

**thank  
you for  
choosing  
us.**



**Terms and Conditions –  
Business Customers**



**Effective June 2019**

# Real Utilities Pty Limited and Real Utilities Eastern Creek Pty Limited Utility Services Agreement

## Terms and Conditions – Business Customers

### 1 Introduction and important information

- 1.1 These are the terms and conditions that apply to the supply of Utility Services at your Premises on the Embedded Electricity Network. The party providing the Utility Services to you:
- (a) in relation to the Network Services, is Real Utilities Operator; and
  - (b) in relation to each other Utility Service, is Real Utilities Retailer,
- and “we” or “us” is used in these Terms and Conditions to refer to either or both of Real Utilities Retailer and Real Utilities Operator in relation to the respective Utility Services as the context requires.
- 1.2 We have given you a Registration Form that you have completed which (among other things) specifies you as the customer or ‘account holder’ (“you”). By completing the Registration Form:
- (a) you agree that you have entered into an agreement (“Agreement”) for the supply of Utility Services at the Premises on these Terms and Conditions; and
  - (b) you acknowledge and give your consent to these Terms and Conditions, including the credit information consents contained in clause 20 below.
- 1.3 The Agreement consists of:
- (a) the Registration Form;
  - (b) these Terms and Conditions;
  - (c) the Energy Price Fact Sheet, the Basic Plan Information Document or Price and Product Information Statement (as applicable) relevant to the Utility Services; and
  - (d) any addendum or appendix we provide to you from time to time that is stated to form part of this Agreement.
- 1.4 The Agreement applies to Business Customers if the Premises is connected to the Embedded Electricity Network and you do not have another contract for the supply of Utility Services with us for the Premises. You must give us notice as soon as reasonably practicable if you reasonably believe you are no longer a Business Customer. Where provisions in this Agreement apply only in respect of Small Business Customers, Small Customers or Large Customers (as the case may be), this is specified in the Agreement.
- 1.5 Where and for so long as a Real Utilities Group Member is providing your Premises with any of Electricity Services or Network Services during the term of the Agreement, then those services will be a ‘Utility Service’ for the purposes of this Agreement. If we have agreed with you that we are not providing you with one or more of these utility services, then that service is not a ‘Utility Service’ for the purposes of this Agreement.
- 1.6 If you are a Small Customer, you have a right to cancel this Agreement in respect of any Utility Service (excluding Network Services) within 10 Business Days starting on the day after you entered this Agreement (“Cooling-Off Period”). To cancel this Agreement during the Cooling-Off Period, you can call us on 1300 16 16 68 or complete the cancellation notice available on our Website. If you cancel this Agreement in respect of any Utility Service during the Cooling-Off Period:
- (a) you will only need to pay charges for that Utility Service to the extent they were provided before you cancelled the Agreement; and
  - (b) in the case of Electricity Services only – you must enter into a contract for the sale of electricity with an Electricity Retailer if you want to continue receiving electricity at the Premises. If you do this, we may still need to charge you for Network Charges as a customer being physically supplied electricity through the Embedded Electricity Network under this Agreement.
- 1.7 Real Utilities Operator is exempt from the requirement to be a Registered Network Service Provider. The Lessor is also exempt from this requirement as a person considered under the Electricity Laws to have control of the Embedded Electricity Network, and who also owns a portion of the Embedded Electricity Network. Accordingly, neither Real Utilities Operator nor the Lessor are subject to all the obligations of a Registered Network Service Provider. This means that you may not have the same consumer protections as you would if you were being connected directly by a Registered Network Service Provider. However, the exemption that has been granted to Real Utilities Operator and the Lessor is subject to conditions with which we (and our representatives) must comply. The conditions of our exemption can be viewed on our Website and the website of the Australian Energy Regulator at [www.aer.gov.au](http://www.aer.gov.au), or (if you are in Victoria) in the General Exemption Order available on the website of the Essential Services Commission at [www.esc.vic.gov.au](http://www.esc.vic.gov.au).
- 1.8 The Australian Consumer Law may apply to the supply of Utility Services under this Agreement. We and our representatives must comply with our obligations under the Australian Consumer Law.
- 1.9 The dispute resolution procedures applying to this Agreement are described in clause 18. You can also contact the relevant Energy Ombudsman if you are a Small Customer or a Small Business Customer and have complaints about the provision of Utility Services under this Agreement.

- 1.10 Information about the applicable tariffs under this Agreement and associated fees and charges is set out in the Energy Price Fact Sheet, the Basic Plan Information Document or Price and Product Information Statement (as applicable) for the Utility Services as updated on our Website from time to time.
- 1.11 Information about energy rebates, concessions and relief schemes as well as flexible payment options is available on our Website. Please contact us if you are experiencing financial difficulty and we may be able to offer you assistance through our Hardship Policy.
- 1.12 Information about the Real Utilities Group, its business and the utility services we provide can be found on our Website.
- 1.13 Unless you otherwise request, we propose to:
- (a) send all utility bills and other communications to the email address nominated in the Registration Form; and
  - (b) put in place direct debit payment arrangements for convenience, which are described in clause 13. The bill we send you will also set out alternative payment methods.
- Please contact us if you would like to discuss alternative arrangements to direct debit, including making payments in person, by telephone, by mail or by electronic funds transfer.
- 1.14 In this Agreement, if the day on which something has to be done is not a Business Day, that thing must be done on or by the next Business Day. If this Agreement refers to a period of time, that period of time is to be calculated without including any day that is not a Business Day.
- 1.15 If there is a fault or emergency related to your supply of the Utility Services, please contact: 1300 16 16 68.
- 1.16 For all other queries in relation to the Embedded Electricity Network or to discuss your utility services account, please contact us at:
- T: 1300 16 16 68
- E: support@realutilities.com.au
- ## 2 Your Agreement with Us
- 2.1 This Agreement is for the provision of Utility Services at the Premises only.
- 2.2 Under this Agreement:
- (a) we agree to supply you Utility Services at the Premises and to comply with our obligations under Electricity Laws or any other applicable law; and
  - (b) you agree to:
    - (1) pay the amounts billed by us under this Agreement;
    - (2) provide us with safe and unhindered access to the Premises in accordance with clause 6;
    - (3) not alter, remove, interfere with or otherwise damage any equipment at the Premises (if any) which facilitates the supply of Utility Services to the Premises (including the Embedded Electricity Network or any meters or associated equipment), or allow others to do so;
- (4) take reasonable steps to minimise risk of loss or damage you may suffer in connection with this Agreement;
- (5) provide us with information about any proposed change you are aware of in plant or equipment (including Embedded Generators), or any change to the capacity or operation of connected plant or equipment that may affect the quality, reliability and safety or metering of the supply of Utility Services to the Premises or the premises or any other person;
- (6) if requested by us from time to time, provide us with accurate information relating to your past Utility Service usage and a reasonable estimate of your forecast Utility Service usage at the Premises;
- (7) provide us with accurate information (including about any material change to the demand, load or usage of the Utility Services at the Premises), and update us if information you have provided to us in the Registration Form or under this Agreement has changed; and
- (8) comply with the law (including any Electricity Laws) in respect of your use of the Utility Services.
- 2.3 We must provide, install and maintain the Embedded Electricity Network in accordance with the Electricity Laws. Our obligations extend up to the connection point where electricity is to be supplied to the Premises (as defined by us) and not beyond.
- 2.4 You acknowledge that, subject to your rights to purchase the Electricity Services from your preferred Electricity Retailer as described in clause 3, during the term of this Agreement, you may only obtain or purchase the Utility Services exclusively from us and you may not obtain or purchase these utility services from any third party supplier offering similar services.
- 2.5 You can request for a new connection to the Embedded Electricity Network or to increase the capacity of an existing connection at the Premises by making an application to us in writing. You must enter into any agreement reasonably required by us and comply with any conditions we impose or any notices we give you in relation to this. You must let us know in writing if you no longer want to maintain these connections.
- 2.6 You acknowledge and agree that the Lessor retain all rights of ownership of certain of the metering equipment in relation to the Utility Services, including the meters, which will at all times remain property of the Lessor.
- ## 3 Power of Choice
- 3.1 You have the right to choose to purchase electricity with an Electricity Retailer of your choice. If you change between different Electricity Retailers, this may require changes to your electricity meter and billing

