

Terms and Conditions of Service

1. RECITALS

1.1 The Services shall be governed by AECO Energy Terms and Conditions of Service unless the parties enter into a separate agreement with the intention that it will govern the Services.

1.2 The terms and conditions in the Electricity Acquisition Summary, the Agreement and Acquisition Summary Schedule SH2 form part of the Agreement. In the event of conflict or variance in the tenor thereof, the Terms and Conditions of Service shall prevail.

2. Service Description

2.1 We will supply you with the services detailed in the Application Form ("Service/s"), which may include Electricity Acquisition, Electricity Plus Program, Value Added Services ("VAS") and related services.

2.2 We will provide you Electricity Plus Program for the agreed sites listed and the level of service nominated ("Service Level/s") in the Application Form.

2.3 We have the right to vary the Bundled Services and Services Level from time to time upon your prior approval. Should a variance exist between these Bundled Services and Service Levels as listed on the Electricity Plus Program guide and on our website then the website description of Services and Service Levels shall prevail.

3. Definitions

3.1 **"Advanced Metering Service Charge"** means a service charge is used to recoup costs to AECO Energy associated with a particular retailer.

3.2 **"Authorised Representative"** means any director, officer, employee, agent, and consultant of the entity duly authorised to enter into this Agreement.

3.3 **"Bundled Services"** are as described on the Electricity Plus Program guide or listed on our website www.aecoenergy.au.

3.4 **"Client"** means the client identified in the Electricity Acquisition Summary.

3.5 **"Confidential Information"** means all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or can reasonably be understood as confidential given the nature of the information and circumstances of disclosure. Confidential information shall include, but not be limited to, Client's Data, the terms and conditions of this Agreement, as well as business and marketing plans, trade secret, technology and technical information, product plans and designs, Client's details and information, and business processes disclosed by such party. However, Confidential Information does not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the

Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

3.6 **"Disclosing Party"** means the Party disclosing Confidential Information to the Receiving Party.

3.7 **"Delivery Point Identifier"** means a unique number given to identify Gas supply Sites.

3.8 **"Default Interest"** means the 90-day Bank Bill Swap Bid Rate (as quoted on Reuters page BBSY at 10.45am) plus 2% commencing from the due date of payment (with interest accruing daily until all monies owing are paid in full).

3.9 **"Electricity Contract"** means an agreement between the Client and Energy Retailer for the supply of electricity to the nominated Site(s).

3.10 **"Electricity Retailer"** means an electricity retailer licensed by the Australian Energy Market Operator ("AEMO") to retail electricity.

3.11 **"Electricity Plus Program"** means a Service which may provide Energy contract management, data analysis including demand, usage and other ancillary information, power quality and price/rate monitoring ('Bundled Service(s)').

3.12 **"Early Termination Fee"** a fee described in clauses 19.5 and 19.6.

3.13 **"Energy"** means gas, electricity and other sources of Energy either conventional or non-conventional.

3.14 **"First AECO Energy Energy Contract"** means the first retailer Energy contract brokered by AECO Energy for the Client, for the Site or Metering Installation. This means that this Site has not been the subject of any of the Client's previous AECO Energy brokered Energy contracts.

3.15 **"Force Majeure"** means any event which is beyond the control of or unforeseen by the parties or which, though foreseen, is inevitable, including fire, virus, epidemic, travel advisories as to health, security and/or terrorism, flood, lockout, transportation delay, war, acts of God, governmental rule or order, strikes or other labour issues.

3.16 **"Gas"** means any gaseous fuel.

3.17 **"National Meter Identifier or NMI"** means a unique 10 or 11 digit number given out to every electricity connection in Australia.

3.18 **"Meter Identification Reference Number or MIRN"** means a unique number given to identify Gas supply Sites.

3.19 **"Site Energy Contract"** means the current Energy contract brokered by AECO Energy for the Site on which the Electricity Plus Program Value Added Services is being terminated.

3.20 “Other AECO Energy Energy Contract” means not the first retailer Energy contract brokered by AECO Energy for the NMI, Site, or Metering Installation. This means that this Site has been subject of any of the Client’s previous AECO Energy brokered Energy contracts.

