

Deemed Retailer of Last Resort Electricity Sale Agreement for Large Market Customers

Effective March 2025



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1. This Agreement

- (a) This 'Deemed Retailer of Last Resort Electricity Sale Agreement for Large Market Customers', constitutes the agreement between Jacana Energy and the Customer for the sale of electricity for the Premises (**Agreement**).
- (b) This Agreement:
 - i) sets out the terms and conditions that apply to customers who consume 750MWh of electricity per annum or more and have been transferred to Jacana Energy (as the Retailer of Last Resort) as a result of a Retailer of Last Resort Event; and
 - ii) applies to business and commercial customers only; and
 - iii) does not apply to residential customers.

2. Sale & Purchase of Electricity

2.1 Sale and purchase

- (a) From the Start Date, Jacana Energy agrees to sell electricity to the Customer at the Connection Point, and the Customer agrees to purchase electricity from Jacana Energy at the Connection Point, in accordance with the terms of this Agreement.
- (b) Title to, and risk in, electricity passes to the Customer at the Connection Point.

2.2 Premises transfer

The Customer acknowledges that:

- (a) the Premises has been transferred from the Failed Retailer to Jacana Energy because:
 - i) there was a Retailer of Last Resort Event in respect of the Failed Retailer; and
 - ii) Jacana Energy is the Retailer of Last Resort;
- (b) the transfer of the Premises from the Failed Retailer to Jacana Energy was effected in accordance with the RoLR Regime; and
- (c) such transfer to Jacana Energy may involve the disclosure of information relating to the sale and supply of electricity at the Premises, and consents Jacana Energy to being provided with any historical consumption data as required.

2.3 Physical supply not part of this Agreement

- (a) Jacana Energy is not responsible for the physical connection of the Customer's Premises to the Network or for delivering or conveying electricity to the Connection Point through the Network.
- (b) The physical connection of the Customer's Premises to the Network and the provision of Network Services will be addressed in the Connection Agreement for the Connection Point.
- (c) Network Services may be subject to interruptions, fluctuations or distortions (in voltage magnitude, voltage waveform or frequency) or other limitations. Jacana Energy cannot (via its arrangements with a Network Provider or otherwise) control the continuity of

Network Services or the quality or other characteristics of the electricity supply through the Network to the Connection Points.

2.4 Term of Agreement

This Agreement commences on the Start Date and continues until it is terminated in accordance with clause 7.

3. Charges

3.1 Energy Charges

- (a) The Customer must pay the Energy Charges for all electricity delivered at the Connection Point in accordance with this clause 3.
- (b) The Energy Charges will be calculated by multiplying the electricity consumption data for the Connection Point (subject to clause 8) by the applicable Energy Charge Rates.

3.2 Energy Charge Rates

- (a) Where:
 - i) there is an Electricity Pricing Order that sets out Electricity Pricing Order Tariffs that apply to customers impacted by a Retailer of Last Resort in accordance with the RoLR Regime; and
 - ii) those Electricity Pricing Order Tariffs apply to the Customer and the Customer's electricity consumption at the Connection Point, the applicable Energy Charge Rates will be the Electricity Pricing Order Tariffs.

- (b) Where:
 - i) there is no Electricity Pricing Order that sets out Electricity Pricing Order Tariffs that apply to customers impacted by a Retailer of Last Resort in accordance with the RoLR Regime; or
 - ii) there is an Electricity Pricing Order that sets out Electricity Pricing Order Tariffs that apply to customers impacted by a Retailer of Last Resort in accordance with the RoLR Regime but those Electricity Pricing Order Tariffs do not apply to the Customer (for whatever reason including because the Customer or the Customer's electricity consumption at the Connection Point does not meet the requirements specified in the Electricity Pricing Order), the applicable Energy Charge Rates will be the Default Rates.

3.3 Other Charges

Where:

- (a) there is an Electricity Pricing Order that applies to the Customer and the Customer's electricity consumption at the Connection Point; and
- (b) that Electricity Pricing Order sets out other costs and charges (other than the Energy Charges) that Jacana Energy is entitled to charge the Customer,

(Other Charges) Jacana Energy is also entitled to charge the Customer such Other Charges.