- arrangements. It is the responsibility of the Real Utilities Operator to ensure that your access to an Electricity Retailer of your choice is not impeded by any network configuration or metering arrangements. We may need to coordinate with your preferred Electricity Retailer's Metering Coordinator in relation to any metering changes required.
- 3.2 We may appoint an Embedded Network Manager if required under the Electricity Laws. The Embedded Network Manager will be responsible for coordinating your access to Electricity Retailers.
- 3.3 [As at the date these Terms and Conditions have been provided to you, the Embedded Network Manager can be contacted at:  
T: 0457 510 159  
E: enm@plusES.com.au ]
- 3.4 We will let you know [if this is done or ]if there is a change to the Embedded Network Manager during the term of this Agreement and will provide you with the relevant contact details where this is required under the Electricity Laws.
- 3.5 If you choose to sign up with an Electricity Retailer other than with a Real Utilities Group Member for the sale of electricity to the Premises, you should do the following things:
- (a) advise that Electricity Retailer that the Premises is connected to the Embedded Electricity Network; and
  - (b) contact the Embedded Network Manager and give notice of that Electricity Retailer.
- 3.6 Subject to clause 3.7, we will help coordinate the collection of the Network Charges with your Electricity Retailer:
- (a) if a Real Utilities Group Member is the Electricity Retailer, by arranging for the Network Charges to be charged under this Agreement; or
  - (b) if the Electricity Retailer is any other licensed electricity retailer and collects the Network Charges from you, by making reasonable attempts to arrange for the Network Charges to be charged under a contract between us and that Electricity Retailer where they collect the Network Charges from you and pay them to the Real Utilities Operator (except to the extent that doing so would be contrary to any obligations imposed upon us under applicable Electricity Laws), in which case you must provide us with all information and assistance reasonably required by us to ensure that all payments for the Network Charges you make are passed on to us.
- 3.7 You will be liable to pay us for Network Charges under this Agreement:
- (a) if your Electricity Retailer does not collect the Network Charges from you; or
  - (b) if you do not have an agreement with any Electricity Retailer for the sale of electricity to the Premises.
- 3.8 We reserve the right to invoice you directly under this Agreement for the Network Charges at any time by issuing a bill for them, or including them in a bill issued, under clause 12 (except to the extent that doing so would be contrary to any obligations imposed upon us under applicable Electricity Laws). You will not be liable for any Network Charges provided to the Premises for which a previous customer at the Premises is liable.
- 3.9 Subject to clause 3.10, even if we have not agreed to provide you with Electricity Services under this Agreement, if you consume electricity at the Premises without having an agreement for the sale of electricity to the Premises with a different Electricity Retailer, you agree that Electricity Services will be deemed to be a 'Utility Service' for the purposes of clause 1.5 until you enter into such an agreement and a transfer of responsibility for the sale of electricity at the Premises to the relevant Electricity Retailer has been completed (where relevant).
- 3.10 Electricity Laws in your jurisdiction may prescribe a form of contract that applies where you have not entered into an agreement for the sale of energy at your Premises. In those circumstances those Electricity Laws take precedence over clause 3.9.
- ## 4 Commencement and Termination of the Agreement
- 4.1 The Agreement will start on the date that we receive a completed Registration Form from you (in person, in the mail or through our Website) or any earlier time as required under any applicable law.
- 4.2 Unless we agree a different date with you, our obligation to supply to you a Utility Service under this Agreement will start on the date on which all of the following conditions have been satisfied in respect of that Utility Service:
- (a) you have satisfied the requirements of our sign-up process for a utility services account, including the provision of a Security Deposit (if any); and
  - (b) if we have informed you that any connection fees or other charges associated with connecting the Premises to the Embedded Electricity Network are payable, you have paid those connection fees or other charges;
  - (c) the Premises are connected to the Embedded Electricity Network; and
  - (d) in the case of Electricity Services only – a Metering Coordinator, metering provider and meter data provider have been engaged in respect of the Premises;
  - (e) in the case of Electricity Service only – if you are transferring from another Electricity Retailer to the Real Utilities Retailer for the sale of electricity at the Premises, when this transfer has been completed.
- 4.3 If you receive Utility Services from us before all of the conditions in clause 4.2 have been satisfied in respect of one or more Utility Services, we will bill you for that consumption of Utility Services in your first bill.

- 4.4 If this Agreement provides for the supply of more than one Utility Service, you can choose to terminate this Agreement under clause 4.5 in relation to one or more Utility Services rather than for all Utility Services being provided at that time. If you choose to partially terminate this Agreement, then this Agreement will continue to apply to the supply of each other remaining Utility Service. If termination is occurring at the end of your lease, tenancy agreement or ownership of the Premises, you must give us the notice required under clause 4.9 and this Agreement will be terminated in respect of all Utility Services being supplied to the Premises at that time (including Network Services).
- 4.5 Subject to this clause 4, the Agreement will terminate in respect of a Utility Service on the earlier of the following dates:
- (a) when you request termination in respect of that Utility Service during the Cooling-Off Period;
  - (b) on a date agreed by you and us in respect of that Utility Service;
  - (c) subject to clause 4.5(g), at the end of your lease, tenancy agreement or ownership of the Premises;
  - (d) when a different customer starts to receive that Utility Service for the Premises or on the date that customer's agreement for that Utility Service starts (whichever is later, to the extent permitted by law);
  - (e) when you start receiving that Utility Service either:
    - (1) from us under a different agreement or
    - (2) in the case of Electricity Services only – from another Electricity Retailer,
 or on the date that separate agreement starts (whichever is later, to the extent permitted by law);
  - (f) for each Utility Service other than Network Services – if you are a Small Customer and subject to cl 5.9, 11 Business Days after the date when the Premises is Disconnected in respect of that Utility Service, where reasonable conditions for reconnection have been set by us under clause 5.9(d) and these conditions have not been met by such date;
  - (g) in the case of Network Services only – if your Electricity Retailer notifies us that the supply of electricity to the Premises is to be Disconnected, on the later of the date:
    - (1) we Disconnect the Premises in respect of Network Services (even if you have vacated the Premises earlier); or
    - (2) if you do not give safe and unhindered access to the Premises to conduct a final meter reading in respect of Network Services, on the date a final meter reading of the Electricity Meter is carried out;
  - (h) for each Utility Service other than Network Services – if you are a Small Customer, in any other circumstance, 5 Business Days from the date on which a termination notice is given by you or us in respect of that Utility Service unless a different time is agreed between us; or
- (i) the date on which we are no longer entitled under applicable law to supply that Utility Service to you.
- 4.6 If you are a Large Customer and subject to clause 5.9, we may also terminate the Agreement:
- (a) if we have Disconnected the Premises under clause 5.2(a) for a failure to pay any amounts invoiced to you in a bill (including any Network Charges or Additional Charges) ("Trigger Bill") by the relevant date as specified in a notice issued under that clause, and:
    - (1) you have failed to pay all outstanding Utility Charges (including any Network Charges) invoiced to you in the Trigger Bill by the date which is 11 Business Days after the date on which Disconnection occurs at the Premises; and
    - (2) we have used reasonable endeavours to apply the Security Deposit (if any) as contemplated by clause 15.3 and there are still amounts invoiced to you in the Trigger Bill (including any Network Charges) outstanding as at the date which is 11 Business Days after the date on which Disconnection occurs at the Premises; and
    - (3) you have failed to satisfy any reasonable conditions notified to you under clause 5.9(d) in respect of the Trigger Bill by the date which is 11 Business Days after the date on which Disconnection occurs at the Premises;
  - (b) if we have Disconnected the Premises under clause 5.2(b) for a failure to remedy any breach ("Trigger Breach") of the provisions of this Agreement (other than the obligation to pay Utility Charges (including any Network Charges) and Additional Charges by the pay-by date) by the relevant date as specified in a notice issued under that clause, and:
    - (1) you have failed to remedy the Trigger Breach by the date which is 11 Business Days after the date on which Disconnection occurs at the Premises; and
    - (2) you have failed to satisfy any reasonable conditions notified to you under clause 5.9(d) in relation to the Trigger Breach by the date which is 11 Business Days after the date on which Disconnection occurs at the Premises; or
  - (c) if you become insolvent; or
  - (d) on 5 Business Days' notice, if you have failed to provide a Security Deposit or to provide top-up security to restore your Security Deposit in accordance with clause 15.2.
- 4.7 Termination of this Agreement does not affect our rights to collect payments still owing to us under this



Agreement. On termination of this Agreement, you must give us safe and unhindered access to the Premises to conduct a final meter reading so that we can prepare a final bill.

4.8 Where the Agreement is terminated in respect of a Utility Service because you have not met the conditions for reconnection following a Disconnection in respect of that Utility Service, we will be entitled to claim from you our reasonable costs and expenses arising from your breach of the Agreement.

4.9 If you are vacating the Premises, you must give us at least 5 Business Days' written notice of the date on which you intend to vacate the Premises and provide a forwarding address to which a final bill may be sent after we have arranged a final meter read. You may remain responsible for paying Utility Charges (including the Network Charges component) incurred and any other amounts payable under this Agreement if you have not given us notice, you have not given us a forwarding address or you do not provide access to your meter.

4.10 Following termination of this Agreement in respect of the Utility Services (other than under clause 4.5(c)) we may continue to supply you these Utility Service(s) on the same terms as these Terms and Conditions until:

- (a) we enter into a new agreement (whether with you or someone else); or
- (b) in the case of Electricity Services only – the transfer of responsibility for the sale of electricity at your Premises to another Electricity Retailer has been completed.

This clause 4.10 does not apply where we are no longer entitled to supply that Utility Service, or when termination of this Agreement occurs at the end of your lease, tenancy agreement or ownership of the Premises.

4.11 The following provisions of this Agreement, as well as any rights or obligations that have already accrued under this Agreement, will survive termination of this Agreement:

- (a) this clause 4;
- (b) the provisions about our recovery of Network Charges (clause 3.7 and clause 3.8);
- (c) the provisions about payment (clause 12 and clause 13);
- (d) the provisions about access (clause 6);
- (e) the provisions about Embedded Generators (clause 8);
- (f) the provisions about our liability (clause 9.2, clause 10, and clause 11),
- (g) the provisions about Metering Data (clause 9.8);
- (h) the provisions about transfer of this Agreement (clause 16);
- (i) the provisions about the complaint and disputes procedure (clause 18); and

- (j) the introductory and important information set out in clause 1 and provisions about confidentiality (clause 19), privacy (clause 20), notices (clause 21), applicable law and application of laws (clause 22), the general provisions (clause 23) and the definitions and interpretation (clause 24).

