

Definitions and Supplementary Terms

Where a Customer has entered into a Supply Agreement with the Company, the terms and conditions set out below form part of that Supply Agreement.

1 Definitions and interpretation

1.1 Definitions

In this Agreement:

any term defined in the Details has the meaning given in the Details;

Additional Damages means any indirect, incidental, special, consequential, punitive or exemplary damages;

Agreement Details means the Details set out in the Supply Agreement;

Bond means the amount set out in the Agreement Details which is payable by the Customer to the Company if requested by the Company on the terms set out in the Supply Agreement;

Business Day means:

- (a) for the purposes of receiving a Notice, a day which is not a Saturday, Sunday, public holiday or bank holiday in the city in which the Notice is to be received; and
- (b) for any other purpose, a day on which the banks are open for business in South Australia other than a Saturday, Sunday or public holiday in South Australia;

Claim includes a claim, notice, demand, action, proceeding, litigation, investigation, judgment, damage, Loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a third party or a party to this Agreement;

Connection Fee means the administrative fee set out in the Agreement Details which is payable to the Company by the Customer on moving in to premises located at the Site;

Credit Card Charge means the administrative fee set out in the Agreement Details which is payable to the Company by the Customer if the Customer elects to make payments using a credit card;

Details means the section of the Supply Agreement with that title;

Disconnection Charge means the administrative fee set out in the Agreement Details which is payable to the Company by the Customer where the Customer has been disconnected from the Embedded Network due to non-payment, failure to enter into a supply agreement with the Company, or for any other reason;

Disconnection Fee means the administrative fee set out in the Agreement Details which is payable to the Company by the Customer on moving out of the Supply Address;

Distributor has the same meaning as “Local Network Service Provider” under the National Electricity Rules;

Embedded Network means an energy distribution network which has a connection point to a Distributor’s distribution network and does not also have a connection point to a transmission network;

Force Majeure Event means an event outside of the reasonable control of a party, including labour disputes, civil disturbances, actions or inactions of Government Authorities, embargoes, fires, weather delays, acts of God, acts of terrorism or the default of a common carrier or supplier.

GST means goods and services tax or similar value added tax levied or imposed in Australia under the GST Law or otherwise on a supply;

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

GST Law has the same meaning as in the GST Act;

Insolvency Event means the occurrence of any one or more of the following events regarding any party to this Agreement:

- (a) a meeting has been convened, resolution proposed, petition presented or order made for the winding up of that party;
- (b) a receiver, receiver and manager, provisional liquidator, liquidator, or other officer of the Court, or other person of similar function has been appointed regarding all or any material asset of the party;
- (c) a security holder, mortgagee or chargee has taken attempted or indicated an intention to exercise its rights under any security of which the party is the security provider, mortgagor or chargor;
- (d) an event has taken place with respect to the party which would make, or deem it to be, insolvent under any law applicable to it; or
- (e) anything similar to any of the events in the other paragraphs of this definition happen to that party under the law of any applicable jurisdiction;

Interest Rate means a rate that is 3% above the cash rate prescribed by the Reserve Bank of Australia per annum;

Law means all statutes, regulations, standards, by-laws, ordinances, subordinate legislation, industry codes of conduct and any government order, decree or other instrument;

Legal Change means any legal or regulatory event that affects the rights and obligations of either party under this Agreement;

Liability means any liability or obligation (whether actual, contingent or prospective) including any Loss, irrespective of when the acts, events or things giving rise to the liability or obligation occurred;

Loss includes any loss, damage, cost, charge, liability (including Tax liability) or expense (including legal costs and expenses);

Meter means a metering point which is used by a Customer to purchase Utilities at the Supply Address;

Meter Charges means the charges set out in the Agreement Details for the sale, hire or lease of a Meter to the Customer;

National Electricity Rules means the "National Electricity Rules" published by the Australian Energy Market Commission from time to time;

National Energy Retail Law means the Schedule of the *National Energy Retail Law (South Australia) Act 2011* or the equivalent enabling legislation in the State in which the Site is located;

Overcharge Threshold has the meaning given by the National Energy Retail Law.