3.4 Pass Through Charges

The Customer also agrees to pay Jacana Energy all Pass Through Charges applicable to the sale of electricity at the Premises.

3.5 Environmental Charges

- (a) The Customer must pay the Environmental Charges determined by Jacana Energy using the electricity consumption data for the Connection Point.
- (b) The Environmental Charges will be calculated on a per certificate basis by reference to the Certificate Cost and the prevailing Liability Percentage.
- (c) The Liability Percentage is subject to change in accordance with the Renewable Energy Act. The Environmental Charges will be varied by Jacana Energy during the term of this Agreement to reflect changes in the prevailing Liability Percentage.

3.6 Goods and Services Tax

- (a) Unless expressly stated otherwise, all amounts under this Agreement are GST exclusive amounts.
- (b) If any GST is or becomes payable in respect of a taxable supply of goods or services under this Agreement, the Charges payable by the Customer for that taxable supply of goods or services will be increased by an amount equal to the GST payable.
- (c) Jacana Energy must provide the Customer with a tax invoice in respect of any taxable supply under this Agreement.
- (d) Terms used in this clause 3.6 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the meaning given in that Act.

4. Invoices and Payment

4.1 Invoices

- (a) Jacana Energy will prepare and send an invoice to the Customer for the Charges and any other payments due under this Agreement for each Billing Period.
- (b) Invoices will be tax invoices within the meaning given in clause 3.6.
- (c) An invoice issued to the Customer by Jacana Energy under this clause 4 may, to the extent permitted by Law, include amounts for unbilled Charges for a previous invoicing period, or may adjust the amounts that were billed for a previous invoicing period.

4.2 Payment and Interest

- (a) The Customer will pay all invoices issued in full, without deduction or set-off, and including any disputed amount, by the Payment Date.
- (b) If the Customer does not pay any invoice by the Payment Date, Jacana Energy may, in addition to any other remedies it may have, charge the Customer interest on any outstanding amount.

- (c) Interest will:
- i) accrue daily at the Bank Bill Rate plus 2 per cent per annum for each day from the day on which the amount became due and payable until it is paid;
 - ii) be calculated on actual days elapsed and a 365 day year; and
 - iii) to the extent reasonably practicable, be included on the next invoice from Jacana Energy to the Customer and payable on the due date for payment of that invoice.

4.3 Disputed amounts

- (a) If the Customer disputes any amount shown on an invoice, the Customer must, prior to the Payment Date, give Jacana Energy notice in writing of the grounds of the dispute.
- (b) A senior manager of each of the parties will meet within 10 Business Days of the notice of dispute being received and shall use their reasonable endeavours to resolve the dispute.
- (c) If the dispute has not been resolved within a reasonable period of the commencement of discussions between the senior managers, the chief executive officers of each party, or their nominees, will meet and use reasonable endeavours to resolve the dispute.
- (d) Neither party may commence legal proceedings concerning a matter in dispute unless the parties have attempted to resolve the matter in accordance with clauses 4.3(a) to 4.3(c).

5. Credit Worthiness and Security

- (a) Jacana Energy may carry out credit worthiness checks on the Customer prior to the Start Date or at any time during the term of the Agreement.
- (b) Despite clause 4, if Jacana Energy, acting reasonably, assesses the Customer as having unsatisfactory credit worthiness, or believes on reasonable grounds that the Customer may not be able to duly and properly perform its obligations under this Agreement (including where the Customer has failed to pay an invoice by the due date for payment), Jacana Energy may, in writing, require the Customer to:
 - i) make advance payments to Jacana Energy; or
 - ii) provide security to Jacana Energy.
- (c) Where clause 5(b)ii) applies:
 - i) the security must be in a form acceptable to Jacana Energy (acting reasonably); and
 - ii) any costs incurred in providing the security will be borne by the Customer.
- (d) The need for, and amount of, any security or advance payment will be reviewed by Jacana Energy from time to time.
- (e) Jacana Energy must, no later than three months after the termination of this Agreement, release any security or advance payment, provided that there are no outstanding debts or disputes and that the Customer has complied with all of its obligations under the Agreement.