3.21 “Other Retailer Charges” other standard charges levied by electricity retailers on behalf of themselves, other organisations and government.

3.22 “Receiving Party” means the Party receiving Confidential Information from the Disclosing Party.

3.23 “Site(s)” means a metered Energy supply point charged as part of an Energy Contract in relation to consumption of the Client. Sites may be identified by a state or national numbering scheme such as DPI, NMI or MRNI.

3.24 “Standard Proportional Method” means the method outline in Clause 19.6 of this Terms and Conditions.

4. Electricity Meter Provision

4.1 For Electricity related supply, you will be required to enter into a contract with one of our approved Australian Energy Market Operator (“AEMO”) registered metering coordinators, called a Metering Coordinator Agreement (“MCA”). The MCA will facilitate recording of Energy data and related services, reporting and ongoing auditing of consumption and costs and the enable our delivery Services to you.

4.2 You will be charged on a daily basis for the MCA and the fees and charges will be on your monthly electricity bill.

4.3 You will be provided with the relevant MCA Terms and Conditions, or they can be made available on request.

5. Charges & Payment

5.1 Charges for the Services are determined in accordance with the Application Form (‘Fees’) and may include:

- a) An establishment fee or brokerage fee agreed between the parties;
- b) Charges billed to you as part of your electricity retailer’s metering costs; and
- c) Vendor commission or incentives that will be fully disclosed to you.
- d) Advanced Metering Service Charge (AM Service Charge): In some cases, AECO Energy may charge additional Advanced Metering Service Charge or AM Service Charge for a particular Site being serviced by a particular retailer. This service charge is used to recoup costs to AECO Energy associated with that retailer. This fee is added to the Electricity Plus Program Offer Daily Data Analysis Service Fee. Not all offers contain this charge. Any AM service charge is noted on the relevant retailer’s offer.

5.2 Our payment terms are 30 days from invoice date.

5.3 Payment is to be by cheque, Electronic Funds Transfer (EFT), Direct Debit or via your electricity retailers metering charge as agreed in the Application Form.

5.4 If you are regularly late paying your invoices (as reasonably determined by us), or you do not pay an invoice more than 14 Business Days after we issue a late payment notice, we will charge you Default Interest on the overdue amounts, as well as our reasonable costs of debt recovery.

5.5 You will provide all reasonable assistance to enable us to deliver Services and charge for Services, including but not limited to (a) the instruction of meter co-ordinators to collect Fees for Services on behalf of us, (b) your nomination of us to meter co-ordinators as your exclusive Service provider, (c) that you inform and provide written notice of existence and provide copies of any related MCA agreements with metering coordinators arranged by us to any electricity retailer as part of any related electricity contract that you enter into during the term of this Agreement, (d) that you during the term of this Agreement maintain currency and not terminate or cancel any MCA that supports the provision of Services and payment of Fees.

5.6 Fees may be varied annually or on the 1st of July each year. Any increase will be limited to the greater of any increase in the Australian Bureau of Statistics Consumer Price Index, the Australian Electricity Regulator average network tariff increase for that year or 5%.

6. Fees & Payment Method

6.1 Fees for Service are calculated at the specified rate and for the specified duration for each Site, meter or NMI nominated on the Application Form and as agreed by you (“Nominated Site”).

6.2 For electricity, You authorise your selected electricity retailer to incorporate the Fee into your monthly electricity bill from your selected electricity retailer for each Nominated Site.

6.3 If you and your selected electricity retailer cannot agree to bill the Fee via your monthly energy bill or other circumstances prevent such an arrangement, then you agree to pay the Fee directly to us on a monthly basis.

7. GST

Unless expressly stated otherwise, the Fees payable for the Services under this Agreement are exclusive of GST. In addition to the Fees, you must pay the GST applicable to each supply the subject of those Fees under the relevant invoice.

8. Privacy

8.1 We adhere fully to the Privacy Act. Our privacy statement sets out the way in which we collect, use and disclose information about you. For a full copy of our privacy statement please visit our website at www.aecoenergy.com.au and click on the privacy link (<http://www.powerchoice.com.au/cms/index.php/privacy-statement>), or contact our office on 1300165020 or info@powerchoice.com.au.

