



29 November 2017

Dear Retailer

Metering Coordinator Terms and Conditions

We are writing to you about amendments to the *National Electricity Rules (NER)* and *National Energy Retail Rules (NERR)* concerning provision of Metering Coordinator services by Essential Energy as a Local Network Service Provider, effective 1 December 2017.

Metering Coordinator Terms and Conditions

Essential Energy is required under rule 11.86.7(b) of the NER to provide a standard set of terms and conditions upon which it agrees to act as Metering Coordinator. These terms and conditions apply to type 5 or type 6 metering installations at Connection Points for which (before 1 December 2017) Essential Energy would have been the Responsible Person, and you are the Financially Responsible Market Participant.

Additionally, under new rule 7.6.4(b) of the NER, Essential Energy may provide a Financially Responsible Market Participant with a standard set of terms and conditions on which it will agree to act as the Metering Coordinator for type 7 metering installations.

Accordingly, please find **enclosed** a copy of our standard terms and conditions for providing Metering Coordinator services for type 5, 6 and 7 metering installations.

In relation to type 5 and 6 metering installations, under rule 11.86.7(c) of the NER, Essential Energy will be deemed to have been appointed as Metering Coordinator for each relevant Connection Point on these standard terms and conditions, unless we agree otherwise prior to 1 December 2017.

In relation to type 7 metering installations, our role as Metering Coordinator is intended to continue in a manner consistent with our existing arrangements and these standard terms and conditions will apply, unless we agree otherwise.

Essential Energy will continue to charge for Metering Coordinator and associated services in line with the existing administrative and financial arrangements between us and in accordance with the NER.

Retailer/Metering Coordinator Requested Planned Interruptions

The changes in the NERR include the introduction of a Retailer Planned Interruption (under Division 9A) and the facilitation of an interruption by a Metering Coordinator when a Retailer Planned Interruption cannot be undertaken (under NERR 91A). In this letter, we also wish to establish a framework for managing Retailer/Metering Coordinator Requested Planned Interruptions, from 1 December 2017.

In particular, where a Retailer/Metering Coordinator Requested Planned Interruption is to occur:

- You must provide us with the information we require to enable us to carry out our obligations under NERR 90 and 91.
- So that we can plan for and accommodate the interruption, you must provide us with at least 25 Business Days' notice.
- Interruptions will commence at 10am on the date requested, unless otherwise agreed.
- We may charge you a reasonable fee for the costs incurred by us in facilitating the interruption.

If you have any questions or comments concerning the new arrangements please contact me on 13 23 91.

Yours sincerely

Graeme Ferguson
Market Liaison Manager



ESSENTIAL ENERGY STANDARD TERMS AND CONDITIONS FOR PROVISION OF METERING COORDINATOR SERVICES

PARTIES **ESSENTIAL ENERGY** ABN 37 428 185 226
of PO Box 5730, Port Macquarie NSW 2444
("Essential Energy")

AND The Retailer or Financially Responsible Market Participant to whom these terms and conditions were provided
("You")

BACKGROUND

- A. Essential Energy is registered with AEMO as a Metering Coordinator under Chapter 2 of the *National Electricity Rules* or NER, and engages in the coordination and provision of Metering Coordinator Services.
- B. This Agreement sets out the terms and conditions upon which Essential Energy will act as a Metering Coordinator with respect to a type 5 or type 6 Metering Installation from 1 December 2017 for each Connection Point for which you are the FRMP and for which Essential Energy was previously the Responsible Person.
- C. This Agreement also sets out the terms and conditions upon which Essential Energy will act as a Metering Coordinator with respect to a type 7 Metering Installation for each Connection Point for which you are the FRMP at any time from 1 December 2017.

1 INTERPRETATION

- 1.1 In this Agreement, unless otherwise defined, capitalised words and phrases have the meaning given to them in the NER, NERR or in clause 15.

2 SUPPLY OF SERVICES

- 2.1 Essential Energy will supply, and you will acquire, the Services on the terms set out in this Agreement.
- 2.2 Essential Energy represents and warrants that it at all times will be suitably qualified and experienced, and will exercise due skill, care and diligence in the execution and completion of the Services.
- 2.3 You acknowledge that the Services are contestable services and that you may appoint a different Metering Coordinator for any or all Relevant Connection Points. You have agreed to appoint Essential Energy to perform the Services.

3 TERM

- 3.1 For a connection point, which is a Relevant Connection Point on 1 December 2017, this Agreement is deemed to commence on 1 December 2017.