## 5 Disconnection and Reconnection

5.1 Subject to this clause 5, we may Disconnect the Premises in respect of a Utility Service:

- (a) you have requested Disconnection in respect of that Utility Service;
- (b) the Agreement has been terminated in respect of that Utility Service;
- (c) if you are a Small Customer – if you have not paid a bill in respect of that Utility Service by the pay-by date, and have not agreed to a payment plan, or having agreed to a payment plan have failed to adhere to the terms of the payment plan, and we have complied with our relevant notice obligations under the Electricity Laws;
- (d) your lease or tenancy agreement has ended and/or you are vacating the Premises;
- (e) for each Utility Service other than Network Services – we have not been able to read your meter relating to that Utility Service for three consecutive meter readings due to a lack of access to the Premises because of your acts or omissions;
- (f) for customers not in Victoria – you do not provide us or our representatives with safe access to the Premises so that we can comply with our obligations in respect of that Utility Service under applicable law or otherwise for purposes permitted under applicable law;
- (g) you have obtained that Utility Service at the Premises fraudulently, or intentionally used such Utility Service contrary to any applicable law;
- (h) for each Utility Service other than Network Services – you refuse to pay, or do not pay the full amount of a Security Deposit we require under clause 15;
- (i) continuity of supply of the Utility Service to the Premises would be unsafe;
- (j) in the event of an Emergency;
- (k) in the case of Network Services only – if your Electricity Retailer notifies us that it has a right to arrange for Disconnection and requests us to Disconnect the Premises in respect of electricity;
- (l) in the case of Network Services only – if you use electricity supplied to the Premises wrongfully or illegally in breach of clause 7
- (m) in the case of Network Services only – if you no longer have an agreement with any Electricity Retailer for the sale of electricity for the Premises;
- (n) we are otherwise entitled or required to Disconnect

the Premises under the Electricity Laws or any other applicable law or at the direction of a relevant authority.

5.2 If you are a Large Customer and subject to clause 5.3, we may also Disconnect the Premises:

- (a) if you have failed to pay any amounts invoiced to you in a bill (including any Network Charges or Additional Charges) by the pay-by date, and we have given you a notice requiring any outstanding amount to be paid within 6 Business Days of the date of that notice and you have failed to do so;
- (b) if you have breached any provision of this Agreement (other than the obligation to pay Network Charges and Additional Charges by the pay-by date), and we have given you a notice requiring you to remedy such breach and you have failed to remedy that breach within 15 Business Days of the date of that notice;
- (c) if you have wrongfully or illegally used the Utility Services at the Premises;
- (d) if you become insolvent; or
- (e) on 5 Business Days' notice, if you have failed to provide a Security Deposit or to provide top-up security to restore your Security Deposit in accordance with clause 15.2.

5.3 Subject to clause 5.5, you agree that we have the right to (and may at our discretion choose to) Disconnect the Premises in respect of one or more of the Utility Services we are supplying to you so long as we are entitled to Disconnect the Premises under this clause 5 for any one of the Utility Services being provided to you under this Agreement, and this Disconnection of multiple Utility Services can occur at the same time (except to the extent that doing so would be contrary to any applicable law), provided that:

- (a) we will not exercise our rights to Disconnect any Utility Services to the Premises:
  - (1) if you are a Small Customer – for so long as you are adhering to the terms of a payment plan or (in Victoria) any assistance for any amounts owing on your utility services account (assessed on a whole of account basis); or
  - (2) where there is a decision pending on an unresolved complaint as described in clause 5.4(c) in relation to any Utility Service; or
  - (3) if there is a failure to pay amounts owing in respect of Additional Charges and no other amounts, we will not exercise our rights to Disconnect the Premises

5.4 Subject to clause 5.5 (in respect of Network Services only) and subject to clause 5.1(a), clause 5.1(b) and clause 5.1(c) (in respect of Utility Services other than Network Services), we cannot Disconnect the Premises:

- (a) without making arrangements for the safety of a Life Support Customer.

- (b) if you are a Small Customer – where the Disconnection of that Utility Service is undertaken for a failure to pay a bill under clause 5.1(c), during an extreme weather event;

- (c) if you are a Small Customer or Small Business Customer – where you have made a complaint to us or the relevant Energy Ombudsman or other relevant external dispute resolution body directly related to the proposed reason for Disconnection and the complaint remains unresolved;

- (d) if you are a Small Customer, where the amount outstanding is of a kind or is below a minimum amount for Disconnection to be permitted in your State;

- (e) where the Electricity Laws or any other applicable law prohibit us from doing so; or

- (f) if you are a Small Customer, during the period:

- (1) before 8.00am or after 3:00pm on Business Days,
- (2) on Fridays or the day before a public holiday;
- (3) a weekend or a public holiday; or
- (4) the days between 20 December and 31 December (inclusive) in any year.

A public holiday includes a day that is observed as a local public holiday in the area in which the Premises are located, or the whole of the State in which the Premises are located.

5.5 The restrictions in clause 5.4 and 5.4 do not apply in respect of Network Services if:

- (a) the Premises is not occupied; or
- (b) Disconnection of the Premises in respect of a Utility Service is undertaken because you have requested Disconnection under clause 5.1(a) or the Agreement has been terminated under clause 5.1(b); or
- (c) Disconnection of the Premises in respect of a Utility Service for health and safety reasons (including under clause 5.1(i)) or in an Emergency under clause 5.1(j); or
- (d) Disconnection of the Embedded Electricity Network required for or otherwise used to supply an affected Utility Service or the Premises is undertaken by the local area Registered Network Service Provider or otherwise at the direction of a relevant authority (including where there is an Emergency or you have failed to provide access to the Premises as required under clause 5.1(e)).

5.6 The restrictions in clause 5.5 do not apply in any of the following circumstances:

- (a) if the reason for Disconnection of the Premises in respect of a Utility Service was failure to provide access to a meter under clause 5.1(e), then the restrictions on Disconnection because you have made an unresolved complaint under clause 5.4(c) do not apply; or

- (b) we will not Disconnect the Premises in respect of a Utility Service for your illegal use of the Utility Services under clause 5.1(g) or clause 5.1(l) without making arrangements for the safety of a Life Support Customer, but no other restriction in clause 5.4.

5.7 Unless we are not required to do so, we will give you notice before we Disconnect the Premises in respect of a Utility Service including (where relevant) in accordance with any applicable procedures and notice requirements under any applicable law.

5.8 We will arrange for reconnection of the Premises for the affected Utility Service as soon as practicable if the Premises has been Disconnected in respect of Network Services:

- (a) for health and safety reasons under clause 5.1(i) or in an Emergency under clause 5.1(j); or
- (b) because of your failure to provide access as required under clause 5.1(e),

in each case provided our entitlement or obligation to Disconnect the Premises was not because of your fault or unlawful act or omission.

5.9 If the Premises has been Disconnected in respect of a Utility Service for a reason other than those described in clause 5.8, except to the extent that doing so would be contrary to any applicable law, we will arrange for reconnection of the Premises for the affected Utility Service in accordance with this clause 5.9 where you have:

- (a) within 10 Business Days of the Disconnection for that affected Utility Service, rectified the matter that led to the Disconnection of the Premises for that affected Utility Service (if relevant); and
- (b) made a request to us for reconnection of the affected Utility Service;
- (c) paid any reconnection charges; and
- (d) satisfied any reasonable conditions we have specified under clause related to the matter that led to the Disconnection for such re-connection,

in which case we will reconnect the Premises in accordance with the requirements of the Electricity Laws. We will arrange with the local area Registered Network Service Provider to reconnect the Premises if required.

## 6 Access to the Premises

6.1 For each Utility Service, you agree to provide us with safe and unhindered access to the Premises in respect of that Utility Service:

- (a) if we need to install, inspect, maintain, replace, test, alter or repair any equipment required for the supply of that Utility Service, for example your meter;
- (b) if we need to connect, Disconnect or reconnect the supply of that Utility Service at the Premises;

(c) to perform services requested:

- (1) for each Utility Service – by you; or
- (2) in the case of Network Services only – by your Electricity Retailer,

in relation to that Utility Service; and

(d) where you are otherwise required to do so under any applicable law in relation to that Utility Service or in any other circumstances we are otherwise entitled or required to have access to the Premises under any applicable law in relation to that Utility Service.

6.2 We will comply with the requirements under the Electricity Laws or any other applicable law if we or our representatives seek access to the Premises under this clause 6.

6.3 You must tell us promptly if you are aware of any change that materially affects access to your meter or to other equipment involved in providing metering services at the Premises in respect of the Utility Services if you are required to do so under any applicable law.

## 7 Wrongful and illegal use of Utility Services

7.1 You must not, and must take reasonable steps to ensure that others do not:

- (a) illegally use any Utility Services supplied to the Premises; or
- (b) interfere or allow interference with any of the equipment facilitating the supply of Utility Services owned by a Lessor Group Member or a Real Utilities Group Member at the Premises (including meters and associated equipment), except as may be permitted by law;
- (c) use Utility Services supplied to the Premises or any equipment facilitating the supply of Utility Services in a manner that:
  - (1) unreasonably interferes with the connection or supply of Utility Services to another customer; or
  - (2) causes damage or interference to any third party; or
  - (d) use the Utility Services provided by us in a way that is not permitted by law or this Agreement; or
  - (e) tamper with, or permit tampering with, any meters or associated equipment.

