Agreement correctly signed by the Customer where indicated at the end of this Agreement, provided that Aurora Energy receives it within the offer validity period set out in this Agreement or otherwise communicated by Aurora Energy.

**Agreement End Date** means, in respect of a Site, the date on which the first to occur of any of 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 the 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 1.1 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.

**Contract Year** a continuous period of 12 months commencing on the Agreement

Commencement Date or the anniversary of the Agreement Commencement Date (as applicable). If the period between the start of a Contract Year and the termination or expiry of this Agreement is less than 12 months, that period will be deemed a Contract Year and any Total Contracted Volume for that Contract Year pro-rated accordingly.

**Customer** means the customer specified in Schedule 1.

**Default Rate** means the standard default rate(s) (for electricity, Environmental Charges, metering or other services as appropriate) determined from time to time by Aurora Energy as being applicable to its customers whose consumption or generation 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 reasonable estimation of its loss and additional costs and charges suffered or incurred as a result of the termination of this Agreement prior to the Agreement End Date, including, without limitation, loss of profit (based on Total Contracted Volume), amounts Aurora Energy has to pay under contracts and arrangements with electricity generators, metering services providers, providers of certificates and others in terminating or renegotiating those contracts or arrangements, and a reasonable administration fee.

**Electricity Charges** means the charges calculated under clause 4.1(a).

**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 8 and Schedule 2.

**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.

**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 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.

**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.

**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 any 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, with respect to amounts due during a month, the rate equal to the average of the Monthly 3-month Bank Accepted Bill Rates for the 3 months prior to that month, plus 6%.

**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.

**Life Support Equipment** has the meaning under the NERR.

**LGC** means large-scale generation certificate, as

defined under the Renewable Energy Act.

**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 Act.

**LRET Charges** are calculated under clause 8.3 and 8.4.

**Market Charges** means the 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 an Electricity Law by any authorised person, as assessed or determined by Aurora Energy, acting reasonably.

**Material Change to an Environmental Scheme** means a material change to the operation of an Environmental Scheme, including (for example):

- (a) a change to the required GWh of renewable source electricity under the Renewable Energy Act or regulations under it, including the introduction or coming into effect of new or varied provisions which provide for such a change on a contingent basis, or the happening of such a contingency;
- (b) a change to the Renewable Energy Act or regulations under it affecting the manner in which the renewable power percentage under that Act is or may be calculated or the manner in which discretions for that purpose may be exercised;
- (c) the exercise of a discretion in setting the renewable power percentage under the Renewable Energy Act that is materially different from the way in which that discretion was expected to be exercised by the market, having regard to the way in which it was historically exercised;
- (d) the small-scale technology percentage for a year under the Renewable Energy Act varying from the non-binding estimate for that year from the Clean Energy Regulator (for the purposes of section 40B of the Renewable Energy Act) by more than 3 percentage points;
- (e) a change to the eligible technologies for the creation of LGCs or STCs;
- (f) a change to the eligible certificates that may be surrendered for compliance under the LRET or SRES scheme; or a change to the large-scale generation shortfall charge or small-scale technology shortfall charge for the purposes of the Renewable Energy Act.

**Metering Charges** means:

- (a) the metering charge per meter for each Site, as specified in Schedule 1 (which may, after

the Fixed Rate Period, be replaced by a Default Rate at Aurora Energy's discretion);

- (b) any costs incurred by Aurora Energy in relation to the testing of current transformers or voltage transformers at a Site;
- (c) any costs incurred by Aurora Energy in relation to an enhanced site inspection at a Site;
- (d) any costs incurred by Aurora Energy in relation to any special meter reads at a Site;
- (e) any costs incurred by Aurora Energy in relation to the repair of metering equipment that is damaged by the Customer; and
- (f) any costs incurred by Aurora Energy in relation to metering specifically requested by the Customer.

**Metering Coordinator** has the meaning given to that term under the Rules.

**Monthly 3-month Bank Accepted Bill Rate** means, for a month, the rate published by the Reserve Bank of Australia for that month which is an average of the daily 3-month bank accepted bill rates for that month published by the Reserve Bank of Australia.

**MSF** means a merchant service fee in relation to each credit card payment received by Aurora Energy, being an amount calculated by Aurora Energy from time to time that is consistent with Part IVC of the *Competition and Consumer Act 2010* (Cth).

**NERL** means the *National Energy Retail Law (Tasmania) Act 2012*.

**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 9.

**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 8.5.

**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 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.

**Renewable Energy Act** means the *Renewable Energy (Electricity) Act 2000* (Cth).

**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.

**Roll-in Percentage** means the amount specified in Schedule 1 or, if no amount is specified means 10%.

**Roll-in Percentage Limit** means the amount determined by increasing the Total Contracted Volume as at the Agreement Commencement Date by the Roll-in Percentage.

**Roll-out Percentage** means the amount specified in Schedule 1 or, if no amount is specified means 10%.

**Roll-out Percentage Limit** means the amount determined by reducing the Total Contracted Volume as at the Agreement Commencement Date by the Roll-out Percentage.

**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).

**SRES** means the Small-scale Renewable Energy Scheme under the Renewable Energy Act.

**SRES Charges** are calculated under clause 8.3 and 8.4.

**Standard Retail Contract** means Aurora Energy's standard retail contract published on Aurora Energy's website from time to time.

**STC** means small-scale technology certificate, as defined in the Renewable Energy Act.

**Total Contracted Volume** means the amount of forecast consumption per Contract Year specified in Schedule 1

**25.2** 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.

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