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- 3.2** For each connection point connected to Essential Energy’s Distribution System with a Type 7 Metering Installation for which you become the FRMP after 1 December 2017, this Agreement commences on the date that the connection point becomes a Relevant Connection Point (i.e. the date that you become the FRMP for the connection point in MSATS).
- 3.3** Essential Energy will supply the Services for all Relevant Connection Points until such time as you terminate this Agreement in accordance with clause 11 of this Agreement.
- 3.4** Despite anything contrary in this Agreement, and in accordance with rule 11.86.7 of the NER, you appoint Essential Energy as Metering Coordinator for each Relevant Connection Point until the earlier of:
- (1) the services provided with respect to the Metering Installation ceasing to be classified by the AER as Direct Control Services; and
 - (2) a different Metering Coordinator being appointed for that Relevant Connection Point under Chapter 7 of the NER, following a termination process activated by you under clause 11 of this Agreement.

4 REGULATORY COMPLIANCE & GENERAL OBLIGATIONS

- 4.1** Essential Energy will provide Services to you in accordance with Chapter 7 of the NER and Schedule 1 to this Agreement. To the extent of any inconsistency, Chapter 7 of the NER will prevail.
- 4.2** Each Party must comply, and must ensure that its employees, subcontractors and agents comply, with all Laws in connection with its obligations under this Agreement, including Chapter 7 of the NER, the Metrology Procedure and the MSATS Procedures.
- 4.3** You must provide Essential Energy with any information reasonably required by it for the purposes of Essential Energy fulfilling the Services, including anything required under the NERR.

5 METERING INSTALLATION MALFUNCTIONS

- 5.1** Essential Energy will promptly notify you of a Metering Installation Malfunction which occurs to a Metering Installation, other than the installations referred to in rule 7.8.10(a)(1) of new Chapter 7 of the NER from 1 December 2017.
- 5.2** If you receive a notice referred to in clause 5.1 of this Agreement, you must promptly appoint a Metering Coordinator for the Relevant Connection Point.

6 CHARGES AND PAYMENTS

- 6.1** You must pay Essential Energy the Charges for the Services.
- 6.2** Essential Energy will render invoices for the Charges in accordance with established processes we have with you, including under Chapter 6B of the NER. The invoices will contain information which is reasonably sufficient to allow you to fully assess the accuracy of the Charges specified therein.

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- 6.3** You must direct an amount payable under clause 6.2 of this Agreement to Essential Energy in accordance with established processes we have with you, including under Chapter 6B of the NER.
- 6.4** For the avoidance of doubt, the parties agree that Chapter 6B of the NER applies to the Services provided by Essential Energy under this Agreement and that they will comply with Chapter 6B accordingly.

7 GST

- 7.1** Save for defined terms in this Agreement, words or expressions used in this clause 7 which have a particular meaning in the GST law (as defined in the GST Act) and including any applicable legislative determinations and Australian Taxation Office public rulings, have the same meaning, unless the context otherwise requires.
- 7.2** Except where express provision is made to the contrary, and subject to this clause 7, the consideration to be paid or provided under or in connection with this Agreement is exclusive of any GST.
- 7.3** To the extent that any supply made under or in connection with this Agreement is a taxable supply, the GST exclusive consideration to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is to be paid or provided.
- 7.4** To the extent that one Party is required to reimburse another Party for costs incurred by the other Party, those costs do not include any amount in respect of GST for which the other Party is entitled to claim an input tax credit.
- 7.5** To the extent that any consideration payable to a Party under or in connection with this Agreement is determined by reference to a cost incurred by a Party, or is determined by reference to a price, value, sales, revenue or similar amount, the GST exclusive amount of that cost, price, value, sales, revenue or similar amount must be used.
- 7.6** A Party's right to payment of the GST under this Agreement is subject to a valid tax invoice being delivered to the recipient of the taxable supply.
- 7.7** To the extent that any consideration to be paid or provided under this Agreement represents a decreasing or increasing adjustment in relation to a taxable supply:
- (1) the supplier must provide a refund or credit to the recipient, or the recipient must pay a further amount to the supplier, as appropriate on account of GST; and
 - (2) the supplier must, notify the recipient of the refund, credit or further amount payable on account of GST by the supplier issuing to the recipient an adjustment note (or a cancellation note together with a tax invoice). The amount of the refund, credit or further amount payable on account of GST must be paid within 10 business days of receipt of the adjustment note or tax invoice.

8 METER OWNERSHIP

- 8.1** Essential Energy owns the Type 5 or Type 6 Metering Installation at a Relevant Connection Point and will continue to do so until such time as a new Metering Installation is installed at that Relevant Connection Point by a person other than Essential Energy (or its employee, contractor, or agent), subject to clause 8.3.
- 8.2** For the avoidance of doubt, where a Type 5 or Type 6 Metering Installation is replaced, then:
- (1) Essential Energy will own any pre-existing network devices; and
 - (2) the new Metering Coordinator will own the new Metering Installation.
- 8.3** If a new Metering Installation is installed, whether or not Essential Energy remains the Metering Coordinator at the Relevant Connection Point, Essential Energy may still charge you to recover its previous capital expenditure on the old Metering Installation, if entitled to do so under the NER.

