

COPY

CUSTOMER CONNECTION AGREEMENT

BETWEEN

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MACKAY ELECTRICITY CORPORATION LIMITED

(ACN 078 848 889)

AND

PERMANENT TRUSTEE AUSTRALIA LIMITED
(ACN 008 412 913) AS TRUSTEE OF BT HOTEL TRUST

**CONNECTION AGREEMENT
(FOR CONNECTION TO A DISTRIBUTION NETWORK)**

TABLE OF CONTENTS

1. TERM AND TERMINATION	4
1.1 Term	4
1.2 Termination	4
1.3 Further Agreement	4
2. CUSTOMER CONNECTION SERVICES	5
2.1 Provision of Services by the Distributor	5
2.2 Acceptance of Services by the Customer	5
3. SCOPE OF CONNECTION AND TECHNICAL SPECIFICATIONS	6
3.1 Connection Requirements Applicable to the Customer	6
3.2 Facility Technical Specifications	6
3.3 Compliance Testing	6
3.4 Non-compliance	6
4. SUPPLY - RELIABILITY, QUALITY, INTERRUPTIBILITY AND OTHER CUSTOMERS	7
4.1 System of Supply	7
4.2 Distributor Quality Standards	7
4.3 Other Customers	8
5. AUTHORISED DEMAND AND AUTHORISED LOAD SWING	8
5.1 Authorised Demand	8
5.2 Variation of Authorised Demand by Customer	9
5.3 Variation by the Distributor	9
6. COMPLIANCE WITH AUTHORITY, CODE AND ACT	10
6.1 Parties to Comply	10
6.2 Interrelationship of Performance Standards	10
6.3 Authorisations	10
6.4 Obligations of the Parties to Meet Improved Standards	10
7. METERING	11
7.1 Responsible Person	11
7.2 Terms and Conditions on which Distributor agrees to be the Responsible Person	12
8. CHARGES AND BILLING	13
8.1 Charges	13
8.2 Variation of Charges	13
8.3 Payments	14
9. FINANCIAL SECURITIES	15
10. PROTECTION OF THE FACILITY IN EMERGENCIES	15
10.1 Customer's Automatic Disconnection Equipment	15
10.2 Distributor's Automatic Disconnection Equipment	16
10.3 No liability by the Distributor	16
11. FORCE MAJEURE	16
11.1 Notice of Force Majeure	16
11.2 Suspension of Obligations	17
11.3 Mitigation	17
11.4 End of Force Majeure Event	17
12. LIABILITY AND INDEMNITY	18
12.1 Liability with Respect to Third Parties	18
12.2 Liability of Distributor	18
12.3 Disconnection at Request of the Retailer	19

\\MMHCSN001\CENTRAL\SIENCS\INFRASTR\AGREEMNT\Retain - Agreements\Hayman - Bankers Trust.DOC

13. DEFAULT AND TERMINATION	20
13.1 Default Notice	20
13.2 Cure Period	20
13.3 Remedy of Curable Performance Default	20
13.4 Rights of Termination	20
13.5 Effect of and Remedies Upon Termination	21
13.6 Right to De-Energise	21
14. DISTRIBUTOR'S RECOVERY OF COSTS OF STRANDED ASSETS	22
14.1 Recovery Right	22
15. ASSIGNMENT AND ENCUMBRANCE	22
15.1 By Customer	22
15.2 By Distributor	23
16. NOTICES	23
16.1 Notice	23
16.2 Deemed Service	23
16.3 Notice of Change of Retailer	24
17. CONFIDENTIALITY	24
17.1 Information Confidential	24
17.2 Information may be Disclosed in Certain Circumstances	24
17.3 Must Notify Intention to Disclose	25
18. DISPUTE RESOLUTION	25
18.1 Scope	25
18.2 Chief Executive Resolution	25
18.3 Expert	25
18.4 Decisions of Expert	27
18.5 Costs	27
18.6 Information and Representation	27
18.7 Other Methods of Dispute Resolution	27
18.8 Obligations Continuing	28
19. GOVERNING LAW	28
19.1 Queensland	28
19.2 Courts	28
20. MISCELLANEOUS	28
20.1 Stamp Duty	28
20.2 Legal Costs	28
20.3 Amendment	28
20.4 Rights Cumulative	28
20.5 Approvals and Consent	29
20.6 Further Assurance	29
20.7 Preservation of Accrued Rights	29
20.8 Invalidity	29
20.9 Entire Understanding	29
21. INTERPRETATION	30
21.1 No Contracting Out of Electricity Act	30
21.2 References	31
21.3 Amendments	31
21.4 Legislation	31
21.5 Group References	31
21.6 References to Persons	31
21.7 Gender and Plurals	32
21.8 Period of Time	32
21.9 References to Time	32