6. Disconnection & Reconnection

6.1 Grounds for Disconnection

Jacana Energy may, to the extent permitted by Law, request the Network Provider to disconnect the Connection Point:

- (a) if the Customer has failed to pay any Charges by the due date for payment and has not made the relevant payment within 5 Business Days' notice of that default;
- (b) if the Customer has breached any other provision of this Agreement and has not remedied that breach within a reasonable period notified by Jacana Energy; or
- (c) if the Customer has failed to comply with any security or advance payment requirements imposed by Jacana Energy in accordance with clause 5; or
- (d) where Jacana Energy is permitted or required by Law to request or require the disconnection.

6.2 Disconnection by Network Provider

The Customer acknowledges that there may be circumstances in which the Network Provider is permitted to disconnect the Connection Point other than where Jacana Energy makes a request under clause 6.1.

6.3 Disconnection & Termination

Unless expressly otherwise provided in this Agreement, the disconnection of the Connection Point, for any reason, does not itself constitute termination of this Agreement in respect of that Connection Point, nor will it prevent Jacana Energy from exercising any other rights it may have under this Agreement.

6.4 Disconnection costs

Jacana Energy may charge the Customer for any cost it reasonably incurs in requesting or arranging disconnection of the Connection Point.

6.5 Reconnection

Jacana Energy may request or arrange for the reconnection of the Connection Point, once it is satisfied that the grounds for disconnection no longer apply, or where it is required to do so by Law. The Customer must pay any costs reasonably incurred by Jacana Energy in requesting or arranging for the reconnection.

7. Termination

7.1 Termination of Agreement

- (a) Either party may terminate this Agreement by providing the other party with at least 14 days' notice.
- (b) Jacana Energy may immediately terminate this Agreement by notice in writing if an Insolvency Event occurs in respect of the Customer.

- (c) Either party may terminate this Agreement by notice in writing if the other party breaches a material provision of this Agreement and has not remedied the breach within a reasonable period of being notified by the party that is not in breach.

7.2 Sale of electricity after termination

- (a) If this Agreement is terminated under this clause 7, Jacana Energy may continue to sell electricity to the Customer at the Connection Point until the Customer has been Transferred to another electricity retailer in respect of that Connection Point.
- (b) The terms and conditions of this Agreement will apply in respect of any sale of electricity by Jacana Energy under clause 7.2(a), except that the Charges payable to Jacana Energy in respect of electricity purchased at the Connection Point will be the amount reasonably determined by Jacana Energy from time to time to reflect the cost to Jacana Energy of selling the electricity at the Connection Point, plus a reasonable margin.

8. Access and Metering

8.1 Access

- (a) The Customer agrees to give Jacana Energy (and Jacana Energy's representatives, the Network Provider and the meter reader) safe and unhindered access to each Premises and Connection Point for the connection, disconnection, and reconnection of the Connection Point and for the installation, testing, maintenance and reading of any meter.
- (b) Where Jacana Energy or its representative requires access to a Premises, Jacana Energy will use reasonable endeavours to give the Customer notice of its intention to enter the Premises, except:
 - i) where entry is during business hours on a Business Day for the purpose of reading or inspecting a meter; or
 - ii) in the case of an emergency.

8.2 Metering

- (a) The quantity of electricity sold under this Agreement is to be determined by readings of the meter(s) located at the Connection Point unless this Agreement specifies that another method may be used. The recording of metering equipment at the Connection Point is prima facie evidence of the amount of electricity sold at that Connection Point.
- (b) The Charges in an invoice may, to the extent permitted by Law, be based upon estimated data where:
 - i) access to the meter(s) is denied for any reason;
 - ii) it is not reasonably practicable, in Jacana Energy's reasonable opinion, to obtain a reading of the meter(s);
 - iii) the metering equipment is providing incorrect readings for any reason; or

- iv) Jacana Energy determines that electricity has been supplied to the Connection Point without passing through the metering equipment.
- (c) Where the Charges in an invoice are based on estimated data, the amount payable will be determined by Jacana Energy in accordance with the requirements of any Law, and may be determined by reference to prior billing history or any other criteria Jacana Energy reasonably considers are relevant. If a bill is based upon estimated data and actual data subsequently becomes available, Jacana Energy will include an adjustment on a later invoice.