9 LIABILITY

- 9.1** To the extent permitted by law, Essential Energy gives no condition, warranty or undertaking, and makes no representation to you, about the condition or suitability of the Services, its quality, fitness for purpose or safety, other than those set out in this Agreement.
- 9.2** Essential Energy's maximum aggregate liability to you under, arising out of or in any way connected with this Agreement, without limitation, by way of indemnity, for breach of contract, in tort (including negligence), in equity, under statute or otherwise, is limited to the total amount charged by Essential Energy for Services provided under this Agreement in relation to the Relevant Connection Point for the 12 months immediately preceding the act or omission giving rise to the liability.
- 9.3** Despite any other provision of this Agreement to the contrary, to the extent permitted by law, Essential Energy shall not be liable to you whether under, arising out of in any way connected with this Agreement, without limitation, by way of indemnity, for breach of contract, in tort (including negligence), in equity, under statute or otherwise for any:
- (1) loss of profit;
 - (2) anticipated loss of profit;
 - (3) loss of production;
 - (4) loss of opportunity;
 - (5) loss of use; or
 - (6) indirect, special or consequential loss or damage.

9.4 The terms of this Agreement do not represent a waiver by Essential Energy of, nor an agreement to vary or exclude, any limitation of its liability under sections 119 or 120 of the NEL and section 316 of the NERL.

10 NOTICES AND BILLS

10.1 Notices and bills (where relevant) in relation to Services provided to you in accordance with this Agreement will be sent in writing, unless the NER says otherwise.

10.2 A notice or bill sent under this Agreement is taken to have been received:

- (1) on the date it is handed to you, left at your registered office (in your case) or one of our offices (which excludes depots) (in our case); or
- (2) on the date 3 Business Days after it is posted; or
- (3) on the date of transmission (unless the sender receives notice that delivery did not occur or has been delayed) if sent electronically and the use of electronic communication has been agreed between us.

11 TERMINATION

11.1 Essential Energy's obligation to provide you with Services relating to a **Type 5 or Type 6** Metering Installation at a Relevant Connection Point will be terminated on the earliest of the following dates, as recoded in MSATS (where applicable):

- (1) you cease to be the Financially Responsible Market Participant;
- (2) Essential Energy ceases to be the Local Network Service Provider;
- (3) appointment by you of a new Metering Coordinator; or
- (4) installation of a new Metering Installation at the relevant Connection Point by a person other than Essential Energy (or its employee, contractor, or agent).

11.2 Essential Energy's obligation to provide you with Services relating to a **Type 7** Metering Installation at a Relevant Connection Point will be terminated on the earlier of the following dates:

- (1) you cease to be the Financially Responsible Market Participant;
- (2) Essential Energy ceases to be the Local Network Service Provider; or
- (3) Essential Energy is otherwise no longer required to be the Metering Coordinator in respect of a type 7 Metering under the NER and the parties have made other arrangements accordingly.

11.3 Despite clause 11.1, if Essential Energy has ceased to act as Metering Coordinator at a relevant Connection Point, but Essential Energy continues to act as a Metering Provider and/or Metering Data Provider for that Connection Point, then Essential Energy will continue to charge for the provision of those

services until such time as a new Metering Installation is installed by the new Metering Provider.

- 11.4** Rights and obligations accrued before the end of the Agreement in relation to a Relevant Connection Point continue despite the end of the Agreement, including any obligations to pay amounts to Essential Energy.

12 CONFIDENTIALITY AND PRIVACY

- 12.1** Each Party must keep the Confidential Information of the other Party confidential, and must not disclose any such Confidential Information to any other person except:

- (1) to agents, employees, legal advisers, auditors and other professional consultants of the recipient or its affiliates who require the information for the purposes of this Agreement;
- (2) with the consent of the party which supplied the information; or
- (3) if the recipient is required to do so by Law.

- 12.2** Each party must comply with:

- (1) the reasonable directions of the other Party in relation to the handling of any Personal Information held or controlled by the first Party; and
- (2) the Privacy Act 1988 (Cth).

- 12.3** Each Party must immediately notify the other Party on becoming aware of a suspected or actual breach of this clause 12.

13 DISPUTE RESOLUTION

- 13.1** Neither Party may initiate arbitration or court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute under this Agreement unless it has first complied with this clause.

- 13.2** The Party claiming that a dispute has arisen under this Agreement must give the other Party written notice of the dispute.

- 13.3** Within 10 business days after a notice is given under clause 13.2, each party must nominate, in writing to the other party, a representative authorised to settle the dispute on its behalf, and the two representatives must meet within 20 days of the notice given under clause 13.2 to discuss the dispute.

