

**Contract for a Dispute Resolution Panel  
(electricity)**

The purpose of this document is to establish a DRP  
for the determination of a Matter referred to the  
Adviser.

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## **Dispute Resolution Agreement**

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May 2010

This document is prepared as a guide to disputing parties in stage 2. The Adviser takes no responsibility for the completeness or accuracy of the draft. Please ensure that the provisions are checked by a legal adviser.

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## Parties

The persons referred to in item 1 of Schedule 1 (the **DRP Members**)

### AND

The persons referred to in item 2 of Schedule 1 (the **Parties**)

### AND

The person referred to in item 3 of Schedule 1 (the **Adviser**)

## Background

- A The Adviser has referred the Matter to a Dispute Resolution Panel for determination, in accordance with clause 3.16.2 or clause 8.2.5 of the NER.
- C In order to facilitate the establishment of the Dispute Resolution Panel and the determination of the Matter, the Parties enter into this Agreement with each of the DRP Members and the Adviser.

## Operative provisions

### 1 Engagement of DRP Members

- 1.1 Each DRP Member agrees to his or her appointment as a member of the Dispute Resolution Panel and to hear and determine the Matter:
- 1.1.1 in accordance with the NER; and
- 1.1.2 on the terms and conditions set out in this Agreement,

### 2 Payment of Fees and Expenses

- 2.1 Subject to Clause 9.2.3, the Parties are liable for the Fees and Expenses of the DRP Members set out in item 1 of Schedule 1 in accordance with clause 2.4. These may be invoiced as directed by the DRP.
- 2.2 The Parties are liable for the Fees and Expenses of the Adviser set out in item 3 of Schedule 1 in accordance with in clause 2.4.
- 2.3 The Fees and Expenses of the Adviser and the DRP include any fees incurred by the DRP or the Adviser as a result of any subsequent legal proceedings in which the validity or effect of the DRP's determination of the Matter is challenged.
- 2.4 The Parties are liable for the Fees and Expenses in the respective shares for which the costs are to be borne as set out in clause 8.2.8 of the NER, or as otherwise determined by the DRP.
- 2.5 Where the time required to hear and determine the Matter exceeds one month, the DRP Members and the Adviser are entitled to be paid on a monthly basis and may render an invoice accordingly.
- 2.6 The Adviser may, in his or her discretion, raise an invoice based on a reasonable preestimate of the Fees and Expenses for the Matter, or any stage of the Matter.

- 2.7 The Fees payable to a DRP member or the Adviser may include a fee for cancellation of a hearing where a Party has:
- 2.7.1 changed the scheduled time, date or place, failed to attend, or cancelled the hearing, or part of the hearing, for the Matter: and
- 2.7.2 Not provided at least three weeks' notice of its intention not to attend the hearing, or part of the hearing, of the Matter. This includes cancellation due to settlement or other dispute resolution process.
- 2.8 The Parties must pay all invoices within 30 days.

### **3 GST**

- 3.1 A party must pay GST on a Taxable Supply made to it under this Agreement, in addition to any Consideration (excluding GST) that is payable for that Taxable Supply.
- 3.2 A party must pay GST on a Taxable Supply made to it under this Agreement at the same time and in the same way as it is required to pay the Consideration for the Taxable Supply provided that a Tax Invoice is issued in accordance with clause 3.3.
- 3.3 A party making a Taxable Supply to another party under this Agreement must issue a Tax Invoice to the other party, setting out the amount of the GST payable by that other party.
- 3.4 In this clause, 'Consideration', 'GST', 'Taxable Supply' and 'Tax Invoice' have the meanings attributed to those terms in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

### **4 Failure to comply with requirements or determinations**

- 4.1 The parties acknowledge that the failure by a Party to comply with a requirement or determination of the Dispute Resolution Panel does not constitute a breach of this Agreement.

### **5 Publication of determination**

- 5.1 Each DRP Member:
- 5.1.1 jointly owns with other members of the Dispute Resolution Panel all intellectual property rights arising out of any determination made by the Dispute Resolution Panel; and
- 5.1.2 gives the Parties, the AER and the Adviser an unlimited and perpetual licence to use, disclose, publish or copy the determination subject to and in accordance with the NER.

### **6 Release and Indemnity**

- 6.1 Subject to the terms of any confidentiality undertakings entered into in connection with the Matter each Party releases and indemnifies each DRP Member and the Adviser in relation to any loss, damage or liability that the DRP Member or the Adviser suffers or incurs, or would, but for this release and indemnity, suffer or incur, as a consequence of any act or omission done in good faith in connection with the Matter, other than a breach of any confidentiality undertaking given by the Adviser or DRP Member in connection with the Matter.
- 6.2 This Agreement does not vary or exclude the operation of section 120B of the National Electricity Law.