\\MMHOSN001\CENTRAL\STENOS\INFRASTR\AGREEMNT\Retain - Agreements\Hayman - Bankers Trust.DOC

21.10 Definitions.....32
21.11 Headings32
21.12 Including32
21.13 Measurement.....32
21.14 Money33
22. DEFINITIONS.....33

\\MCHOSN001\CENTRAL\STENOS\INFRASTR\AGREEMENT\Retain - Agreements\Hayman - Bankers Trust.DOC

**NEGOTIATED CONNECTION AGREEMENT
(FOR CONNECTION TO A DISTRIBUTION NETWORK)**

THIS AGREEMENT is made on the date specified in Item 1 of Schedule 1

BETWEEN: Mackay Electricity Corporation Limited ACN 078 848 889 trading as "MEB" of P O Box 259, Mackay, Queensland ("the Distributor")

AND: The Entity Specified In Item 3 of Schedule 1 ("the Customer")

BACKGROUND

This Agreement records the arrangements between the Distributor and the Customer in relation to the provision by the Distributor to the Customer of Customer Connection Services in respect of the Facility.

IT IS AGREED:

1. TERM AND TERMINATION

1.1 Initial Term

Subject to clauses 1.2, 1.3(a) and 13.4, this Agreement commences on the Effective Date and continues for the term specified in Item 7 of Schedule 1 (the *Initial Term*).

1.2 Termination

Notwithstanding clause 1.1 or any other provision in this Agreement, if commissioning of the works so as to enable the Customer Connection Services to be provided is not completed by 31 March 2000 either party may terminate this Agreement by notice in writing to the other. This Agreement cannot be terminated other than in accordance with the provisions of this clause, clause 1.3(a) or clause 13.4.

1.3 Further Agreement

- (a) Upon expiration of the Initial Term specified in Item 7 of Schedule 1, this Agreement will automatically renew for the further term referred to in Clause 1.3(b)(i), unless prior to the date of expiration of the Initial Term or within twelve months thereafter, the Customer gives written notice to the Distributor that it does not wish to renew this Agreement in which event this Agreement shall terminate three months after the date of such notice or at the expiration for the Initial Term, whichever is the later. Where such date of termination is after the expiration of the Initial Term the Charges payable until termination shall be calculated in accordance with Clause 1.3(b)(ii).

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- (b) The terms of that further agreement are to be:
- (i) a further term of 15 years or as may be mutually agreed;
 - (ii) Charges payable will be based on the then current connection charges (with no regard to the capital and interest repayment of the connection asset with the intention that the Charges will enable the Distributor to recover depreciation (based on straight line depreciation over 35 years), operating and maintenance costs only); and
 - (iii) otherwise identical to the terms of this Agreement.

The Distributor will provide Customer Connection Services for the Facility during any further term in accordance with Clause 2.1.

2. CUSTOMER CONNECTION SERVICES

2.1 Provision of Services by the Distributor

From the Effective Date, the Distributor must provide Customer Connection Services to the Customer using the Distributor's distribution network at the Connection Point:-

- (a) to allow the supply of electricity, as reduced by any electrical losses, from the Transmission Network Connection Point via the Distributor's distribution network to the Facility up to the Authorised Demand; and
- (b) to permit the taking of electricity by the Customer to service the requirements of the Facility, up to the Authorised Demand,

in accordance with the terms of this Agreement, the Code and the Electricity Act.

2.2 Acceptance of Services by the Customer

- (a) The Customer will:-
- (i) accept from the Distributor the services mentioned in Clause 2.1; and
 - (ii) take electricity at the Connection Point up to but not beyond the Authorised Demand;

in accordance with the terms of this Agreement, the Code and the Electricity Act.

- (b) The Customer's obligations under this Agreement are not affected by the continued existence, variation or termination of any other agreement including any agreement between the Customer and the Retailer.