7.2 If you do not comply with clause 7.1, we may, in accordance with any applicable law (where relevant) take any or all of the following actions:

- (a) estimate the amount of Utility Services obtained wrongfully or illegally and take debt recovery action against you for that amount; and
- (b) undertake (or agree that you undertake) any necessary rectification work at your cost; and
- (c) arrange for the immediate Disconnection of the Premises in respect of the affected Utility Services.



## 8 Load consumption

8.1 You must give us notice as soon as reasonably practicable:

- (a) if you are a Large Customer (whether as at the date of this Agreement or subsequently during the term of this Agreement), and you reasonably believe you are no longer a Large Customer; or
- (b) if you are a Small Customer (whether as at the date of this Agreement or subsequently during the term of this Agreement), and you reasonably believe you are no longer a Small Customer; and
- (c) in all cases, in relation to any material change or likely material change in the amount or pattern of your electricity consumption at the Premises.

8.2 You must get our prior written consent before:

- (a) entering into any arrangements for the curtailment of electricity consumption or load management at the premises; or
- (b) installing an Embedded Generator that will be connected to the Embedded Electricity Network, or changing an existing connection of an Embedded Generator already connected to the Embedded Electricity Network. If consent is provided under this clause 8.2(b), we will provide you with a copy of the relevant additional terms and conditions at the time when a connection offer is made to you.

8.3 As part of the consent process under clause 8.2(b), we may need to seek the approval of the Registered Network Service Provider or another third party for the installation of, or a change to an existing connection for, an Embedded Generator. We will let you know what these consent requirements are at the time you make a request under clause 8.2(b).

8.4 Any consent provided under clause 8.2(b) will be conditional on the receipt of all third party approvals required to install or change a connection for an Embedded Generator. We will only commence the process of seeking any third party approvals if you accept the relevant connection offer made under clause 8.2(b). You acknowledge and agree that you will be liable for all costs in connection with obtaining any approvals under this clause 8.4.

8.5 If you have an Embedded Generator connected to the Embedded Electricity Network, you must comply:

- (a) with any applicable laws (including the Electricity Laws) and standards in operating and maintaining the Embedded Generator when you start to take supply of electricity under this Agreement; and
- (b) with any requests made for you to install (at your cost) additional meters and metering equipment which we consider necessary to measure the quantity of electricity supplied to the Premises or supplied to the Embedded Electricity Network by an Embedded Generator installed at the Premises; and
- (c) with any notices given to you from time to time

by us (as the agent of the Lessor) or the Lessor directly (which may not be in writing) in relation to an Embedded Generator that is connected to the Embedded Electricity Network as soon as possible after receipt of such notice.

8.6 If you have an Embedded Generator connected to the Embedded Electricity Network:

- (a) you must ensure that electricity produced by such Embedded Generator does not flow back into the Embedded Electricity Network unless we have first consented to this, which may be subject to conditions that you must comply with;
- (b) we are not responsible for, and you accept all risk in respect of, the control and use of electricity beyond the Customer Connection Point and in respect of the supply of electricity to the Premises or to the Embedded Electricity Network from such Embedded Generator;
- (c) you indemnify us against and must pay us for any loss suffered by us arising in connection with:
  - (1) the control and use of electricity beyond the Customer Connection Point from such Embedded Generator; or
  - (2) the installation, operation or maintenance of such Embedded Generator and any supply of electricity to the Embedded Electricity Network from such Embedded Generator; and
- (d) so far as the law allows, we are not liable for any losses you may suffer as a consequence of or in connection with any Embedded Generator located at the Premises failing (or being unable) to supply electricity to the Premises or to the Embedded Electricity Network for any reason (including, without limitation, where caused by any negligent or wilful act or omission by the Lessor, Real Utilities Group or any other person).

8.7 If you no longer want to retain a connection of an Embedded Generator at the Premises to the Embedded Electricity Network, you must apply to us for a connection alteration so that any necessary alterations to the connection can be made.

8.8 You must give us sufficient prior notice if the arrangements to which we consented under clause 8.2 are no longer required at the Premises.

## 9 Metering

9.1 Subject to the Electricity Laws, you may have the right to choose to appoint a Metering Coordinator of your choice for the meter relevant to your consumption of electricity at the Premises and you (or your Electricity Retailer) may become liable for additional charges relating to the supply of metering related services. Changing suppliers for metering related services may require changes to your electricity meter arrangements.

9.2 If you appoint a Metering Coordinator:

- (a) we will have no liability for and are not responsible

for the provision of metering services at the Premises or compliance with the Electricity Laws in respect of the meter(s) at the Premises;

- (b) we are not liable for any losses you may suffer as a consequence of or in connection with metering services provided by the Metering Coordinator or any acts or omissions of the Metering Coordinator; and
- (c) if you are a Large Customer, you indemnify us against and must pay us for any loss suffered by us as a direct or indirect result of:
  - (1) any act or omission of your appointed Metering Coordinator;
  - (2) any failure by your appointed Metering Coordinator complying with any Electricity Laws,

including where such loss is suffered due to your negligence or the negligence of your appointed Metering Coordinator.

9.3 Subject to clause 12.13 and unless you are entitled and have elected to appoint a Metering Coordinator in accordance with clause 9.1, we will arrange for the installation, periodic testing, repair, replacement and maintenance of the meters at the Premises to the extent we are required to do so under and in accordance with any applicable law (where relevant).

9.4 We may arrange for interruptions to the supply of Utility Services to the Premises for the activities contemplated by clause 9.1. If the supply of Utility Services to the Premises will be affected, we will give you prior notice of an interruption we propose to undertake under this clause 9 if this is practicable or we are required to do so under any applicable law (where relevant).

9.5 We will do our best to arrange for the meter(s) for the Utility Services to be read consistent with the requirements under any applicable law or otherwise at appropriate intervals. We may require you to pay a meter read fee if you request a physical read of any meter or we are otherwise entitled to do so. By completing the Registration Form, you acknowledge and agree that you have provided your consent for us to charge you meter read fees more than once per month in response to a request you make under this Agreement for more flexible payment arrangements. This consent will remain in place until you give us notice at any time that this consent is withdrawn.

9.6 If we propose to replace your meter in relation to any Utility Service, we will give you notice before doing so where this is required under applicable law. If you request that a new meter be installed at the Premises, we will arrange for the replacement in accordance with the Electricity Laws.

9.7 Each party must notify the other party as soon as possible if it suspects that a meter at the Premises or other location is or may be defective, damaged or operating inaccurately.

9.8 You authorise us to access or receive Metering Data, and to provide Metering Data and any other information related to, or in respect of any meter installed and maintained for the purpose of measuring consumption at the Premises:

- (a) to any Lessor Group Member and any Real Utilities Group Member and their representatives, agents or sub-contractors;
- (b) to the local area Registered Network Service Provider, Embedded Network Manager, your Electricity Retailer and their representatives, agents or sub-contractors;
- (c) to any counterparty of agreements a Real Utilities Group Member (or its agents) enters into to manage any arrangements in supplying Utility Services to you (including in relation to metering related services) and their representatives, agents or sub-contractors;
- (d) for the purpose of meeting obligations in relation to greenhouse gas reporting;
- (e) in respect of general Metering Data concerning the general usage of Utility Services by post code (but excluding any information relating to names or address or other identifying features), for internal analyses of usage patterns by the Real Utilities Group; and
- (f) for the purpose of any Electricity Laws or any other applicable law or any other lawful purpose reasonably considered necessary by any Real Utilities Group Member or any Lessor Group Member.

## 10 Supply of Utility Services

10.1 The supply of electricity to the Embedded Electricity Network is the responsibility of the local area Registered Network Service Provider and we cannot control the quality, voltage, frequency or security of the electricity supply delivered to and on the Embedded Electricity Network. The quality and reliability of the Utility Services supplied to you under this Agreement may be subject to a variety of factors that are beyond our control, including as a result of accidents, emergencies, weather conditions, vandalism, system demand and the actions of the local area Registered Network Service Provider. Except to the extent required by law, we do not guarantee the quality, voltage, frequency or security of the electricity supply, and we make no representation to you about the conditions or suitability of the Utility Services supplied under this Agreement, its quality, fitness for purpose or safety.