## 7 Insurance

- 7.1 None of the Parties, the Adviser or the AER is required to provide any insurance in favour of a DRP Member.

## 8 Accession of other parties

- 8.1 Another Registered Participant may become a party to this Agreement if that Registered Participant is joined to a proceeding before the DRP in accordance with clause 8.2.6B of the NER, subsequent to which that Registered Participant and the parties to this Agreement must execute a deed of accession.
- 8.2 If it is determined that a Party is no longer to be party to a proceeding before the DRP, all parties must execute a deed of variation releasing that Party from any further liability under this Agreement from the date of that Party's removal from the proceeding.

## 9 Conflicts of interest

- 9.1 In clause 9 "**conflict of interest**" means an interest of a DRP Member that may conflict, or may reasonably be seen to conflict, with the DRP Member's obligation to resolve the Matter impartially.
- 9.2 Each DRP Member must immediately advise each Party and the Adviser if the DRP Member becomes aware that the DRP Member has a conflict of interest.
- 9.3 Except with the consent of each Party and the Adviser, a DRP Member:
- 9.3.1 must not continue to hear and determine the Matter if the DRP Member has a conflict of interest; and
- 9.3.2 is not entitled to be paid Fees in respect of any time spent hearing and determining the Matter that occurs after the DRP Member became aware, or ought reasonably to have become aware, of the conflict of interest.

## 10 General provisions

### Entire agreement

- 10.1 Subject to the NER, this Agreement contains everything the parties have agreed on in relation to the matters it deals with.
- 10.2 No party can rely on an earlier agreement, or anything said or done by another party, or by a director, officer, agent or employee of that party, before this Agreement was executed, except as permitted by National Electricity Law or the NER.

### Execution of separate documents

- 10.3 This Agreement is properly executed if each party executes either this Agreement or an identical document embodying this Agreement.
- 10.4 If identical Agreements are executed, this Agreement takes effect when the separately executed Agreements are exchanged between the parties.

### **Further Acts**

10.5 The parties will promptly do and perform all acts and things and execute all agreements as may from time to time be required, and at all times will act in good faith, for the purposes of or to give effect to this Agreement.

### **Governing law and jurisdiction**

10.6 This document is governed by the law of the State in which the Matter arises, as specified in item 5 of Schedule 1.

10.7 The parties submit to the non-exclusive jurisdiction of the courts of the State as set out in item 5 of Schedule 1.

10.8 The parties must not object to the exercise of jurisdiction by the courts of the State as set out in item 5 of Schedule 1.

### **No agency or partnership**

10.9 No party is an agent, representative or partner of any other party by virtue of this Agreement.

### **No authority to act**

10.10 No party has any power or authority to act for or to assume any obligation or responsibility on behalf of another party, to bind another party to any agreement, negotiate or enter into any binding relationship for or on behalf of another party or pledge the credit of another party except as specifically provided in this Agreement or by express agreement between the parties.

### **Severability**

10.11 If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.

10.12 If any clause or part of a clause of this Agreement is illegal, unenforceable or invalid, that clause or part must be treated as removed from this Agreement, but the rest of this Agreement is not affected.

### **Variation**

10.13 No variation of this Agreement will be of any force or effect unless it is in writing and signed by the parties to this Agreement.

### **Waiver**

10.14 The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party.

10.15 A waiver by a party is only effective if it is in writing.

10.16 A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given and is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

## 11 Definitions and interpretation

### Definitions

11.1 In this Agreement the following definitions apply:

**Adviser** has the meaning given to that term in the NER and is named in item 3 of Schedule 1.

**AER** means the Australian Energy Regulator, a constituent part of the Australian Competition and Consumer Commission.

**Agreement** means this agreement.

**Confidential information** means any information provided to the DRP and the Adviser in this Matter by any of the Parties and labelled as confidential.

**Dispute Resolution Panel** or **DRP** means the Dispute Resolution Panel comprising the DRP Members and established by the Adviser in accordance with clause 8.2.6A of the NER to determine the Matter.

**DRP Members** are named in item 1 of Schedule 1.

**Expenses** means the expenses (including room hire, travel, accommodation, provision of transcripts and other incidental expenses) that are reasonably incurred by a DRP Member and the Adviser in relation to the Matter, but for the avoidance of doubt does not include legal costs that may be incurred by the DRP or the Adviser seeking legal advice.