- (c) The Customer warrants that at the Effective Date it is lawfully entitled:
 - (i) under customer sale contracts with one or more retailers; or
 - (ii) through transactions in the spot market,to be sold electricity in quantities that are, at least, sufficient to enable the Distributor to comply with its obligations or exercise its rights under this Agreement. The Customer is aware of no reason why this should not remain the case throughout the Term of the agreement.
- (d) Nothing in this Agreement affects the right of the Distributor to exercise any of its rights against the Retailer, save that the Distributor must nevertheless comply with its obligations to the Customer.

3. SCOPE OF CONNECTION AND TECHNICAL SPECIFICATIONS

3.1 Connection Requirements Applicable to the Customer

The Customer must ensure that, at all times during the Term, the Facility complies with the Facility Connection Requirements.

3.2 Facility Technical Specifications

Unless otherwise agreed the Customer must ensure that, at all times during the Term, the Facility complies with, and is operated in accordance with, the Facility Technical Data.

3.3 Compliance Testing

At any time, after giving reasonable notice, the Distributor may inspect and, where necessary, test the Facility to satisfy itself that the Facility is acceptable for connection and complies in all respects with the requirements of this Agreement, the Code and all relevant Australian Standards.

3.4 Non-compliance

- (a) If at any time during the Term in the Distributor's opinion:-
 - (i) there is a Facility Deficiency; and
 - (ii) that Facility Deficiency could have or is having a material adverse effect on the Connection Point or the Distributor's distribution network to which it is connected, if the Facility continued to be connected to the Connection Point;

then (other than in the case of an emergency) the Distributor must give the Customer a notice specifying the nature of the Facility Deficiency and a reasonable period (having regard to the nature of the Facility Deficiency and the possible effect of the Facility Deficiency) in which to rectify the Facility Deficiency.

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- (b) If the Customer fails to remedy the Facility Deficiency to the satisfaction of the Distributor within the time specified in the Facility Deficiency Notice or in the case of an emergency related to the Facility Deficiency, the Distributor may disconnect the Facility from the Distributor's distribution network.

The Distributor will not be required to reconnect the Facility to the Distributor's distribution network until the Customer remedies the Facility Deficiency to the entire satisfaction of the Distributor.

4. SUPPLY RELIABILITY, QUALITY, INTERRUPTIBILITY AND OTHER CUSTOMERS

4.1 System of Supply

- (a) Electricity delivered at the Connection Point will be provided from a three phase system.
- (b) Subject to the electrical characteristics of electricity which is supplied to the Distributor's distribution network from the Transmission Network Connection Point being in conformity with the requirements of the Code and subject to the Customer drawing a Steady Load, the electricity delivered at the Connection Point will be:
 - (i) at a nominal voltage as specified in Item 8(a) of Schedule 1; and
 - (ii) within a range of voltage as specified in Item 8(b) of Schedule 1.
- (c) The Distributor must use its best endeavours to exercise its rights and enforce the obligations of Powerlink owed to the Distributor under the Code.

4.2 Distributor Quality Standards

- (a) The Distributor must operate and manage its distribution network so that the reliability and quality of supply requirements for the distribution network at the Connection Point are in accordance with the Code and other applicable laws.
- (b) The parties acknowledge that the agreed configuration for the connection of the Facility does not include duplication of equipment and that a Credible Contingency Event may cause loss of the capability to supply and accept electricity at the Connection Point.
- (c) The Distributor will prepare contingency plans for the restoration of supply to the customer in the shortest reasonable time and will provide such contingency plans to the customer within six months of the date of this Agreement. The parties will then negotiate in good faith to achieve agreement on the contingency plans.

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4.3 Other Customers

The Distributor may provide Customer Connection Services to any other person using the Distributor's distribution network, including those parts used to connect or supply the Customer provided that:

- (a) when submitting information in support of the charges to the Jurisdictional Regulator, the Distributor includes an appropriate recognition for the use of those parts of its distribution network which are used exclusively for supply of electricity to the Customer; and
- (b) the supply does not adversely affect the Customer's use of any part of the Authorised Demand or the supply of electricity to the Connection Point; and
- (c) the Customer will not suffer loss or damage as a result of the provision of Customer Connection Services to any other person by connecting the other person to the distribution network as long as the Customer is complying with the provisions of this Agreement, all relevant provisions of the Electricity Act, the Code and other applicable laws.