9. Liability

9.1 Acknowledgement

The Customer acknowledges that:

- (a) the quality, frequency and continuity of the supply of electricity are subject to a variety of factors which include accidents, weather and acts of third parties; and
- (b) Jacana Energy cannot and does not guarantee to the Customer or any third party the quality or frequency of electricity or the continuity of supply of electricity otherwise than in accordance with any express obligations under this Agreement.

9.2 Application

- (a) This clause 9 applies:
 - i) notwithstanding any other provision of this Agreement; and
 - ii) to the extent permitted by Law.
- (b) In this clause 9, **Claim** means any claim arising:
 - i) out of, or in any way in connection with, this Agreement;
 - ii) out of, or in any way in connection with, the sale or supply of electricity to the Customer, or either party's conduct in connection with this Agreement; and
 - iii) otherwise at law or in equity including:
 - A. by statute;
 - B. in tort for negligence or otherwise, including negligent misrepresentation; or
 - C. for restitution.

9.3 Limitation of liability

To the full extent permitted by Law, Jacana Energy will have no liability for:

- (a) any Claim by the Customer for any loss of revenue or profit, loss of business opportunity or goodwill, any claims for indirect, special or punitive damages, or any other indirect or consequential losses suffered by the Customer however arising in respect of any circumstances under or in relation to this Agreement;
- (b) any Claim against the Customer as a result of a claim by a third party; or
- (c) any Claim to or by any third party.

9.4 Implied warranties

- (a) The *Competition and Consumer Act 2010* (Cth) and other Laws provide that certain conditions, consumer guarantees and rights apply to contracts with consumers (as defined in that legislation) that cannot be excluded or limited.
- (b) To the extent permitted by Law, any liability Jacana Energy has to the Customer for breach of a condition, guarantee, right or representation applying to this Agreement that is implied by law and cannot be excluded but can be limited, will (at Jacana Energy's option) be limited to:
 - i) providing to the Customer equivalent goods or services to those goods or services to which that breach relates; or
 - ii) paying the Customer the cost of acquiring goods or services which are equivalent to the goods or services to which that breach relates.

9.5 Statutory immunity

The limitations of liability contained in clause 9 are in addition to any immunities from, or limitation of, liability contained in the Act or the National Electricity Law (NT).

9.6 No Third Party Duties

Jacana Energy and the Customer each acknowledges that the provisions of this Agreement bind and are for the benefit only of Jacana Energy and the Customer and do not give rise to any duty or obligation to any third party.

10. Force Majeure

10.1 Event of Force Majeure

If either party is prevented from, hindered or delayed in performing any of its obligations (whether in whole or part) under this Agreement by any Event of Force Majeure, and as long as the situation constituting that Event of Force Majeure continues, then, provided that party has complied with clause 10.2:

- (a) that party will not be in breach of this Agreement and will be excused from performance of such obligations (other than any obligation to pay an amount, including the Charges, as and when due and payable) to the extent it is so prevented, hindered or delayed; and
- (b) the time for performance of such obligation will be extended accordingly.

10.2 Notice of Force Majeure and obligation to minimise effect

- (a) A party affected by an Event of Force Majeure must:
 - i) as soon as reasonably possible notify the other party of its occurrence and its effect;
 - ii) update the notice given under paragraph (i) from time to time; and
 - iii) use all reasonable endeavours to minimise the effect of the Event of Force Majeure and bring it to an end as quickly as possible.

- (b) Compliance with clause 10.2(a) is a precondition to the application of clause 10.1.
- (c) Nothing in this Agreement will require a party to settle a strike or other labour disturbance on terms and conditions not to its satisfaction.

11. Confidentiality

11.1 General obligation

- (a) For the purposes of this Agreement, **Confidential Information** means:
 - i) the terms of this Agreement and the operations and dealings under this Agreement; and
 - ii) all information exchanged between the parties under this Agreement or during the negotiations preceding the signing of this Agreement, but excludes information which is in the public domain or which is lawfully obtained from another source.
- (b) Except as otherwise permitted in this Agreement:
 - i) each party (**Recipient**) must treat as confidential all Confidential Information of the other party (**Disclosing Party**) in its possession;
 - ii) a Recipient may not disclose Confidential Information of the Disclosing Party to third parties without the prior written consent of the Disclosing Party; and
 - iii) a Recipient must take reasonable precautions to ensure that its representatives maintain the confidentiality of that Confidential Information.
- (c) A party disclosing information under this clause 11 must use reasonable endeavours to ensure the persons receiving Confidential Information from it do not disclose the information except in the circumstances permitted in clause 11.