10.2 In addition to the interruptions under clause 10, there may be interruptions to the supply of Utility Services where permitted under the Electricity Laws or any other applicable law or as otherwise required by your Electricity Retailer, the local area Registered Network Service Provider or a relevant authority or another third party (including any retailer selling electricity to or on the Embedded Electricity Network). Interruptions may occur at any time in circumstances including:

- (a) for the purpose of maintaining the safe and efficient operation of the Embedded Electricity Network or any equipment related to the Embedded Electricity Network (including metering equipment);
  - (b) for the installation of a new connection or a connection alteration to another customer or to restore supply to another customer in relation to a Utility Service;
  - (c) where the Embedded Electricity Network or External Distribution Network poses an immediate threat of injury or material damage to any person, any property or the Embedded Electricity Network or External Distribution Network;
  - (d) for health or safety reasons or in an Emergency; or
  - (e) in the case of Network Services – to shed demand for electricity because the total demand at the relevant time exceeds the total supply available.
- 10.3 Third parties such as the relevant Registered Network Service Supplier or an Electricity Retailer may Disconnect, interrupt or reduce (or direct that there is a Disconnection, interruption or reduction of) the supply of electricity to the relevant Embedded Electricity Network or Premises or otherwise arrange for an interruption as permitted under the Electricity Laws or any other applicable law. To the extent permitted by law, you release us from any liability:
- (a) for such Disconnection, interruption or reduction in the supply of the Utility Services or where an Electricity Retailer discontinues the sale of electricity to you under or in connection with an agreement for the sale of electricity to the Premises; and
  - (b) for any variation in the voltage and frequency of the supply.
- 10.4 If the supply of a Utility Service to the Premises will be affected, we will do our best to give you prior notice of a proposed interruption if this is practicable or we are required to do so under any applicable law. We will do our best to restore the supply of an affected Utility Service to the Premises as soon as possible or otherwise in accordance with any applicable law.
- 10.5 Other than for failure to comply with a Consumer Guarantee, to the extent permitted by law, we will not be liable for any loss, damage or expense (including loss of profit, loss of revenue or loss of commercial opportunity) that you may suffer, arising out of or in relation to the supply (or failure to supply or the defective supply) of any Utility Service to you.
- 10.6 To the extent permitted by law:
- (a) we are not liable to you or any other person for any loss or damage suffered as a result of the total or partial failure to supply that Utility Service or the defective supply of that Utility Service; and
  - (b) we are not liable for any indirect, special or consequential losses suffered by you or any other person as a result of any partial or total failure to

supply that Utility Service or the defective supply of that Utility Service.

## 11 Our Liability

- 11.1 We agree to supply the Utility Services to you on the terms of this Agreement and in accordance with the non-excludable warranties under the Australian Consumer Law, including Consumer Guarantees. Our liability to you in connection with the supply of the Utility Services is limited to the maximum extent permitted by the Australian Consumer Law.
- 11.2 In relation to the supply or sale of electricity other than for personal, domestic or household use or consumption, our liability is limited to the resupply or re-sale of the electricity or the cost of the supply or selling of equivalent electricity by another entity, unless it would not be fair and reasonable for us to rely on this limitation.
- 11.3 Subject to clause 11.2, our liability for breach of a condition, guarantee, right or representation arising out of or in connection with the Agreement that cannot be excluded is limited (at our discretion) to:
- (a) providing you with equivalent goods or services to the value or quality of those goods or services to which that breach relates; or
  - (b) paying you the cost of acquiring the goods or services which are equivalent to the goods or services to which that breach relates,
- unless it would not be fair and reasonable for us to rely on this limitation.
- 11.4 We will not be liable to you or any third party for any indirect, special or consequential loss or damage suffered or incurred by you or by third parties, and the amount of our liability will be reduced to the extent that the event giving rise to the liability has been caused or contributed to by you or a third party, except to the extent we cannot exclude or reduce such liability at law.
- 11.5 To the extent permitted by law, if you are a Large Customer:
- (a) we are not liable to you for any liability in connection with or arising from this Agreement except to the extent such liability arose directly from our Wilful Default; and
  - (b) our liability to you for all claims you make in any one calendar year (in aggregate) is limited to 5% of the aggregate Utility Charges payable by you under this Agreement during the relevant calendar year.

## 12 Utility Charges and Payment

- 12.1 The charges payable by you for the supply of Utility Services under the Agreement ("Utility Charges") are set out in each Energy Price Fact Sheet, Basic Plan Information Document or Price and Product Information Statement (as applicable) for the Utility Services. You can also find updates about our pricing, fees and other charges on our Website.

- 12.2 The Utility Charges in your bill:
- (a) includes a separate daily fixed access tariff for each Utility Service that is applied pro rata for each day the Premises is connected for the supply of those Utility Services irrespective of the quantity of those Utility Services consumed at the Premises in that billing period;
  - (b) if the Utility Services being supplied under this Agreement includes Electricity Services, will be calculated so that the Utility Charges payable for Electricity Services is inclusive of the Network Charges component; and
  - (c) otherwise, will be based on your consumption of the Utility Services.
- 12.3 We will determine your consumption of the Utility Services using Metering Data or an estimation in accordance with applicable law (where relevant).
- 12.4 If an estimation is used to prepare a bill and Metering Data then becomes available, subsequent bills will be adjusted to account for the difference between the estimated and measured consumption of the Utility Services. If you ask for a bill to be adjusted where a meter reading could not be conducted due to your failure to give us access, we may charge you a fee to do so.
- 12.5 If an estimation is used to prepare a bill, you may be able to request an adjusted bill based on your Customer Read Estimate if the request is made before the due date for payment of that bill. If you provide a compliant Customer Read Estimate, we will provide you with an adjusted bill based on the Customer Read Estimate at no extra charge. Further information on this process will be provided with your bill.
- 12.6 In addition to the Utility Charges for the consumption of Utility Services (including the Network Charges), additional charges that you may be required to pay include Environmental and Reliability Scheme Charges, connection, disconnection or reconnection fees, special meter read, initial meter read, final meter read, meter testing, late payment fees (unless you are a Small Customer in Victoria), any fees we incur if your payment is dishonoured or reversed and our reasonable administrative and processing costs in relation to such payment dishonouring or reversal, charges reasonably required to recover any costs imposed on us by a third party, or incurred by us as a result of a Change in Law, in connection with our supply of the Utility Services, any other amounts referred to in this Agreement and any other fees set out on our Website ("Additional Charges"). Any Additional Charges payable by you will be set out in your bill. Details of our Additional Charges are set out on each Energy Price Fact Sheet, Basic Plan Information Document or Price and Product Information Statement (as applicable) for the Utility Services and our Website.
- 12.7 If you are a Large Customer, in addition to the payment of any late payment fees, we may also require you to pay any costs reasonably incurred in recovering any amounts (including Network Charges and Additional Charges) owed under this Agreement, including because of late payments or any amount not paid in the event of a billing dispute under clause 12.14 which we are subsequently entitled to recover under clause 12.15.
- 12.8 If you are a Small Customer, you will not be charged Network Charges or Additional Charges in connection with Network Services that are higher than the comparable tariffs that would be charged by the local area Registered Network Service Provider, had you obtained supply of electricity to your Premises directly from that Registered Network Service Provider and been charged for such service by that Registered Network Service Provider in the same circumstances (in the case of Network Charges) or subject to a standard distribution connection contract (in the case of any Additional Charges in connection with the supply of Network Services).
- 12.9 Billing will be monthly unless otherwise agreed. If this Agreement provides for the supply of more than one of the Utility Services, we will issue you a single bill under this clause 12 in respect of all Utility Services being supplied under this Agreement in that billing period.
- 12.10 You must pay the Utility Charges (including the Network Charges) and the Additional Charges in relation to the Utility Services and any adjustments or other amounts payable under this Agreement as specified in your bills. You must pay each bill in full by the pay-by date specified in the bill, using one of the payment methods provided in the bill. If you pay by a credit card and we incur a merchant service fee, a credit card surcharge may apply as set out in each Energy Price Fact Sheet, Basic Plan Information Document or Price and Product Information Statement (as applicable) for the Utility Services.
- 12.11 You agree that any amounts you pay towards a bill issued for your utility services account will be applied in satisfaction of the entire balance owing on your utility services account (on a whole of account basis) at the time of that payment, rather than in satisfaction of the Utility Charges and Additional Charges payable for any specific Utility Service. To the extent permitted by law, the payments you make may be allocated at our discretion:
- (a) towards payment of amounts owing on your utility services account for each respective Utility Service proportionate to the fees and charges owing for each applicable Utility Service on your utility services account;
  - (b) towards payment of any amounts owing on the then-oldest overdue bill, even if you intended the payment for a different bill under this Agreement; or
  - (c) any other allocation agreed between us from time to time.
- 12.12 Please contact us before the applicable pay-by date if you believe there are any issues with a bill, or if you would like us to review your bill, and provide us with detailed particulars in writing relating to the disputed portion of the bill. Our contact details (including for billing related