8.2 You consent for us to use your personal information in accordance with our privacy statement.

9. Information

9.1 You consent to allow us or our suppliers to exchange your information and or details.

9.2 You will authorise metering companies and energy retailers to regularly provide electronically to us any relevant information including meter details, bills and invoices, electricity account information, meter data and Energy usage details in any format ("Energy Information"). You will take all reasonable steps in a timely manner to ensure that this authorisation is enacted.

9.3 You consent and grant us access to your Energy Information. You permit us to use this Energy Information in the delivery of services to you.

10. Limitation of Liability

10.1 To the full extent permitted by law Including Australian Consumer Law & subject to clause (10.2), we will not be liable in any circumstances, however arising, to you or any person claiming through you in contract, tort, or otherwise (including negligence) for:

- e) Any economic loss or damage & in particular (without limitation), any loss of revenue, profits, data, actual or potential business opportunities, contracts or anticipated savings or profits; or
- f) Any indirect or consequential loss; or
- g) The acts of omissions of any supplier or any of our servants, officers, agents, contractors or subcontractors; or
- h) Our failure to continue to provide the Service to you for any reason whatsoever. You acknowledge that we do not guarantee continuous fault free provision of the service.

10.2 We will not be liable for any consequential, direct or special loss resulting from any fluctuation in Energy prices, government regulated price, or any other market price into the future that may result from you being advised and contracted on rate higher than that may be available into the future and that is unknown or uncertain at the time.

11. Modifications and Changes

No changes, amendments or modifications to the Terms and Conditions or any other documentation are binding unless made in writing and signed by the duly authorised representatives of each party.

12. Warranties

12.1 Client recognises the uncertainty of the future price of electricity and acknowledges that AECO Energy cannot provide reliable forecasts, guarantees or warranties over any future price of electricity.

12.2 Client acknowledges that AECO Energy cannot warrant or guarantee that the prices will be the lowest available at the time when prices are presented to Client or when the Energy Contract is executed.

12.3 To the fullest extent permitted by law, AECO Energy disclaims and shall not be liable for any and all other warranties, expressed, implied or otherwise, including warranties of merchantability and

fitness for a particular purpose. AECO Energy does not assume or authorize any other person to assume for it any other liability in connection with the services.

12.4 AECO Energy will have no liability for delays, failures, losses or damages attributable or related in any way to Energy retailers or any Energy contracts between client and Energy retailers.

13. Representations

13.1 Each Party represents to the other Party that:

13.1.1 This Agreement was entered through their duly authorised representative;

13.1.2 It is a legal entity formed and validly existing and in good standing under the laws of the country of its formation.

13.1.3 It has the full power, authority and has obtained all necessary regulatory or governmental approvals, if any, to execute, deliver, and perform this Agreement and to carry out the transactions contemplated thereby;

13.2 It has made its own independent decisions to enter into a transaction and as to whether such transaction is appropriate or proper for it based upon its own judgment and decision and any based upon advice from such advisors;

13.2.1 There are no legal or regulatory proceedings pending or threatened that could have a material adverse effect on such Party's ability to perform the Party's obligations under this Agreement;

13.3 It is not relying upon any representation or warranty of the other than those expressly set forth in this Agreement;

13.4 It has entered into this Agreement as principal (and not as Agent or in any other capacity, fiduciary or otherwise);

13.5 It has entered into this Agreement with a full understanding of the material terms and risks hereof, and is capable of assuming those risks;

13.6 It has made its investment and trading decisions (including regarding the suitability hereof) based upon its own judgment and any advice from such advisors as it have deemed necessary, and not in reliance upon any view expressed by the other party; and

13.6.1 The other Party is not acting as a fiduciary or an advisor for it, nor has given to it any assurance or guarantee as to the expected performance or result of this Agreement.

14. Term of the Agreement.

The Agreement will commence on the date of its signing by you and will continue for 60 months or other period as agreed in writing ('Agreement Term').