11.2 Permitted disclosures

- (a) A Recipient may make such disclosures of Confidential Information as are required by Law or by the rules of any recognised stock exchange or by an authority having jurisdiction over the Recipient.
- (b) If the Recipient of Confidential Information is a “government owned corporation” (as that term is defined in the *Government Owned Corporations Act (NT)*), the Recipient may make such disclosures of Confidential Information as are required by its shareholding Minister, or disclosures that are reasonably required as part of a parliamentary process, provided that a person to whom the Confidential Information is disclosed is advised of its confidential nature and requested to hold the Confidential Information in confidence, and that the disclosure of that information does not result in a breach of any Law.
- (c) A Recipient may disclose Confidential Information to any of the undermentioned persons whose legitimate interests reasonably require disclosure and who have first agreed in writing with the Disclosing Party to be bound by the confidentiality obligations imposed upon the Recipient under this Agreement:
 - i) any financier or prospective financier;

- ii) recognised ratings agency;
 - iii) any employee or any professional adviser;
 - iv) any assignee or bona fide prospective assignee; or
 - v) any third party in connection with the proposed disposal of the Recipient, any of its substantial assets or all or a significant part of its business undertaking.
- (d) If this Agreement permits a Recipient to disclose Confidential Information to another person for a purpose, the Recipient shall use all reasonable endeavours to limit the disclosure to those matters which reasonably need to be disclosed in order to accomplish that purpose.

11.3 Notice of disclosure to be given

To the extent practicable, before disclosing Confidential Information in reliance on clause 11.2, a Recipient must give reasonable notice to the Disclosing Party that its Confidential Information is going to be disclosed, including in that notice reasonable details of the circumstances of the proposed disclosure.

11.4 Creditworthiness

Despite anything in this clause 11, Jacana Energy may disclose Confidential Information where the disclosure is:

- (a) required to verify the creditworthiness of the Customer;
- (b) required for the purposes of recovering any amounts owed by the Customer under this Agreement; or
- (c) required for Jacana Energy to carry out its obligations under this Agreement.

11.5 Clause survives termination

The rights and obligations contained in this clause 11 shall survive termination of this Agreement, and shall continue in full force and effect after such termination for 5 years.

11.6 Information not deemed publicly available

For the purposes of this Agreement, information is not generally and publicly available merely because it is known to an authority, a Generator, a Network Provider or another electricity retailer.

11.7 Customer information and data

Despite anything else in this Agreement, Jacana Energy may provide information or data relating to the Customer, the Connection Point or a Premises to a Generator, Network Provider, System Operator or any other person who reasonably requires that information or data in connection with the sale or supply of electricity at the Connection Points.

12. Disputes

12.1 Application of this clause

- (a) Before commencing any court proceedings, a party must, subject to clause 12.1(b), seek to resolve a dispute in accordance with this clause 12.
- (b) Nothing in this clause 12 affects either party's right to seek urgent interlocutory or injunctive relief.

12.2 Notification of dispute

A party must notify the other party as soon as is reasonably practicable if it considers that a dispute has arisen in respect of the subject matter of this Agreement.

12.3 Good faith negotiations

Within 5 Business Days of a party giving notice under clause 12.2, a representative of each party must meet and use their reasonable endeavours, acting in good faith, to resolve the dispute by negotiation.

12.4 Executive negotiations

If the dispute is not resolved within 10 Business Days of commencing negotiations under clause 12.3, the matter must be referred by the parties to the Chief Executive Officer or other appropriate executive officer of each party, who must meet and use their reasonable endeavours, acting in good faith, to resolve the dispute.

13. Notices

13.1 Methods of giving Notices

- (a) Any notice, approval, consent, demand or other communication (in this clause 13 called a **Notice**) given under this Agreement must be in writing, signed by or on behalf of the person giving it, and sent to:
 - i) in respect of Jacana Energy;
 - ii) in respect of the Customer, the postal address and/or email address notified to Jacana Energy by the network provider in accordance with relevant Laws, or such other address as notified pursuant to clause 13.3.
- (b) Any Notice must be:
 - i) hand delivered to that party's address;
 - ii) sent by pre-paid mail to that party's address; or
 - iii) transmitted by email to that party's email address.