- queries) are available on our Website. If you have a complaint or wish to dispute a bill, we will review the bill and respond in accordance with the standard complaints and dispute resolution procedures as described in clause 18.
- 12.13 You have the right to make a written request for a meter test or a check of the meter reading or metering data (“Meter Test”) in the event of a billing dispute. We may ask you to pay the cost of the Meter Test in advance (except to the extent that doing so would be contrary to any obligations imposed upon us under applicable law), and will reimburse you for this cost if the meter reading or meter data proves to be faulty or incorrect.
- 12.14 If you dispute your bill in relation to a Utility Service, while your bill is being reviewed, you will need to pay:
- if you are a Small Customer, any amount we ask you to (in accordance with the Electricity Laws, the Australian Consumer Law or any other applicable law as relevant) for the relevant bill in relation to that Utility Service;
  - if you are a Large Customer, the greater of the undisputed amount for the bill under review and an amount equal to the average amount of your last three bills;
  - in all cases, all amounts on the relevant bill in relation to any other Utility Services; and
  - in all cases, any future bills by the applicable pay-by date.
- 12.15 If the review finds the bill is correct, we are entitled to recover any unpaid amount. If the review finds the bill is incorrect, we will correct the bill under review. Any amounts paid in relation to an incorrect bill in excess of the amount showing on the corrected bill will either be refunded to you or otherwise credited to your next bill.
- 12.16 If you have been undercharged in relation to a Utility Service, we are entitled to recover the undercharged amount in instalments in accordance with any applicable law or otherwise as soon as reasonably practicable after we determine the relevant amounts. If you are a Small Customer and the undercharging was not because of your fault or your unlawful act or omission, you will only have to pay us any amounts that should have been charged in the 9 months before we notify you of the undercharge. In all other cases, we will recover all amounts undercharged. We will not charge you interest on the undercharged amount if you are a Small Customer.
- 12.17 If we discover we have overcharged you in relation to a Utility Service, we will notify you of the overcharging and repay you by either crediting or refunding the overcharged amount to your utility services account in accordance any applicable law or otherwise as soon as reasonably practicable after we determine the relevant amounts. You may be entitled to request an immediate refund of overcharged amounts in some circumstances. If you are a Small Customer and the overcharging was because of your fault or unlawful act or omission, we will only refund to you or credit to your next bill any amount that was overcharged in the 12 months before the date we discovered the overcharging. In all other cases and subject to the Electricity Laws or any other applicable law, we will refund or credit any amount that was overcharged for a period of up to 12 months after that overcharging occurred. No interest is payable on any overcharged amount.
- 12.18 We may vary the Utility Charges (including the Network Charges component) and the Additional Charges by giving you notice at any time. This notice may be included as a statement in your bill. We will notify you of any change in tariff and the date on which the variation takes place in accordance with any applicable law. The Energy Price Fact Sheet, Basic Plan Information Document or Price and Product Information Statement (as applicable) for the Utility Services will also be updated from time to time to show any variation in the Utility Charges and the Additional Charges. These variations will form part of this Agreement from the date the notice is taken to have been received by you.
- 12.19 Any variation to the Utility Charges (including the Network Charges component) and the Additional Charges must be fair and reasonable. To the extent permitted by law, any variation in the Utility Charges may reflect:
- any increases in the total cost to us of the electricity purchased by us for on-sale to you, or any component of the total cost of such electricity;
  - any increases in relation to the following: distribution network charges, regulated charges or tariffs, taxes, regulatory requirements and regulatory compliance requirements, any energy efficiency scheme or carbon tax, metering charges, loss factors, charges resulting from the operation of the National Electricity Market or any other regulatory requirements; or
  - any other changes in our costs of supplying the Utility Services to you (which may include any costs incurred by us for electricity to operate any Embedded Electricity Network), or any component of such costs.
- 12.20 At your request, we will provide you with historical billing and metering data for the previous 2 years in accordance with the Electricity Laws. This data will be ordinarily be provided without charge, unless we are authorised to charge you in accordance with the Electricity Laws, in which case we will notify you prior to fulfilling your request.
- 12.21 Amounts payable under this Agreement may be stated to be exclusive or inclusive of GST. Where an amount is not stated to include GST and is payment for a “taxable supply” as defined for GST purposes, to the extent permitted by law, that payment will be increased so that the cost of the GST payable on the taxable supply is passed on to the recipient of that taxable supply.

## 13 Direct Debit



13.1 So that you can avoid late payment fees, we offer a direct debit payment method as well as our other payment methods. As part of our sign-up process, we request all Business Customers to provide direct debit details as their method of payment unless we have otherwise agreed alternative arrangements with you.

13.2 Unless we have put in place separate arrangements, you acknowledge and agree that you have provided your consent to enter into a direct debit payment arrangement in respect of this Agreement by completing the Registration Form. This consent will remain in place unless you indicated otherwise on the Registration Form or until you give us notice at any time that you prefer not to pay bills by direct debit. If this is the case, we can put in place alternative payment methods for you to pay your bills.

13.3 The direct debit terms and conditions are as follows:

- (a) You authorise us to arrange for funds to be debited from your nominated bank account or credit card (as specified in the Registration Form) as prescribed through the 'Bulk Electronic Clearing System'.
- (b) You authorise us to verify the details of your nominated bank account with your financial institution to ensure they are correct.
- (c) You agree that automatic payments will be deducted for the amount on the bill issued including any overdue amounts.
- (d) The funds will be debited on the date your bill becomes due.
- (e) If a direct debit is refused by your financial institution or otherwise returned not fully paid, you agree that:
  - (1) we may charge you for any fees we incur if your payment is dishonoured or reversed and our reasonable administrative and processing costs in relation to such payment dishonouring or reversal; and
  - (2) if this occurs over two consecutive billing periods, your direct debit arrangement may be cancelled, in which case we will notify you and you must arrange for an alternative payment method.
- (f) If you have cancelled the payment request through your bank, you need to notify us and arrange for an alternative payment method.

## 14 Life support customers

14.1 You must notify us if there exists a requirement to maintain supply at the Premises for Life Support Equipment. You must keep us updated if the requirement to maintain supply at the Premises for Life Support Equipment no longer exists.

14.2 You consent to us using and disclosing information disclosed under clause 14.1 for purposes connected with the provision of Utility Services to the Premises and otherwise complying with our regulatory obligations regarding Life Support Equipment. Before you provide

us with health information about another person, you must first get their consent to us collecting, using and disclosing that information for the purposes described in this clause 14.2.

14.3 If you give us notice under clause 14.1, we will comply with any information and notice requirements or other obligations relating to Life Support Equipment under applicable law.

## 15 Security Deposits

15.1 We may conduct an assessment of your creditworthiness at any time before or during the term of this Agreement. You must promptly provide any assistance or information we reasonably request from time to time to allow us to assess your creditworthiness.

15.2 We may require you to provide us with a Security Deposit in a form acceptable to us and for the amount we request:

- (a) in all cases, at the time the Agreement is entered into; and
- (b) if you are a Large Customer, and:
  - (1) we consider, acting reasonably, that your creditworthiness is unsatisfactory or has materially adversely changed since the date of the Agreement; or
  - (2) you fail to pay the amounts invoiced to you in a bill by the applicable pay-by date in full for any 3 bills in a 12 month period or any 2 consecutive bills; or
  - (3) the Premises have been Disconnected under clause 5.2(a) or clause 5.2(d).

15.3 If you have provided a Security Deposit, we may use the Security Deposit and any interest earned on the Security Deposit to offset any amount you owe under this Agreement (including any Network Charges). Where the Security Deposit is used under this clause 15.3 and you are a Large Customer, we may require you to provide top-up security to restore the Security Deposit to the original amount most recently requested under this Agreement within 10 Business Days.

15.4 We will refund the balance of the Security Deposit to you on termination of the Agreement once all outstanding amounts due to us have been paid in accordance with any applicable law.

## 16 Transfer of the Agreement

16.1 You may transfer the Agreement to another person but only if we agree in writing. We will not unreasonably refuse a request from you to transfer the Agreement and will do our best to accommodate any such request. We may require that reasonable conditions be met before our consent to your transfer of this Agreement is provided under this clause 16.1, including the provision of a Security Deposit from you and/or the proposed transferee in which case clause 15 will apply.

16.2 By entering into the Agreement, you give your consent for us to transfer, novate or assign the Agreement or transfer

you as a customer:

- (1) to any Real Utilities Group Member; or
- (2) as part of the transfer to the same third party of all or substantially all of a Real Utilities Group Member's business segments; or
- (3) as part of the transfer to the same third party of the Embedded Electricity Network (or its agent),

in each case in respect of any utility services to the extent this is permitted by law.

16.3 We will provide you with advance notice of any such transfer, novation or assignment contemplated by clause 16.2, and you acknowledge and agree that you will take all reasonable steps and sign any documents on our request that is required to effect such transfer, novation or assignment.

16.4 We may transfer, novate or assign this Agreement or otherwise transfer you as a customer to any other third party with your consent.

## 17 Force Majeure Event

17.1 If a Force Majeure Event prevents us or you from carrying out any obligation under the Agreement, other than an obligation to pay money, the affected obligation will be suspended to the extent to which they are affected by the Force Majeure Event for as long as the Force Majeure Event continues.

## 18 Complaints and Disputes

18.1 You will find a complaints and feedback section on our Website. You are encouraged to contact us in relation to any queries, complaints or disputes concerning the provision of Utility Services under the Agreement and we will handle these in accordance with our Complaints Policy.

18.2 Even if you raise a complaint or dispute (including where this is brought to mediation under clause 18.4), we will continue to comply with our obligations under this Agreement. You must continue to pay the amounts billed under this Agreement during this time or as required under clause 12.14.

18.3 If you are not satisfied with our response in relation to any complaint or dispute, you can also contact the relevant Energy Ombudsman to lodge a complaint or for free independent information and advice if you are a Small Customer or a Small Business Customer.

18.4 In the event the relevant Energy Ombudsman cannot or declines to handle your complaint (including if you are a Large Customer), the party claiming the dispute in relation to this Agreement ("Dispute") must give notice ("Dispute Notice") to the other party setting out full particulars of the Dispute.

18.5 The parties must use best endeavours to resolve the Dispute following the provision of a Dispute Notice by good faith negotiations scheduled to commence within 20 Business Days of the date of the Dispute Notice

involving senior representatives of each party with the necessary authority to settle the Dispute.

18.6 Any party may refer the matter to mediation in accordance with clause 18.7 if the Dispute has not been fully resolved within 3 months of the date of the Dispute Notice following negotiations conducted pursuant to clause 18.5.