It is provided however that if at any time it is proposed to provide Customer Connection Services to any person other than the Customer using those parts of the Distributor's distribution network used to connect or supply the Customer, the Distributor shall first notify the Customer of such proposal. If within 21 days of such notification the Customer advises that it will utilise that part of the capacity of the relevant part or parts of the distribution network proposed to be used in respect of the proposal relating to the other person then the Distributor will not enter into the proposed arrangement with that other person.

5. AUTHORISED DEMAND AND AUTHORISED LOAD SWING

5.1 Authorised Demand

- (a) Subject to any variation of the Authorised Demand made under this Clause 5, the Authorised Demand is the capacity specified in Item 9 of Schedule 1.
- (b) The Distributor is not obliged to make supply available to a capacity greater than the Authorised Demand + 10%.

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5.2 Variation of Authorised Demand by Customer

- (a) The Customer may by notice to the Distributor request an increase in the Authorised Demand.
- (b) The Notice of Requested Increased Demand must state the number of kilowatts by which the Authorised Demand is required to be increased and the specified date from which the increase is to be effective. The required increase shall not be less than 500 kilowatts.
- (c) The parties will then negotiate in good faith as to the conditions under which the increase may occur and when it may occur.
- (d) A Customer may not:
 - (i) serve a Notice of Requested Increased Demand more than once in any period of twelve calendar months; or
 - (ii) withdraw a Notice of Requested Increased Demand.
- (e) the Customer may request a reduction of the Authorised Demand by no more than 20% with two years notice and the Distributor will accept this request.

5.3 Variation by the Distributor

- (a) Should any recorded monthly Maximum Demand exceed the Authorised Demand, the Distributor may:
 - (i) take no action other than substituting the Maximum Demand for the Authorised Demand in calculating the Authorised Level and such Authorised Demand for the remaining part of the Term (other than as modified under 5.2(d) and (e));
 - (ii) require the Customer to take action to ensure that the Authorised Demand is not exceeded, using the procedure under Clause 13; or,
 - (iii) require the Customer to enter into good faith negotiations as to whether an increase in the Authorised Demand is required.
- (b) The Distributor may temporarily discontinue the supply of electricity or reduce the quantity of electricity to be supplied where:
 - (i) the Distributor, through any circumstances that are not due to its own negligence or default, is temporarily unable to continue the supply of electricity to the Customer or is temporarily required to restrict such supply of electricity; or
 - (ii) the method of operation of the Customer's plant results in undue interference or damage to the Distributor's or the Transmission Network Service Provider's works.

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- (c) Should the Distributor need to interrupt supply for other than Force Majeure, timing is to be coordinated with the Customer.
- (d) Where the Distributor exercises its rights in Clause 5.3(b), the Distributor must use its best endeavours to ensure that any permitted reductions are of minimum duration and consistent with the contingency arising.

6. COMPLIANCE WITH AUTHORITY, CODE AND ACT

6.1 Parties to Comply

- (a) Notwithstanding anything else contained in this Agreement:-
 - (i) the Distributor must comply with its distribution authority, the Code, (except where the Code permits this Agreement to prevail where it is inconsistent with the Code), the Electricity Act, applicable laws, Directives and Authorisations: and
 - (ii) the Customer must comply with the Code, the Electricity Act, applicable laws, Directives and Authorisations,

despite that compliance being inconsistent with any term of this Agreement and resulting in breach of a term of this Agreement.

- (b) If a party becomes aware of an inconsistency mentioned in Clause 6.1(a), that party must notify the other party as soon as practicable of the inconsistency. The parties must negotiate in good faith to modify this Agreement to resolve the inconsistency but neither party is obliged to agree to any modification.
- (c) If a party's breach of a provision of this Agreement (other than its obligations in Clause 6.1(a)) occurs as a result of complying with its obligations under Clause 6.1(a) then the other party will not have any right or remedies with respect to that breach under this Agreement.

6.2 Authorisations

Each party will obtain, and use its reasonable endeavours to maintain, all Authorisations necessary for it to perform its obligations under this Agreement.

6.3 Obligations of the Parties to Meet Improved Standards

- (a) If after the date of this Agreement:
 - (i) there is a change in any law, or any Directive, or change in the Code, which requires standards of technical performance by the Distributor in the operation of the Distributor's distribution

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network to be higher than that which existed prior to such change; and

- (ii) in order for the Distributor to comply with its obligations brought about by such change it is necessary for the Customer to modify the operations, or the manner of operations, of the Facility;

then the Distributor may serve a notice on the Customer setting out the actions or works the Customer must do to enable compliance with such change including who is to bear the cost of carrying out any works and whether any Charges must be altered to take account of the cost of compliance with such change.