13.2 Receipt of Notices

A Notice given to a person in accordance with this clause 13 is treated as having been given and received:

- (a) if hand delivered, on the day of delivery if a Business Day, otherwise on the next Business Day;
- (b) if sent by pre-paid mail, on the fifth Business Day following posting if posted within Australia or the twelfth Business Day following posting if posted outside Australia; and
- (c) if transmitted by email, when the sender's email system generates a report indicating the sender's date, time and transmission to the recipient's email address.

13.3 Change of address

Either party must notify the other of any change of address for service of notices within 7 days of the change.

14. General Provisions

14.1 Governing Law

This Agreement is governed by the laws of the Northern Territory and the parties submit to the jurisdiction of the courts of the Northern Territory.

14.2 Assignment

Jacana Energy may assign, transfer or novate this Agreement without the Customer's consent by notice to the Customer.

14.3 Successors

This Agreement is binding on the parties and their respective successors and permitted assigns, and will be enforceable by and against the parties or those successors and assigns.

14.4 No representation or reliance

- (a) Each party acknowledges that neither party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this Agreement, except for representations or inducements expressly set out in this Agreement.
- (b) Each party acknowledges and confirms that it does not enter into this Agreement in reliance on any representation or other inducement by or on behalf of the other party, except for
- (c) representations or inducements expressly set out in this Agreement.

14.5 Waiver

A provision of this Agreement may only be waived by the parties by an instrument in writing signed by the authorised officer of each party specified in this Agreement.

14.6 Entire Agreement

This Agreement constitutes the entire agreement between the parties relating in any way to its subject matter.

14.7 Severability

A term or part of a term of this Agreement that is illegal or unenforceable may be severed from this Agreement and the remaining terms or parts of the term of this Agreement continue in force.

15. Definitions and Interpretation

15.1 Definitions

In this Agreement:

Act means the *Electricity Reform Act* (NT) and all regulations, notices, orders and other statutory instruments made or issued under that Act from time to time.

Agreement has the meaning given in clause 1(a).

Bank Bill Rate in respect of any day means the Bank Bill Swap Reference Rate for 30 days on that day (or if not a Business Day, then the previous Business Day) published in the Australian Financial Review.

Billing Period means a calendar month.

Business Day means any Week Day on which banks are open for trading in Darwin.

Certificate Cost means the certificate cost set out in the Pricing Schedule.

Charges means the charges payable by the Customer for the sale of electricity under this Agreement, and includes (as applicable) Energy Charges, Environmental Charges, Pass Through Charges and Other Charges.

Claim has the meaning given in clause 9.2(b).

Confidential Information has the meaning given in clause 11.1.

Connection Point means the point at which electricity is sold to the Customer at the Premises under this Agreement, being the point of connection between the Premises and a Network.

Connection Agreement means an agreement or deemed agreement between the Network Provider and the Customer for the connection of the Customer's Premises to the Network and for the provision of connection services to the Customer.

Corporations Act means the *Corporations Act 2001*(Cth).

Customer means a 'customer' as that term is defined in the Act, whose:

- (a) Premises has been transferred to Jacana Energy in accordance with the RoLR Regime as a result of the occurrence of a Retailer of Last Resort; and
- (b) consumption is 750MWh of electricity or more per annum, and is the subject of the terms of this Agreement by operation of the RoLR Regime.

Default Rates means the rates applicable to customers transferred to Jacana Energy as a result of a Retailer of Last Resort Event determined by Jacana Energy at its absolute discretion from time to time to reflect the cost to Jacana Energy of selling the electricity at the Connection Point, plus a reasonable margin. For the avoidance of doubt there may be different rates that may apply depending on the Customer's annual electricity consumption.

Disclosing Party has the meaning given in clause 11.1(b)i).

Electricity Pricing Order means a pricing order issued by the Treasurer under section 44 of the Act that regulates pricing for the sale of electricity to specified classes of customers.