15. Confidentiality

15.1 You agree that as a Receiving Party to an information defined as Confidential Information in this Agreement shall not be disclosed without our written consent.

15.2 You further acknowledge that the Confidential Information to be disclosed hereunder is of a unique and valuable character, and that the damages caused by unauthorized dissemination of the Confidential Information would be impossible to calculate. Therefore, both parties hereby agree that the Disclosing Party shall be entitled to injunctive relief preventing the dissemination of any Confidential Information in violation of the terms hereof. Such injunctive relief shall be in addition to any other remedies available hereunder whether at law or in equity including damages. Disclosing Party be entitled to recover its costs and fees, including reasonable attorney’s fees incurred in obtaining any such relief. Further, in the event of litigation relating to this Agreement, the prevailing party shall be entitled to recover its attorney’s fees and expenses.

16. Entire Agreement

16.1 The Agreement contains your and our entire understanding, to the exclusion of any and all prior or collateral agreement of understanding, relating to the Services provided whether oral or written. You acknowledge that you have not entered into the Agreement in reliance upon any statement made by us, other than as expressly contained in the Agreement.

16.2 If any part of the Agreement is found to be invalid or of no force or effect the Agreement shall be construed as though such part had not been inserted and the remainder of the Agreement shall retain its full force and effect.

16.3 To the extent that any Service specific term or condition conflicts with any other term or condition in the Agreement, the term or condition specific to the Service will apply.

16.4 In the Agreement, unless the context otherwise requires or permits:

- a) Where any word or phrase is given a defined meaning any other grammatical form of that word or phrase will have a corresponding meaning;
- b) References to legislation or legislative provisions will include modifying, consolidating or replacing legislation or legislative provisions;
- c) References to months and years means calendar months and years;
- d) The use of headings are only for convenience and do not affect interpretation and any headings, underlining or marginal notes are only included for ease of reference;
- e) The terms “included”, “including” and similar expressions when introducing a list of items do not exclude a reference to other items of the same class or genus.

17. Notices

Any notice, demand, consent or other communication required to be given by either party must be delivered personally or sent by

registered mail or by facsimile to the address of the other as last notified.

18. Governing Law

The Agreement shall be governed & construed in accordance with the law of Queensland and the parties hereby submits to the jurisdiction of the Courts of that State.

19. Termination

19.1 The Agreement may be terminated on the following grounds:

19.2 In the event of Default (Section 26);

19.3 As stated in Section 27.7;

19.4 As stated in Section 19.10; and

19.4.1 Force Majeure (Section 20.1)

19.5 Should you elect to terminate the Agreement early with us prior to expiry of the Agreement Term, you must provide us ninety (90) days written notice (“Early Termination”).

19.6 Early Termination of Essential Metering: Early contract termination of essential metering requires ninety (90) days written notice. The Early Termination Fee shall be governed by the contract entered into between the Client and the Metering Company.

19.7 Early Termination of Electricity Plus Program-Value Added Services(“EPP-VAS”): Early contract termination of Electricity Plus Program- Value Added Services requires ninety (90) days written notice.

19.8 Early Termination Fee of EPP-VAS calculation: The table below describes the algorithm how the early termination fee is calculated for this Agreement.

Electricity Plus Program <i>Early</i> Termination Fee Calculation	Calculated from Termination Date
First AECO Energy Energy Contract	EPP VAS Fee for greater of the remaining term of NMI Energy Contract or 12 months; Or The Standard Proportional Method of calculation if it produces a lesser amount
Other AECO Energy Energy Contract	EPP VAS Fee for lesser of the remaining term of NMI Energy Contract or 12 months; Or The Standard Proportional Method of calculation if it produces a lesser amount.

19.9 If there is no current Energy contract brokered by AECO Energy for the Site then for clarification, the EPP-VAS Fee payable shall be taken as zero for the purposes of the calculation of the ETF algorithm.

19.10 The EPP-VAS fee payable shall be calculated using the daily price for the EPP for the NMI as specified as a “Daily Data Analysis fee” or the “EPP-VAS Daily Fee” in your Agreement with AECO Energy for that NMI multiplied by the number of days between from the Termination Date and the date of the end of the NMI Energy Contract.