The nature of the actions or the works and who is to bear the cost of the actions and/or the works must be reasonable and appropriate in the circumstances.

- (b) Within thirty (30) days of its receipt of a notice under Clause 6.3(a) the Customer must give a notice to the Distributor:-

- (i) advising whether or not it accepts the matters in the notice; or
- (ii) suggesting alternative options for dealing with works required for compliance with such change, including the Distributor undertaking the works and charging the Customer for those works over a period of time.

- (c) If the Customer does not give a notice under Clause 6.3(b), then the Customer will be taken to agree with the matters in the notice.

- (d) If the Customer gives a notice under Clause 6.3(b), the parties shall meet to agree on the works or actions that are required to be undertaken to enable compliance with the change referred to in Clause 6.3(a).

- (e) If the parties cannot reach agreement on the works or actions to be undertaken in accordance with Clause 6.3(d) within 30 days, then the dispute resolution process in Clause 18 will apply.

7. METERING

7.1 Responsible Person

This clause applies if the Distributor is the person who has the responsibility for the provision, installation and maintenance of the Metering Equipment for the Connection Point and therefore is the responsible person for the purposes of Chapter 7 of the Code with the associated responsibilities as set out in the Code.

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7.2 Terms and Conditions on which Distributor agrees to be the Responsible Person

- (a) Metering Equipment, including the necessary current transformers, voltage transformer, and communications equipment, must be provided, owned, and maintained by the Distributor. Such equipment shall be fitted with reverse running detents to prevent the registration of electrical energy flows back from the Customer to the Distributor's distribution network.
- (b) If the Metering Equipment was installed prior to the date of this Agreement, title in the Metering Equipment will be deemed to be held by the Distributor.
- (c) The Customer shall meet the costs of any modifications to the Metering Equipment required to ensure compliance with the Code.
- (d) Where check metering is installed it must be maintained by the Distributor in accordance with the level of accuracy of check metering required under the Code.
- (e) In the absence of a separate agreement between the parties, the Distributor will act as the responsible person and as the Metering Provider and the Customer must pay the Meter Charges as agreed between the parties. If the parties cannot agree, the dispute resolution procedure in clause 18 will apply.
- (f) Subject to any contrary change in the Code or Act or Directives or Authorisation of the Jurisdictional Regulator, the Meter Charges will be escalated at CPL.
- (g) The Distributor must deliver to the Customer an invoice for the Meter Charges in the Account Period which includes the anniversary of the Effective Date.
- (h) The Customer must pay the amount set out in the invoice within 30 days following receipt of that invoice.
- (i) The Customer, if a Second Tier Customer, must pay any NEMMCO Settlement Charges levied upon the Distributor in relation to it being a Second Tier Customer.
- (j) The Customer must pay the Distributor, within 30 days of receipt of notice specifying the amount payable, for any work performed other than Metering Equipment maintenance resulting from a direction of NEMMCO, or at the request of the Meter Data Agent, at the cost to the Distributor plus 10%.
- (k) The Customer must provide reasonable access to the Customer's premises for the Distributor, and load conditions during normal working hours to allow the testing or calibration of Metering Equipment at intervals as specified in the Code.

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8. CHARGES AND BILLING

8.1 Charges

- (a) The Customer must pay to the Distributor the charges being:
 - (i) the Fixed Charge;
 - (ii) a Demand Charge for the Authorised Level;
 - (iii) an Energy Charge; and
 - (iv) any part of charges levied on the Distributor by Powerlink, that the Distributor is permitted at law to pass on to the Customer, unless it is already included in paragraphs (i) to (iii).

The amounts applicable other than for paragraph (iv) at the commencement of this Agreement are specified in Item 10 of Schedule 1. In respect of the Fixed Charges referred to in Clause 8(a)(i), \$85,073 per month will remain constant for the duration of the Initial Term and will not be subject to Clause 8.2.