Electricity Pricing Order Tariffs means the electricity tariffs set out in an Electricity Pricing Order.

Energy Charge Rates has the meaning given in clause 3.2.

Energy Charges means the charges payable by the Customer and described as such in clause 3.1.

Environmental Scheme means:

- (a) any Law, requirement or condition of a licence, permit, governmental consent or approval, imposed by any government (including a territory government) or governmental agency with respect to the production, emission, reduction, limitation, cessation, prevention, offset, sequestration or management of Greenhouse Gas emissions or concentrations; or
- (b) any mandatory environmental scheme designed to achieve a reduction in Greenhouse Gases, including any Greenhouse Gas abatement scheme, any carbon reduction scheme, any carbon trading scheme, any carbon tax, any mandatory renewable energy target or any similar scheme or tax.

Environmental Charges means the charges payable by the Customer and described as such in clause 3.2.

Event of Force Majeure means:

- (a) in relation to either party, any event outside a party's reasonable control, including:
 - i) any act of God, lightning, earthquake, storm, fire, flood, cyclone or natural disaster, explosion, action of the elements, malicious damage, act of a public enemy, blockade, radioactive contamination, toxic or dangerous chemical contamination, or force of nature;
 - ii) a war (declared or undeclared), military action, act of sabotage or vandalism, any riots, insurrection or civil disorder;
 - iii) any determination, award or order of any court or tribunal;
 - iv) any act or omission by a court, of government or any government instrumentality unrelated to that party;
 - v) any industrial dispute of any kind;
 - vi) any act or omission of any persons with facilities connected to the Network that affects the party's ability to perform its obligations under this Agreement; or
 - vii) any significant plant or equipment failure which could not have been avoided by the exercise by the affected party of Good Electricity Industry Practice; and
- (b) in relation to Jacana Energy, the failure of a supplier to Jacana Energy (including a Generator, wholesale supplier of electricity or Network Provider).

Failed Retailer has the meaning given to that term in the RoLR Regime.

Generator means a person holding a licence under the Act authorising the generation of electricity.

Good Electricity Industry Practice has the meaning given to that term in the National Electricity Rules (NT).

Greenhouse Gas has the same meaning as in the *National Greenhouse and Energy Reporting Act 2007* (Cth).

Insolvency Event means, in respect of the Customer:

- (a) any execution or other process of any court or other authority issued against or levied upon any material part of the Customer's property or assets;
- (b) a petition or application is presented (and not withdrawn within 10 Business Days), or an order is made or a resolution is passed for the winding-up or dissolution without winding-up of the Customer otherwise than for the purpose reconstruction or amalgamation under a scheme to which Jacana Energy has given its consent;
- (c) a receiver, receiver manager, official manager, trustee, controller (as defined in the Corporations Act) or similar officer is appointed over the whole or a material part of the Customer's undertaking, property or assets;
- (d) the Customer proposes to enter into, or enters into, any arrangement, reconstruction or composition with or for the benefit of its creditors to which Jacana Energy has not given its consent;
- (e) an administrator of the Customer is appointed in respect of the Customer or the whole or a material part of the Customer's undertaking, property or assets;
- (f) application is made to a court for an order in respect of the Customer under section 233(2) of the Corporations Act; or
- (g) an event referred to in section 459C(2) of the Corporations Act occurs in respect of the Customer.

Jacana Energy means Power Retail Corporation established by section 5 of the *Power Retail Corporation Act 2014* (NT), trading as Jacana Energy ABN 65 889 840 667.

Law means any law or regulation, legislative instrument or binding rule, code, guideline, procedures, licence condition, order, direction or instruction including the Act, the National Electricity Law (NT), the National Electricity Rules (NT), the Utilities Commission Act, the Retail Supply Code, the Renewable Energy Act and any other laws relating to an Environmental Scheme.

Liability Percentage means the "renewable power percentage" or the "small-scale technology percentage" (as applicable) within the meaning given in the Renewable Energy Act.

National Electricity Law (NT) means the National Electricity Law as set out in the Schedule to the *National Electricity (South Australia) Act 1998* as it applies in the Northern Territory in accordance with the *National Electricity (Northern Territory) (National Uniform Legislation) Act 2015*.