- 13.4** If the dispute is not resolved within 10 business days after the representatives meet, the matter will be referred to each Party's respective chief executive officer (or equivalent), and if the dispute is not resolved within 10 business days of referral to the respective chief executive officers (or equivalent), either Party may refer the dispute:

- (1) for mediation, in accordance with the Australian Disputes Centre Guidelines for Commercial Mediation (or other guidelines as agreed parties); and

- (2) To a mediator agreed by the parties, or if the Parties do not agree on a mediator, a mediator nominated by an authorised representative of the Australian Disputes Centre (or other dispute resolution service as agreed by the parties).

13.5 If the dispute is not resolved under clause 13.4 within 10 business days, or any longer period as agreed in writing by the parties, either Party may initiate court proceedings.

13.6 Each party must bear its own costs of complying with this clause.

14 GENERAL

14.1 Essential Energy may amend this Agreement on 30 days' written notice to you in order to maintain consistency with the Law. Otherwise, these terms and conditions may only be amended with the written agreement of both parties.

14.2 We may novate or assign our rights and obligations under this Agreement on 30 days' written notice to you.

14.3 The laws of New South Wales govern this Agreement.

14.4 Clauses 5, 8, 9, 11 and 12 of this Agreement survive termination of this Agreement.

15 DEFINITIONS

15.1 In this Agreement:

AER means the Australian Energy Regulator;

Agreement means this document and any Schedules or Annexures to it;

Business Day means a day other than a Saturday, a Sunday or a public holiday in New South Wales;

Charges are as set out in Schedule 2;

Confidential Information means all confidential, non-public or proprietary information of a party, whether created or exchanged before or after the commencement of this Agreement;

GST has the meaning given in the GST Act;

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

Law means Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth, a State, a Territory or any other authority which applies to the Services supplied under this Agreement or any part thereof is being carried out and includes the NEL, NERL, NER and NERR;

MSATS means the Market Settlement and Transfer Solution administered by the Australian Energy Market Operator;

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NEL means the National Electricity (NSW) Law, as in force from time to time;

NERL means the National Energy Retail (NSW) Law, as in force from time to time;

NER means the National Electricity Rules, as in force from time to time, made under the NEL;

NERR means the National Energy Retail Rules, as in force from time to time, made under the NERL;

Personal Information has the meaning given to it in the Privacy Act 1988 (Cth);

Party means you and/or Essential Energy;

Relevant Connection Point means:

- for Type 5 and Type 6 Metering Installations - a Connection Point for which you are the FRMP and, immediately before 1 December 2017, Essential Energy was the Responsible Person;
- for Type 7 Metering Installations – a Connection Point connected to our Distribution System, for which you are the FRMP;

Services means services to be performed under this Agreement as set out in Schedule 1.

Type 5, Type 6 or Type 7 means the type of Metering Installation determined under the NER and recorded in MSATS.

SCHEDULE 1 – SERVICES

A. Scope of Appointment

- i. Essential Energy will supply Metering Coordinator Services at the Relevant Connection Points as a Metering Coordinator, and within its approvals under Chapter 2 of the NER.
- ii. The scope of the Services include:
 - a. maintenance of Type 5, Type 6 and Type 7 Metering Installations at Relevant Connection Points;
 - b. collection of Metering Data from each type 5, 6 and 7 Metering Installation for each Relevant Connection Point, the processing of that data and the delivery of the processed data to the Metering Database and to parties entitled to that data under the NER;
 - c. retention of Metering Data in the Metering Data Services Database in accordance with the minimum requirements of clause 7.10.2 of the NER; and

B. Compliance with Chapter 7 of the NER

- i. For each Relevant Connection Point, Essential Energy will provide Services in accordance with Chapter 7 of the NER.
- ii. Essential Energy is not required to meet the requirements of clause 2.4A.2(a)(4) of the NER except if, immediately before 1 December 2017, it was the Responsible Person for Metering Installations that would fall within the definition of Small Customer Metering Installations.
- iii. Essential Energy is not obliged to comply with clause 7.8.10(a)(2) of the NER.

C. Time and Delay

- i. Essential Energy shall use its reasonable endeavours to provide the Services with due expedition and without delay and within any times set out in this Agreement, or required under the NER or NERR.
- ii. If Essential Energy is or will be delayed in carrying out Services by a cause beyond the reasonable control of Essential Energy, the time for completion shall be extended by the extent of the delay.



SCHEDULE 2 – CHARGES

A. Services

Services provided by Essential Energy will be charged for at the AER-determined rates in accordance with Chapter 6 of the NER and as outlined in Essential Energy's Price Schedule for metering services, published from time to time on the Essential Energy website.

B. Other Services

If Essential Energy provides other services under this Agreement not covered by those services in Item A, the charges will be in accordance with any quotation for works provided by Essential Energy.