- (b) The parties acknowledge that the Charges payable by the Customer have been calculated on the basis that the Distributor will enter into agreements and/or an agreement which will enable the Distributor to have access to or use of certain assets presently associated with the supply of electricity to Hamilton Island in sufficient time prior to the Distributor providing the Customer Connection Services to the Facility, so as to enable the Distributor to incorporate such assets in the project for the provisions of Customer Connection Services to the Facility. If such agreement or agreements are not entered into in sufficient time prior to the provisions of the Customer Connection Services, then the Charges and the Effective Date will be altered as agreed between the parties having regard to the increased cost to the Distributor as a consequence of the agreements or agreement not having been entered into. If agreement is unable to be reached then the dispute resolution procedure referred to in Clause 18 of this Agreement shall apply.

8.2 Variation of Charges

- (a) The parties acknowledge that the Queensland Competition Authority is the Jurisdictional Regulator at the Effective Date for the purposes of the regulation of distribution network service pricing and will from time to time fix the Charges.
- (b) If the Jurisdictional Regulator publishes a ruling after the date of this Agreement the result of which is that the Charges to be levied by the Distributor are different from those applicable under this Agreement at the date of the ruling, the Charges shall be adjusted so that they are in accordance with the ruling, and apply from the date of commencement of the ruling.

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- (c) If the Jurisdictional Regulator fails to approve charges for the relevant period, the Charges shall be adjusted Quarterly in accordance with the following formula:

$$\text{New Charges} = \frac{\text{Old Charges} \times \text{CPI}}{\text{CPI Base}}$$

Where

- New Charges = the Charges payable from the date of the adjustment;
- Old Charges = means the Charges payable in the Quarter immediately preceding the new Quarter;
- CPI = CPI in respect of the Quarter preceding the Quarter in which the adjustment is to be made; and
- CPI Base = means the CPI in respect of the second last Quarter preceding the Quarter in which the adjustment is to be made.
- (d) As soon as practicable after the last day of each Account Period the Distributor must deliver to the Customer an invoice detailing the calculation of the Charges which became payable at the end of that Account Period, including details of the measured quantities, billed quantities, prices and amounts charged for each component of the Charges.
- (e) Should an outage exceed 24 hours for any reason (whether caused by Force Majeure or otherwise), the charges will be adjusted on a pro rata daily basis for every day (or part thereof) for the period from the time of the outage until full supply is provided. This applies to all charges in 8.1(a) except for the Energy Charge.
- (f) If the Distributor becomes obliged to grant access to another customer through its distribution system (including the submarine cable), the Distributor must adjust the Charges as from the date of such access so that the return on assets to the Distributor contemplated by this Agreement is shared between the Customer under this Agreement and those other customers in proportion to their respective Authorised Demands.

8.3 Payments

- (a) The Customer must pay the Distributor the amount set out in the invoice (whether disputed or not) within 10 days or as mutually agreed following receipt of that invoice. It is acknowledged that the Customer may appoint the Retailer as its agent to make the payment under this Clause.

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11.2 Suspension of Obligations

- (a) For the duration of the Force Majeure the rights and Non-Financial Obligations of the parties under this Agreement will be suspended in whole or in part, as the case may require, to the extent that the ability of the Affected Party to perform any of its Non-Financial Obligations is adversely affected by a Force Majeure that is the subject of a FM Notice or a notice given under Clause 11.1(a)(ii).
- (b) Suspension of any Non-Financial Obligations under this Clause 11.2 will not affect any rights or obligations which may have accrued prior to that suspension or, if the Force Majeure affects only some Non-Financial Obligations, any other obligations or rights of the parties.
- (c) The period of suspension under Clause 11.2(a) of the Non-Financial Obligations of the Affected Party will exclude any delay in the Affected Party's performance of those Non-Financial Obligations which is attributable to a failure by the Affected Party to comply with Clause 11.3.

11.3 Mitigation

- (a) Subject to Clause 11.3(b) the Affected Party will use all reasonable endeavours to avoid or remove the circumstances constituting the Force Majeure and to mitigate the effect of the Force Majeure and the other party will co-operate and give such assistance as the Affected Party may reasonably request in connection with the Force Majeure.
- (b) Nothing in this Clause 11 requires the Affected Party to settle any industrial dispute otherwise than in a way that is commercially reasonable and no delay in making the settlement will deprive the Affected Party of the benefit of Clause 11.2(a) provided that the Affected party has complied with relevant industrial orders, awards or agreements.