**Fees** means the hourly or daily rate payable to a DRP Member or the Adviser for professional fees in the Matter at the rate specified in items 1 and 3 of Schedule 1 respectively.

**Matter** means the dispute or request for compensation referred by the Adviser to the Dispute Resolution Panel for determination in accordance with clauses 3.16.2 or 8.2.5 of the NER and as briefly described in item 4 of Schedule 1.

**Parties** are named in item 2 of Schedule 1 and any other Registered Participant that becomes a party to this Agreement in accordance with clause 8.1.

**National Electricity Law** means the schedule to the National Electricity (South Australia) Act 1996 (SA).

**NER** means the National Electricity Rules as defined in the National Electricity Law.

**Registered Participant** has the meaning given to that term in the NER.

## Interpretation

11.2 In this Agreement, unless the context otherwise requires:

- 11.2.1 a reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- 11.2.2 a reference to any agreement or document is to that agreement or document as amended, notated, supplemented or replaced from time to time;
- 11.2.3 a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement unless otherwise stated;
- 11.2.4 an expression importing a natural person includes any company, trust, partnership, joint venture, association, corporation, body corporate or governmental agency;
- 11.2.5 a reference to a business day means a day on which all banks are open for business generally in the State in which the Matter is heard;
- 11.2.6 if the day on which any act, matter or thing is to be done under this Agreement is not a business day, that act, matter or thing may be done on the next business day;
- 11.2.7 a covenant or agreement on the part of two or more persons binds them jointly and severally; and
- 11.2.8 The schedules and attachments form part of this Agreement.



**Execution**

Executed as an agreement

Date: \_\_\_\_\_

<p><b>Signed by:</b> <i>[insert name of DRP member]</i></p>	<p>_____</p>
<p><b>Signed by:</b> <i>[insert name of DRP member]</i></p>	<p>_____</p>
<p><b>Signed by:</b> <i>[insert name of DRP member]</i></p>	<p>_____</p>
<p><b>Signed by the Adviser:</b> Shirli Kirschner, Wholesale Energy Market Dispute Resolution Adviser</p>	<p>_____</p>
<p><b>Signed for and on behalf of:</b> On <i>[date]</i> or by its solicitor or its duly authorised officer <i>[amend and insert names and position as applicable]</i></p>	<p>_____</p>
<p><b>Signed for and on behalf of:</b> On <i>[date]</i> or by its solicitor or its duly authorised officer <i>[amend and insert names and position as applicable]</i></p>	<p>_____</p>
<p><b>Signed for and on behalf of:</b> On <i>[date]</i> or by its solicitor or its duly authorised officer <i>[amend and insert names and position as applicable]</i></p>	<p>_____</p>

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**Schedule 1**

**1 DRP Members**

1.1 The name, address, fees and expenses of each DRP Member are:

Name	
Address	
Hourly fee	
Daily fee	
Expenses	Economy airfares and daily allowances

Name	
Address	
Hourly fee	
Daily fee	
Expenses	Economy airfares and daily allowances

Name	
Address	
Hourly fee	
Daily fee	
Expenses	Economy airfares and daily allowances

## 2 The parties

### 2.1 The name, ABN and address of each part is:

Name	
ABN	
Address	

Name	
ABN	
Address	

## 3 The Adviser

### 3.1 The name, address, Fees and Expenses of the Adviser :

Name	Shirli Kirschner
Address	PO Box Paddington 2021
Fee (administration)	\$70.00 outsourced
Fee (facilitation)	\$3,500.00 per day plus GST
Expenses	At Federal Government rates set out by the ATO, for accommodation and meals

#### 4 Description of the Matter

*[Insert outline of the Matter or request for compensation referred by the Adviser to the DRP or append a [Stage 2 - Adviser referral notice](#)]*

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#### 5 Relevant State

The State for the purposes of governing law and jurisdiction is (state in which the Matter arises):

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### Document Control Details

Please direct comments and questions to the Adviser, Shirli Kirschner, by email:

[shirli@resolveadvisors.com.au](mailto:shirli@resolveadvisors.com.au)

#### History of Amendments:

- Based on a document drafted by NECA in 2005
- Amended May2010 by AGL and AEMO to incorporate requests for compensation from the participant compensation Fund as well as dispute directly through NER 8.2. Incorporation of suggestions from AEMO 5 May.
- Reviewed and amended October 2013