Owner means the party who owns or is responsible for the Site and who is party to an Embedded Network Management Agreement with the Company;

Paper Invoice Charge means the administrative charge set out in the Agreement Details which is payable by the Customer to the Company if the Customer elects to receive paper invoices rather than electronic invoices;

Reconnection Charge means the administrative charge set out in the Agreement Details payable to the Company by the Customer where the Customer is reconnected after being disconnected

from the Embedded Network due to non-payment, failure to enter into a supply agreement with the Company or for any other reason;

Regulatory Requirements means any relevant Commonwealth, State, Territory or local government regulation, including all laws, regulations, subordinate legislation, proclamations, orders in council, licensing or authorisation conditions, codes, guidelines or standards applicable from time to time to the supply of the Utilities to the Supply Address;

Site means the address of the Embedded Network that is subject to this Agreement;

Supply Address means the address at the Site to which the Utilities are to be supplied;

Supply Agreement means any agreement entered into between Sustainable Savings and another party for the supply of Utilities;

Tax means all forms of taxes, duties, excises, imposts, charges, withholdings, rates, levies or other governmental impositions of whatever nature and by whatever authority imposed, assessed or charged together with all costs, charges, interest, penalties, fines, expenses and other additional statutory charges, incidental or related to the imposition;

Utility Charges means the charges set out in the Agreement Details which are payable by the Customer for provision of the Utilities and which will be determined using actual Meter readings unless otherwise specified in this Agreement;

Unavoidable Costs means meter insurance, maintenance, meter reading services, consultancy services such as rates reviews and any other costs incurred by the Company for the purposes of the Embedded Network that continue beyond termination of this Agreement; and

Utility Provider means an organisation providing Utility services to the Site.

1.2 Interpretation

In this Agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to this Agreement includes any schedule, and schedules to this Agreement form part of this Agreement;
- (d) a reference to \$A, dollar or \$ is to Australian currency;
- (e) a reference to time is to South Australian time;
- (f) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (g) a reference to a group of persons is a reference to any two or more of them taken together and to each of them individually;
- (h) a reference to a thing includes a part of that thing;
- (i) "including" and similar expressions, and the giving of examples, do not limit what else may be included;
- (j) if a day for payment is not a Business Day, the payment is due on the next Business Day; and
- (k) headings are for ease of reference only and do not affect interpretation.

2 Over-charging and under-charging

2.1 Over-charging

In the event that the Customer is over-charged, including as a result of an estimation of Utility usage as described in clause 4.3 of the Supply Agreement, the Company will notify the Customer within 10 Business Days of becoming aware of the over-charging. If the Customer has been overcharged by an amount equal to or greater than the Overcharge Threshold, the Company will repay that amount to the Customer, or credit that amount to the next invoice issued to the Customer, at the Customer's election. If the Customer has been overcharged by an amount less than the Overcharge Threshold, the Company will credit that amount to the next invoice issued to the Customer.

2.2 Under-charging

In the event that the Customer is under-charged, including as a result of estimation of Utility usage as described in clause 4.3 of the Supply Agreement, the Customer will, on demand by the Company, pay the Company the difference between the amount charged and the amount owed. The Company will not charge interest on that amount and will offer the Customer such payment options as are required by the relevant Laws.

3 Tax

3.1 GST

- (a) Unless otherwise stated, the amounts payable by the Customer to the Company for, or in connection with, any Supply under this Agreement include any GST.
- (b) If GST is imposed on any supply made under or in accordance with this Agreement, the Customer must pay the Company an additional amount on account of GST equal to the amounts payable by the Customer for the Supply multiplied by the prevailing GST rate.
- (c) Subject to clause 3.1(d), the additional amount on account of GST referred to in clause 3.1(d) is payable at the same time and in the same manner as any other amounts payable by the Customer are required to be paid under this Agreement.
- (d) The Customer is not required to pay the additional amount referred to in clause 3.1(c) until such time as the Customer has been provided with a tax invoice which is in an approved form for GST purposes.

3.2 Other Taxes

The Customer is responsible for all Taxes applicable to the Utilities supplied under this Agreement, unless otherwise agreed by the Company.

4 Dispute resolution

4.1 Complaints

The Customer may lodge a complaint or query with the Company in accordance with the procedure set out in this clause 4. The Company will notify the Customer of the outcome of any such complaint. If the customer is not satisfied with the retailer's response to the customer's complaint, the customer has a right to refer the complaint or dispute to the energy ombudsman.