National Electricity Rules (NT) means the National Electricity Rules, as they apply in the Northern Territory in accordance with the *National Electricity (Northern Territory) (National Uniform Legislation) Act 2015* and the *National Electricity (Northern Territory) (National Uniform Legislation) (Modification) Regulations 2016*.

Network has the same meaning as "electricity network" bears in the Act.

Network Provider means a person holding a licence under the Act authorising the ownership or operation of a Network.

Network Services means the services provided by the Network Provider.

Notice is defined in clause 13.

Other Charges has the meaning given in clause 3.3.

Pass Through Charges means all other costs that have, or are reasonably expected to be, incurred by Jacana Energy in relation to the sale of electricity to the Customer at the Connection Point and include:

- (a) charges imposed by a Network Provider for the provision of Network Services in relation to the Connection Point; and
- (b) any charges imposed on Jacana Energy by the Utilities Commission or another relevant regulatory, statutory or market body, including in relation to system control, market operation or the provision of historical metering data.

Payment Date means the date that is 14 days after the date of the invoice.

Premises means premises which has been transferred to Jacana Energy in accordance with the RoLR Regime as a result of a Retailer of Last Resort Event.

Recipient has the meaning given in clause 11.1(b)i).

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

Retail Supply Code means the Electricity Retail Supply Code made by the Utilities Commission pursuant to section 24 of the Utilities Commission Act and regulation 2A of the *Utilities Commission Regulations (NT)*.

Retailer of Last Resort has the meaning given to that term in the RoLR Regime.

Retailer of Last Resort Event has the meaning given to that term in the RoLR Regime.

RoLR Regime means the retailer of last resort regime that is set out in the Act and the Retail Supply Code.

Start Date means in relation to a Premises, means the date that the Premises is transferred to Jacana Energy in accordance with the RoLR Regime as a result of a Retailer of Last Resort Event.

System Operator means a person holding a licence under the Act authorising operations relating to system control over a power system.

Transfer has the meaning given in the Retail Supply Code.

Utilities Commission means the Utilities Commission of the Northern Territory, as established under the Utilities Commission Act.

Utilities Commission Act means the *Utilities Commission Act (NT)* and all regulations, notices, orders and other statutory instruments made or issued under that Act from time to time.

Week Day means any Monday, Tuesday, Wednesday, Thursday or Friday.

15.2 Interpretation

In this Agreement:

- (a) headings are for convenience only and do not affect interpretation of this Agreement; and unless the context indicates a contrary intention:

- (b) a reference to a person includes a firm, body corporate, unincorporated association or authority, whether or not it comprises a separate legal entity;
- (c) a reference to any party to this Agreement includes that party's successors, permitted substitutes and permitted assigns (including, where applicable, that party's legal representatives);
- (d) a reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document, and includes the recitals and schedules and annexures to that agreement or document;
- (e) a reference to any Law includes any consolidations, modifications (statutory or otherwise) or re-enactment of, or any regulatory provision substituted for, that Law;
- (f) words indicating the singular includes the plural and vice versa and words importing one gender include all other genders;
- (g) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexure to it;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) no rule of construction applies to the disadvantage of a party on the basis that the party put forward the Agreement or any part of it;
- (j) mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included
- (k) a reference to \$ and dollars is to Australian currency;
- (l) obligations to indemnify, and all other provisions which, by their nature are intended to survive termination or expiry of this Agreement, survive termination or expiry of this Agreement;
- (m) a reference to writing includes any method of representing or reproducing words, figures, drawing or symbols in a visible and tangible form;
- (n) a reference to conduct includes an omission, statement or undertaking, whether or not in writing;
- (o) a reference to time is a reference to Darwin, Northern Territory time; and
- (p) a reference to day means a calendar day.

15.3 Consent or Approval

If the doing of any act, matter or thing under this Agreement is dependent on the consent or approval of a party or is within the discretion of a party, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the party.

15.4 Inconsistency with Laws

- (a) In the event of any inconsistency between the provisions of this Agreement and the provisions of any Law which cannot be excluded or modified by contract, the provisions of that Law will prevail to the extent of that inconsistency.
- (b) To the extent that a Law requires a provision to be included in this Agreement, and the requirement cannot be excluded or modified by contract, that provision is deemed to be incorporated in this Agreement.



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