11.4 End of Force Majeure Event

- (a) The Affected Party must as soon as reasonably possible after the end of a Force Majeure resume performance of any obligation suspended as a result of it.
- (b) If the Affected Party gave a Force Majeure Notice then the Affected Party must give notice to the other party of the end of the Force Majeure as soon as practicable after the end of the Force Majeure.

12. LIABILITY AND INDEMNITY

12.1 Liability with Respect to Third Parties

(a) The Customer indemnifies and holds harmless the Distributor and its officers, employees and agents against any and all third party claims for loss, damage or expense arising out of:

- (i) the operation and maintenance of the Facility;
- (ii) a breach by the Customer of its obligations or warranties under this Agreement,

except to the extent that any such claim has arisen directly due to a negligent act or omission, breach of contract or breach of statutory duty on the part of the Distributor or its officers, employees or agents (to the extent that the Distributor is liable by the operation of Sections 96 and 97 of the Electricity Act or Section 78 of the National Electricity Law (whichever is applicable) or to the extent that the Distributor is liable to the Customer for a breach of this Agreement).

(b) The Distributor indemnifies the Customer and its officers, employees and agents against any and all third party claims for loss, damage or expense arising out of:

- (i) the operation or maintenance of the Distributor's distribution network; or
- (ii) a breach by the Distributor of its obligations under this Agreement,

except to the extent that any such claim has arisen directly due to a negligent act or omission, breach of contract or breach of statutory duty on the part of the Customer or its officers, employees or agents.

12.2 Liability of Distributor

(a) Notwithstanding the protective provisions, the Distributor agrees that it is liable (in damages and otherwise) to the Customer for any total or partial failure to supply or sell electricity or perform an obligation under this Agreement concerning the supply or sale of electricity, but only if that failure was caused by:

- (i) the negligence of the Distributor or a person acting for it; or
- (ii) contravention by the Distributor, or a person acting for it, of the Electricity Act, the Code or a condition of the Distributor's distribution authority; or
- (iii) breach of duty on the part of the Distributor or a person acting for it (whether the duty be imposed by statute or the Code).

Notwithstanding anything hereinbefore contained the Distributor shall only be liable where Section 97 of the Act or Section 78 of the National Electricity Law applies or where the Distributor is liable to the Customer for breach of the provisions of this Agreement.

- (b) In this Clause, the protective provisions are:
- (i) sections 96 and 97 of the Electricity Act 1994 (Qld); and
 - (ii) section 78 of the Electricity - National Scheme (Queensland) Act 1997,

in each case as amended from time to time.

- (c) The Distributor agrees that it is liable (in damages and otherwise) to the Customer for each breach of this Agreement, not being a breach constituting a total or partial failure to supply or sell electricity or to perform an obligation under this Agreement concerning the supply or sale of electricity.

12.3 Disconnection at Request of the Retailer

- (a) The Customer acknowledges that the Distributor may exercise any right it may have under the Electricity Act to disconnect or reduce supply to the Customer upon request by the Retailer.
- (b) The Customer for itself, and all persons claiming through it, releases and discharges the Distributor and any of its employees, officers, agents or contractors from any claims (including legal costs and claims for consequential loss), liabilities, demands, actions, suits or proceedings in any way connected with or arising out of a disconnection or reduction of supply and at the request of the Retailer as referred to in clause 12.3(a) and agrees that this release and discharge may be pleaded in defense of, and as a bar to, any such claims, liabilities, demands, actions suits or proceedings.
- (c) The Distributor will not disconnect the Customer without consulting with the Customer.

12.4 Limitation of Liability

Under no circumstance and notwithstanding any other term or condition of this Agreement or any other document, or any law, regulation, code, provision or other regulatory instrument, where the Distributor has liability to the Customer or is required to indemnify the Customer the maximum amount payable by the Distributor under any such liability and indemnity shall be [REDACTED] per week in total during any relevant period or periods for which the Distributor shall be liable to the Customer and the maximum total amount payable by the Distributor during the term of this Agreement, any extension or at any other time relating to this Agreement shall not exceed [REDACTED]. The amounts of

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██████████ and ██████████ shall be escalated annually in accordance with CPI.

13. DEFAULT AND TERMINATION

13.1 Default Notice

If a Default occurs, the Non-Defaulting Party may give the Defaulting Party a written notice ("Default Notice") specifying the Default that has occurred.