4.2

Resolution of Disputes

A party must not commence any court proceedings (other than proceedings for urgent injunctive or interlocutory relief) in respect of a dispute arising in connection with this Agreement (**Dispute**) until it has complied with this clause 4.

4.3

Notification

- (a) A party claiming that a Dispute has arisen must notify the other party to the Dispute in writing giving details of the Dispute.

- (b) For the purposes of this clause, a Dispute will be taken to have arisen if clause 4.3(a) is satisfied.

4.4 Nomination of Representatives and Resolution

Within the 7 days after notification of a Dispute (**Initial Period**), each party must:

- (a) nominate in writing a representative of that party authorised to settle the Dispute on its behalf; and
- (b) use its best endeavours to resolve the Dispute.

4.5 Mediation

If the parties are unable to resolve the Dispute within the Initial Period they must, within an additional 14 days either:

- (a) appoint a mediator and agree the terms upon which the mediator is to mediate the Dispute; or
- (b) if the parties are unable to agree on a mediator or the terms of the mediation, refer the Dispute for mediation to a mediator nominated by the then current president of the Law Society of South Australia upon the terms of the mediation agreement then approved by the Law Society,

and the parties must thereafter mediate the Dispute.

4.6 Termination of mediation

If, within 21 days of the appointment of a mediator under clause 4.5, the Dispute has not been resolved, either party may terminate the mediation by giving written notice of the termination to the other party and the mediator.

4.7 Costs

Each party must bear its own costs of resolving the Dispute under this clause and, unless the parties otherwise agree, the parties must bear equally the costs of any mediator engaged for that purpose.

5 Change in circumstances

5.1 Change in Laws

- (a) If at any time a Legal Change occurs or is likely to occur which may adversely affects or may adversely affect the rights or obligations of a party or the ability of a party to perform its obligations under this Agreement, that party may request that the parties enter into good faith negotiations, as soon as practicable, to amend or vary this Agreement to the extent necessary or appropriate to address that party's reasonable concerns regarding such Legal Change.
- (b) If the parties are unable to reach agreement under this clause in what either party considers to be a reasonable period of time, the matter will be dealt with under clause 4 and if it is not resolved under that clause, the Company may terminate this Agreement on 30 days written notice to the Customer.

5.2 New tax

If any new tax (excluding income tax changes) or levy is introduced which affects the cost of supplying the Utilities under this Agreement the Company may, in its discretion and by written notice to the Customer, increase the Payments up to an amount equal to the cost of the variation resulting from the new tax or levy.

6 General

6.1 Notices

- (a) A notice, demand, consent, approval or communication under this Agreement (**Notice**) must be in writing, legible and in English, addressed to the recipient's address set out in this Agreement (as may varied by any Notice by that recipient), and hand delivered or sent by prepaid post, facsimile or email to that address.
- (b) A Notice takes effect when received (or at a later time specified in it), and is taken to be received
 - (i) if hand delivered, on delivery;
 - (ii) if sent by prepaid post, three Business Days after the date of posting;
 - (iii) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within 1 Business Day after the transmission, the recipient informs the sender that it has not received the entire Notice; or
 - (iv) if transmitted by email, on the day of transmission, provided that the sender does not receive an automated notice generated by an email server indicating that the email was not delivered,

but if the delivery, receipt or transmission is not on a Business Day or is after 5pm on a Business Day, the Notice is taken to be received at 9am on the following Business Day.

6.2 Severability

- (a) If a provision of this Agreement is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this Agreement.
- (b) Clause 6.2(a) does not apply if severing the provision materially alters the scope and nature of this Agreement, or the relative commercial or financial positions of the parties, or would be contrary to public policy.

6.3 Further action

Each party must promptly do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Agreement and to perform its obligations under it.

6.4 Waiver

A single or partial exercise or waiver by a party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.

6.5 Survival

Any provision expressly stated or by its nature intended to survive expiry or termination of this Agreement survives expiry or termination of this Agreement, including clause 5 of the Supply Agreement.

6.6 Assignment

The Company may assign its interest in this Agreement, or require the novation of this Agreement, to a third party nominated by the Company by written notice to the Customer, upon receipt of which the Customer must execute any documentation required by the Company to effect such assignment or novation.

6.7 Subcontracting

The Company may sub-contract or otherwise arrange for another person to perform any part of this Agreement or to discharge any of its obligations under this Agreement.