19.11 Standard Proportional Method: An Early Termination fee equivalent to a proportion of the total amount payable over the term Agreement for the Service (“Proportion”) less all Fees paid for that Service under this Agreement, if being a mathematically positive amount, will be payable by you as follows:

Services contracted	Early Termination fee
Electricity Acquisition only (no Electricity Plus Program contract)	100% Proportion
Electricity Plus Program + Electricity Acquisition (initial Energy contract)	80% Proportion
Electricity Plus Program only	50% Proportion
Electricity Plus Program + Electricity Acquisition (renewal Energy contract)	50% Proportion

Example: A calculation of an early Termination fee would be for example:
 Service: Electricity Plus Program only – Proportion 50% Agreement Term: 5 Years
 Fee: \$1000 per year
 Amount Paid up until Early Termination: \$1500
 Early Termination fee: $((5 \times \$1000) \times 50\%) - \$1500 = \$1000$

19.12 You agree that this Early Termination fee is a genuine and reasonable pre- estimate of the loss that we are likely to suffer because of your Early Termination of the Agreement.

19.13 We are also entitled to charge an administration fee to process any Early Termination.

19.14 The notice provided in clause 19.2 can take a written form or notice may be implied as being provided by your acts or failure to act in compliance with the terms of this agreement. Termination notices include acts of frustration or delay of the provision of Services including breach of clauses 5.5 and 9, and if you breach any term of this Agreement and fail to take reasonable steps to rectify that breach after 30 days written notice by AECO Energy of any such breach.

19.15 We may terminate this Agreement with immediate effect if (a) Your Default under clause 26 is not corrected within 30 days or is not capable of remedy; or (b) You do not pay Fees by the due date for payment; or (c) You become insolvent.

20.1 We may agree to suspend or terminate all or part of your Agreement that relates to specific locations or sites without penalty where you have undergone a force majeure closure of the site. Such suspension, termination or part termination will be at our sole discretion.

20.2 If we agree to terminate or suspend the Agreement under clause 20.1 you may be charged any related costs and an administration fee.

21. Assignment

21.1 Neither party may assign or transfer this Agreement or any obligation herein without the prior written consent of the other party, except that, upon written notice, AECO Energy may assign or transfer this Agreement or any obligation herein to its Affiliate, or an entity acquiring all or substantially all assets of AECO Energy, whether by acquisition of assets or shares, or by merger or consolidation.

21.2 Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties.

22. EasyDoc Agency

As a client of AECO Energy, you appoint us to act on your behalf (“EasyDoc Agent”) under the authorities outlined herein.

23. EasyDoc Agency Diligence

As your EasyDoc Agent we will follow your instructions, act in your interest and will use reasonable diligence, care and skill in carrying out your instructions.

24. EasyDoc Agency Authority

You authorise us as your EasyDoc Agent to:

- f) Sign, authorise or execute Energy contract agreements, on your behalf, in accordance with your instructions.
- g) Sign, authorise or execute MCAs, direct metering agreements, metering co-ordinator agreements, novation agreements and any other related agreement on your behalf to establish or maintain Services as instructed by you including in the event of changes to the National Electricity Rules or maintenance of payment for Fees varied in accordance to clause 5.6.
- h) Provide notice of contract cancellation or termination to other parties including Energy brokers, meter providers according to your terms of contracts on your behalf as instructed by you.
- i) Notify Australian Energy Market Operator (“AEMO”) registered Financially Responsible Market Participants and AEMO Metering Co-ordinators and electricity retailers of any existing agreements and AECO Energy service agreements that you have entered into and to direct them to maintain currency and effect these agreements, unless you explicitly direct us to cancel these agreements with your acknowledgement and your acceptance of any associated termination fees.

20. Change of Circumstances

25. EasyDoc Agency Indemnity

You indemnify us for any loss or damage arising from any claim or action brought by any third party arising from the acts or omissions in connection with our acting as your EasyDoc Agent in accordance with this Agreement.