18.7 Any matters brought to mediation under clause 18.6 will be conducted in the State in which the Premises are located under the guidelines for commercial mediation published from time to time by the Australian Dispute Centre. The parties will share equally in all reasonable costs of the mediator appointed to conduct any mediation under clause 18.6 but will otherwise bear their own costs of the mediation.

18.8 The requirements of this clause 18 are without prejudice to any legal or other remedies which any party may be entitled to pursue by other means, except that no party may commence legal proceedings concerning the Dispute unless the parties have attempted to resolve the Dispute in accordance with clause 18.5 and clause 18.6. Nothing in this clause 18 prevents a party seeking urgent injunctive or similar interim relief from a court.

## 19 Confidentiality

19.1 Except as otherwise provided in this Agreement, you must not disclose any Confidential Information to any third party.

19.2 You may disclose Confidential Information:

- (a) if required by the Electricity Laws or any other laws or the rules of a stock exchange;
- (b) on a confidential basis to your officers, employees, agents and contractors (or those of your Related Body Corporate) whose duties reasonably require such disclosure; or
- (c) with our prior written consent.

19.3 You must ensure that those persons receiving Confidential Information under clause 19.2(b) comply with your obligations under this clause 19. You will be liable for the actions of those persons in disclosing any Confidential Information in breach of this clause 19.

## 20 Privacy Act Notice and Credit Information Consent

20.1 We will comply with all applicable privacy laws in relation to your personal information. You can find our Privacy Policy on our Website. If you have any questions, please contact our Privacy Officer.

20.2 We may collect relevant personal information about you in connection with this Agreement. You consent to us collecting, using and disclosing that information in accordance with this Agreement and our Privacy Policy. You also consent:

- (a) to us disclosing relevant personal information (including this Agreement itself) to any Lessor Group Member and any counterparty of agreements that a Real Utilities

Group Member (or its agents) enters into to manage any arrangements in supplying Utility Services to you (including in relation to metering related services) and their representatives, agents or sub-contractors;

- (b) to us disclosing that information to any Real Utilities Group Member for any reason; and.
- (c) to the use and disclosure of that information by a Lessor Group Member or a Real Utilities Group Member for the purposes of any Electricity Laws or any other applicable law or any other lawful purpose it reasonably considers necessary.

20.3 You hereby consent to us:

- (a) exchanging your personal information with a credit reporting body to obtain a consumer credit report about you or to allow the credit reporting body to create or maintain a credit information file containing information about you; and
- (b) collecting credit information about you from other legally permissible sources, for purposes related to determining your eligibility to receive (or continue receiving) Utility Services or other services from us.

20.4 You also hereby consent to us using your personal information and credit information and exchanging it with any Real Utilities Group Member (or its agents), as well as any credit reporting bodies and credit providers for the purpose of:

- (a) assessing your application(s) for credit;
- (b) notifying other credit providers of payment defaults;
- (c) exchanging information about your credit status if you are in default with us or another credit provider;
- (d) assessing your credit worthiness at any time during or after the life of your credit arrangement;
- (e) resolving disputes and errors; and
- (f) any other purpose authorised by law.

## 21 Notices

21.1 Notices and bills under this Agreement must be sent in writing, including by email, unless specified otherwise.

21.2 Communications under this Agreement other than bills may be sent to the email address or via SMS to the mobile phone number nominated in the Registration Form (except to the extent that doing so would be contrary to any applicable law).

21.3 Unless otherwise provided in the Energy Laws, a notice or bill sent under this Agreement is taken to have been received by you or by us (as relevant):

- (a) on the date it is handed to the party, by leaving it at the Premises or Billing Address (in your case) or at our registered office (in our case); or
- (b) on the date 2 Business Days after it is posted to the Premises or the Billing Address (in your case) or at our registered office (in our case); or

- (c) on the date of transmission (unless the sender receives notice that delivery did not occur or has been delayed) if sent electronically to an email address or mobile phone (via SMS) notified to the sending party from time to time.

21.4 Our contact details for you to contact us or send us a notice are as set out in our bill to you, or as notified to you from time to time.

## 22 Applicable laws and Application of laws

22.1 The Agreement is governed by the laws of the State in which the Premises is located.

22.2 If any amendments to the Agreement are, in our opinion, reasonably required due to a change in applicable laws, then we may make such amendments. If such amendments are reasonably likely to be adverse to you, we will notify you prior to making such amendments and they will only take effect from the date the nature of the amendments are communicated to you. You may end this Agreement if the variation is not acceptable to you by giving us notice.

22.3 Certain provisions of the Electricity Laws may be deemed to apply to the supply of Network Services under this Agreement as a condition of the exemptions granted to the Lessor and Real Utilities Operator from the requirement to be a Registered Network Service Provider. Except in those cases, and unless the relevant law provides that it must prevail, this Agreement prevails to the extent it is inconsistent with any Electricity Law or any other applicable law to the extent allowed.

22.4 If any matter that is required to be dealt with under the Electricity Laws is not expressly dealt with in this Agreement (whether in whole or in part), the relevant provisions of the Electricity Laws are incorporated into this Agreement in whole or in part as required.

22.5 Any present or future legislation which operates to vary the obligations of a party in connection with this Agreement with the result that another party's rights, powers or remedies are adversely affected (including, by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

## 23 General Provisions

23.1 Some of our obligations under this Agreement may be carried out by another person, however we remain liable to you for any failures to comply with those obligations.

23.2 The Agreement represents the entire agreement between you and us and supersedes all prior arrangements or understandings between you and us in connection with the provision of Utility Services at the Premises.

23.3 If any term or clause of the Agreement is or becomes invalid or unenforceable, then the other terms remain valid and unaffected and will continue for the duration of the Agreement.

23.4 If we do not exercise or enforce any right or power under the Agreement, that failure will not amount to a waiver

of that right or power. Any delay in doing so will also not amount to a waiver of that right or power.

- 23.5 Subject to clause 22.2, unless your explicit informed consent is required by law, we may vary this Agreement by giving you at least 20 Business Days' written notice of the variation. If the variation is not acceptable to you, you may terminate this Agreement by giving us notice. The Agreement will be varied by agreement between us if you have accepted that variation by not terminating this Agreement in the 20 Business Day period immediately following the date the notice is taken to have been received by you. Other than as provided in this Agreement, no variation of the provisions of the Agreement may be inferred from a course of conduct.

## 24 Definitions and interpretation

- 24.1 The meanings of certain terms used and not otherwise defined elsewhere in these Terms and Conditions are given below:

**Additional Charges** has the meaning set out in clause 12.6.

**Agreement** has the meaning set out in clause 1.2(a).

**Approved Energy Loss Factor** means the aggregate of the electrical loss factors determined or approved as applying in respect of the Embedded Electricity Network's connection point to the External Distribution Network and/or the Customer Connection Point.

**Australian Consumer Law** means Schedule 2 to the Competition and Consumer Act 2010 (Cth).

**Basic Plan Information Document** means (from the time this obligation applies to the Real Utilities Retailer) the 'Basic Plan Information Document' in relation to pricing for the Utility Services and other fees and charges payable under this Agreement provided alongside these Terms and Conditions, or any relevant pricing or other document for Business Customers (either Large Customer or Small Customer as is applicable to you) published on our Website as amended and varied from time to time.

**Billing Address** means the address specified in the Registration Form as the 'billing address' or similar.

**Business Customer** means a customer who is not a Residential Customer.

**Business Day** means any day that is not a Saturday or Sunday or a public holiday in the area in which the Premises is located or the whole of the State in which the Premises is located.

**Business Premises** means premises of a Business Customer, other than premises used solely or principally for personal, household or domestic use.

**Change in Law** means the repeal, amendment or enactment of any Law or a change in the application of any Law resulting from a judicial or administrative decision or interpretation of any Law.

**Complaints Policy** means the 'Energy Complaints Policy' that is applicable to the Real Utilities Group and published on our Website as amended and varied from time to time.

**Confidential Information** means the terms of this Agreement

and all commercially sensitive information exchanged between the parties which is not in the public domain (other than as a result of a breach of clause 19).

**Consumer Guarantee** means a consumer guarantee applicable to this Agreement under the Australian Consumer Law, including any express warranty as defined in clause 2(1) of the Australian Consumer Law.

**Cooling Off-Period** has the meaning set out in clause 1.6.

**Customer Connection Point** means the agreed point where electricity is to be supplied between the Embedded Electricity Network and an electricity installation or equipment serving the Premises (as defined by us).

**Customer Read Estimate** means your reading of the relevant meter.

**Disconnection** means an action to prevent the flow of Utility Services to the Premises, but does not include an interruption.

**Electricity Laws** means national and State and Territory laws and rules relating to energy and the legal instruments made under those laws and rules, insofar as they apply to this Agreement, and includes the conditions applying to the exemption from the requirement to be a Registered Network Service Provider granted to Real Utilities Operator and the Lessor.

**Electricity Retailer** means a person that is authorised to sell electricity to customers under the Electricity Laws.

**Electricity Services** means the sale of electricity to the Premises through the Embedded Electricity Network.

**Embedded Electricity Network** means the private electricity network that enables the supply of electricity to the Premises.

**Embedded Network Manager** means the person appointed to manage certain aspects of the Embedded Electricity Network under the Electricity Laws as notified to you from time to time.

**Emergency** means an emergency due to the actual or imminent occurrence of an event that in any way endangers or threatens to endanger the safety or health of any person, or normal operation of the Embedded Electricity Network, or that destroys or damages, or threatens to destroy or damage, any property.