26. Default

If you or us believe that the other party to the Agreement has defaulted in their obligations in the Agreement, then that party may issue a written notice to the other party which identifies the default and provides for a reasonable time to remedy the default ("Default").

27. Safety and Compliance

27.1 We or our agents may need to conduct work at your Nominated Meter sites to provide the Service. You agree to provide a safe work environment that meets all appropriate and required occupational, health and safety regulations.

27.2 If We or our agents deem a site at their sole discretion to be unsafe then We may suspend work or terminate the Agreement.

27.3 You are solely responsible for the operation, safety and work practices and monitoring of our work at your Nominated Meter sites. If you reasonably believe that works are being conducted in an unsafe manner you must suspend work being conducted and notify our head-office immediately.

27.4 We or our agents may need to install equipment to provide the Services which may require the site to meet certain compliance standards set by government regulation or by your electricity network provider. You agree to make any reasonable modifications at your own cost to your Nominated Meter sites to meet the relevant compliance standards.

27.5 Should you fail to provide the Nominated Meter site conditions outlined in

27.6 27.1 and 27.4 we will provide you with written notification of the requirement to rectify.

27.7 You have 30 days to rectify any failure notified to you by us.

27.8 If the failure is not rectified within 30 days, then we may terminate the Agreement by written notice to you.

Important Information

28. Distribution and Transmission Losses:

28.1 The delivery of electricity to your location incurs various transmission and distribution losses as the electricity travels from the power station across high voltage lines, distribution lines and transformers. These depend on your location and are not negotiable. If you do not have a billable Distribution Loss Factor (DLF) or Transmission Loss Factor (TLF) allocated on your bill, AECO Energy will estimate this factor using your network provider's guidelines when producing your Tender.

28.2 The Energy prices are calculated using the following formula:
Cost= Energy Price x Kwh x (1+ DLF) x (1+ TLF)

29. Network Charges:

29.1 The electricity network charges are allocated by your network provider. This component of your electricity bill covers the costs associated with the physical distribution of electricity within your network region. They include maintenance of the transformers, sub-stations, power-poles and wires within your region. This component of your electricity bill is non-negotiable and is regulated by the Australian Energy Regulator. This contains costs of both the electricity transmission provider and the network distributors.

29.2 Network Charges can be based on an average of monthly usage, period of time and monthly peak kilowatt demand;

30. Market and Distribution Costs

These rates are governed by the Australian Energy Regulator and are reflective of the costs to manage and monitor the national electricity grid. These prices are not negotiable.

31. Future Prices of Energy

31.1 We are unable to provide any forecasts of future Energy prices. Energy operates in a commodities market, much like any commodity, such as wheat, oil, or coal. The future price of Energy is uncertain and we are not able to provide any forecasts, guarantees or warranties over any future Energy prices. We recommend you contact a licensed financial advisor should you seek specific financial advice on the electricity market.

31.2 In addition, to market uncertainty, future service supply prices are determined by government legislative changes and regulated price changes. Currently legislative uncertainty is high. The Commonwealth Governments greenhouse legislation carbon tax/Emissions Trading Scheme/ Renewable Energy targets and their related costs are uncertain.

31.3 What is known is the current market for Energy to be delivered in the future - the Energy futures market. Your future costs will be determined not only by market prices, government legislation, regulator prices, but also by your future energy 'usage' and electricity 'demand'.

31.4 Any preceding or subsequent information communicated by any method, is not financial advice. AECO Energy is not a provider of financial advice. Before making any decisions involving financial products or services we recommend you obtain independent qualified professional advice about the suitability of the products or services to your particular situation.

32. Warnings

32.1 All data, recommendations, and views expressed by AECO Energy are not the views of affiliates, suppliers and electricity retailers. The information is of a general nature only. Neither AECO Energy, nor its affiliates, directors, officers, employees, agents, contractors, successors or retailers offers any warranty as to the accuracy or reliability of the information including: calculations, estimates, conclusions, recommendations contained in the information and, to

the maximum extent permitted by law, AECO Energy cannot be held responsible for any loss, damage, or price increases or price decreases in the market unforeseen or not covered with the terms of any contract entered into.

Effective 2/5/2019