**Embedded Generator** means any generating unit connected within the Embedded Electricity Network, including any standby generating units.

**Environmental and Reliability Scheme Charges** means amounts determined by us to be a reasonable allocation of costs or liabilities imposed on or incurred by, or likely to be imposed on or incurred by, us or our Related Body Corporate directly or indirectly under in connection with an Environmental or Reliability Scheme, and (without limitation):

- (a) we may charge in proportion to your consumption of Utility Services or otherwise reasonably attributed or apportioned to you; and
- (b) where calculated with reference to an amount of electricity, the Approved Energy Loss Factor will be applied against the Environmental and Reliability Scheme Charges rates.



**Environmental or Reliability Scheme** means any act, regulation, code, scheme, rule, mandatory guideline, authorisation, determination, licence or like instrument 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, the minimisation of the impact of the electricity industry on the environment or the security or reliability of the power system.

**Energy Ombudsman** means the energy ombudsman prescribed by the Electricity Laws for the State in which the Premises are located, which as at the date of this Agreement is:

- (c) EWON if the Premises are located in New South Wales;
- (d) EWOV if the Premises are located in Victoria; and
- (e) EWOQ if the Premises are located in Queensland.

**Energy Price Fact Sheet** means the 'Energy Price Fact Sheet' in relation to pricing for the Utility Services and other fees and charges payable under this Agreement provided alongside these Terms and Conditions, or any relevant pricing or other document for Business Customers (either Large Customer or Small Customer as is applicable to you) published on our Website as amended and varied from time to time.

**EWON** means Energy and Water Ombudsman NSW, and as at the date these Terms and Conditions are provided to you, EWON's website is [www.ewon.com.au](http://www.ewon.com.au) and it has a hotline on 1800 246 545.

**EWOQ** means Energy and Water Ombudsman Queensland, and as at the date these Terms and Conditions are provided to you, EWOQ's website is [www.ewog.com.au](http://www.ewog.com.au) and it has a hotline on 1800 662 837.

**EWOV** means Energy and Water Ombudsman Victoria, and as at the date these Terms and Conditions are provided to you, EWOV's website is [www.ewov.com.au](http://www.ewov.com.au) and it has a hotline on 1800 500 509.

**External Distribution Network** means the local electricity distribution network connected to the Embedded Electricity Network.

**Force Majeure Event** means an event outside the control of a party, and may include a failure or fluctuation in any electrical power supply, failure of air-conditioning or humidity control, electromagnetic interference, cable cut, fire, storm, flood, earthquake, accident, war, labour dispute (other than a dispute solely between that person and its own staff or staff under its control), materials or labour shortage, the change or introduction of any law or regulation or an act or omission, failure or delay of any third party or any failure of any equipment owned or operated by any third party.

**Governmental Agency** means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, government Minister, agency or entity in any part of the world.

**GST** has the meaning given in the GST Act (A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Hardship Policy** means the 'Customer Hardship Policy' that is applicable to the Real Utilities Group and published on our Website as amended and varied from time to time.

**Large Customer** means a Business Customer who consumes electricity at Business Premises at or above the Upper Consumption Threshold.

**Law** means: (1) any act, regulation or other statutory instrument or proclamation of any applicable jurisdiction including the National Electricity Rules and the National Energy Retail Rules; (2) any applicable law, whether of a legislative, equitable or common law nature; and (3) any judgment, decree or similar order with mandatory effect or any binding requirement (including binding guidelines) or mandatory approval of a Regulatory Authority; and (4) without limitation, any Environmental or Reliability Scheme.

**Lessor** means Frasers Property Retail Holding Pty Limited ACN 618 676 994.

**Lessor Group** means the Lessor and each of its Related Bodies Corporate and Lessor Group Member means any member of the Lessor Group or any successor or permitted assign as notified to you by us from time to time.

**Life Support Equipment** means:

- (a) an oxygen concentrator;
- (b) an intermittent peritoneal dialysis machine;
- (c) a kidney dialysis machine;
- (d) a chronic positive airways pressure respirator;
- (e) crigler najjar syndrome phototherapy equipment;
- (f) a ventilator for life support; and
- (g) in relation to a particular customer, any other equipment that a registered medical practitioner certifies is required at the Premises for life support.

**Metering Coordinator** means a person that is registered as a 'Metering Coordinator' with the Australian Energy Market Operator.

**Metering Data** means information obtained from a meter installed and maintained for the purpose of measuring the consumption of Utility Services at the Premises.

**Meter Test** has the meaning set out in 12.13.

**Network Charge** means any tariff or charge that we are permitted to charge under the Electricity Laws or any other applicable law in connection with the transportation of electricity to the Premises.

**Network Services** means the connection of the Premises to the Embedded Electricity Network and the permitting of the Embedded Electricity Network to be used to supply electricity to the Premises.

**Premises** means the premises as specified in the Registration Form as the 'supply address'.

**Price and Product Information Statement** means the 'Price and Product Information Sheet' in relation to pricing for the Utility Services and other fees and charges payable under this Agreement provided alongside these Terms and Conditions, or any relevant pricing or other document for Business Customers (either Large Customer or Small Customer as is applicable to you) published on our Website as amended and varied from time to time.



**Privacy Policy** means the 'Privacy Policy' that is applicable to the Real Utilities Group and published on our Website as amended and varied from time to time.

**Real Utilities Group** means Real Utilities Retailer, Real Utilities Operator and each of their Related Bodies Corporate and Real Utilities Group Member means any member of the Real Utilities Group.

**Real Utilities Operators** means Real Utilities Eastern Creek Pty Limited ACN 107 355 886.

**Real Utilities Retailer** means Real Utilities Pty Ltd ACN 150 290 814.

**Registered Network Service Provider** means a person that is registered as a 'Distribution Network Service Provider' with the Australian Energy Market Operator.

**Registration Form** means:

- (1) a paper form entitled 'Business Customer Application Form'; or
- (2) an on-line Application Form as accessed from our Website or any other website notified to you from time to time.

**Related Body Corporate** has the meaning given the Corporations Act 2001 (Cth).

**Residential Customer** means a customer who purchases electricity principally for personal, household or domestic use at premises.

**Security Deposit** means an amount of money paid to us as security against non-payment of a bill specified in the Registration Form (if any) or as notified to you from time to time.

**Small Business** means, as the context requires and as at the date of this Agreement, either:

- (a) in respect of any Australian Consumer Law matters, a business that employs less than 20 employees including casual employees that work on a systematic basis; or
- (b) in relation to matters regarding EWON's jurisdiction, a business that either has less than 20 full time equivalent employees or an aggregate annual turnover of less than \$2 million,

or as otherwise amended or varied in the applicable laws from time to time.

**Small Business Customer** means, as the context requires, either:

- (a) a customer that carries on a business which is a Small Business; or
- (b) in relation to matters regarding EWOQ's jurisdiction and as at the date of this Agreement, a Business Customer whose electricity consumption at the Premises is at or above the Upper Consumption Threshold, but not more than 160MWh per year or such other threshold as specified in the applicable laws from time to time,

or as otherwise amended or varied in the applicable laws from time to time.

**Small Customer** means a customer whose electricity consumption at the Premises is below the Upper Consumption Threshold.

**Terms and Conditions** means clauses 1 to 24 of this document.

**Upper Consumption Threshold** means, in respect of electricity consumption at a premises:

- (a) the upper level threshold as determined under the Electricity Laws applicable from time to time in the State in which the Premises is located, which as at the date of this Agreement is 100MWh per year; or
- (b) if no threshold is defined in the State in which the Premises is located, then the upper level threshold as specified in the Electricity Laws applicable from time to time in South Australia, which as at the date of this Agreement is 100MWh per year.

**Utility Charges** has the meaning set out in clause 12.1.

**Utility Services** has the meaning set out clause 1.5.

**We or Us** has the meaning set out in clause 1.1.

**Website** means the website for the Real Utilities Group, which as at the date of this Agreement is [www.realutilities.com.au](http://www.realutilities.com.au).

**Wilful Default** means fraud or any act or omission of a party with an intentional, conscious or reckless disregard of the terms of this Agreement.

you has the meaning set out in clause 1.2.

24.2 In these Terms and Conditions, unless the contrary intention appears, an obligation or a liability assumed by 2 or more persons binds them jointly and severally and a right conferred on 2 or more persons benefits them jointly and severally.

24.3 In these Terms and Conditions, headings and boldings are for convenience only and do not affect the interpretation of this Agreement and, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
- (c) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Governmental Agency;
- (d) a reference to any thing (including, but not limited to, any right) includes a part of that thing;
- (e) a reference to a clause or party is a reference to a clause of, and a party to this Agreement;
- (f) a reference to a statute, regulation, proclamation, ordinance or by law includes all statutes, regulations, proclamations, ordinances or by laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by laws issued under that statute;

- (g) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (h) a reference to a party to any document includes that party's successors and permitted assigns;
- (i) a reference to an agreement other than this Agreement includes an undertaking, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (j) 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 without including that day;
- (k) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (l) a reference to time is to local time in the State in which the Premises is located;
- (m) a reference to a month is to be interpreted as a calendar month;
- (n) specifying anything in this Agreement after the words 'including', 'includes' or 'for example' or similar expressions does not limit what else is included; and
- (o) no provision of this Agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Agreement or that provision.