13.2 Cure Period

Upon receipt of a Default Notice, the Defaulting Party will have:

- (a) in the case of a Financial Default, 7 days from the date of receipt of the Default Notice to remedy that Default;
- (b) in the case of a Performance Default which is capable of remedy, 30 days from the date of receipt of the Default Notice to remedy the Default provided that the Defaulting Party diligently pursues a cure of the Performance Default; or
- (c) in the case of a Performance Default which is agreed by the parties (or in default of agreement, determined in accordance with Clause 18) to be incapable of remedy:
 - (i) 14 days after the agreement upon, or determination of, the Compensation within which to pay that Compensation to the Non-Defaulting Party; and
 - (ii) 14 days from the date of receipt of the Default Notice to take all reasonable steps to prevent re-occurrence of the Performance Default;
- (d) in the case of an Insolvency Default, 30 days from the date of receipt of the Default Notice to remedy the Default.

13.3 Remedy of Curable Performance Default

Any remedy of a Performance Default undertaken by or on behalf of a Defaulting Party must be in accordance with Good Electricity Industry Practice.

13.4 Rights of Termination

- (a) If the relevant Default remains unremedied at the end of the applicable cure period the Non-Defaulting Party may at any time after the end of the cure period providing the relevant Default is still subsisting, terminate this Agreement by notice to the Defaulting Party.
- (b) Termination of this Agreement by a party under Clause 13.4(a) is without prejudice to the other rights and remedies which a party may have in respect of the Default.

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13.5 Effect of and Remedies Upon Termination

- (a) If either party elects to terminate this Agreement pursuant to its rights under Clause 13.4 then upon termination this Agreement will, subject to Clause 13.5(c), be of no further force and effect.
- (b) Upon termination of this Agreement, the party electing to terminate may do any or all of the following, without prejudice to its rights at law or otherwise:-
 - (i) sue the Defaulting Party to recover damages or Compensation for that Default; or
 - (ii) exercise all available legal and equitable remedies including injunctive relief or such other orders as it considers appropriate.
- (c) Upon termination of this Agreement by either party (and without prejudice to the Distributor's other rights and remedies) the Distributor may do any or all of the following:
 - (i) subject to Clause 13.6, de-energise the Connection Point;
 - (ii) disconnect the Facility from the Connection Point; and
 - (iii) decommission and remove any of its assets associated with the Connection Point.

In doing so, the Distributor must not do anything to prejudice the operation of the Plant and Facility.
- (d) Each party must remove any item of its property located on premises occupied or under the control of the other party within 60 days of the date of termination and must make good any damage done in doing so. Any property not so removed will be taken to be abandoned.

13.6 Right to De-Energise

If the Distributor elects to de-energise the Connection Point, it may only do so on it giving 14 days notice to the Customer stating its intention to do so if the relevant Default is not remedied within the applicable cure period and remains unremedied at the expiry of that notice period.

13.7 Contingency Plans

The provisions of this clause regarding termination will be subject to the provisions of Clause 4.2(c). Where contingency plans referred to in Clause 4.2(c) are applicable to any circumstance which would otherwise constitute a default, neither party shall have a right of terminating this Agreement.

14. DISTRIBUTOR'S RECOVERY OF COSTS OF STRANDED ASSETS

14.1 Recovery Right

If this Agreement is terminated by the Distributor pursuant to Clause 13 then, in addition to all other monies payable by the Customer to the Distributor, the Customer will forfeit to the Distributor the bank guarantee held under Clause 9.

15. ASSIGNMENT AND ENCUMBRANCE

15.1 By Customer

- (a) The Customer must not assign, mortgage, charge or attempt or purport to assign, mortgage or charge any or all of its rights, title or interest under this Agreement, without the prior written consent of the Distributor.
- (b) If the Distributor consents to an assignment the assignee must enter into a deed of covenant in favour of the Distributor whereby the assignee agrees to be bound by the provisions of this Agreement as if the assignee had been a party to this Agreement in place of the customer.
- (c) The Distributor agrees that it will not unreasonably withhold its consent to an assignment, mortgage, novation or charge.
- (d) The Distributor shall be under no obligation to consent to any of the matters referred to in this clause without first being satisfied that:
 - (i) it will not be disadvantaged as a result of giving such consent; and
 - (ii) it will be in no worse position than it is under the provisions of this agreement;

including but not limited to in relation to the execution of appropriate documents to protect the Distributor's interests under this agreement, the provision of appropriate financial security and the technical and financial capacity and competence of any proposed third party.

In deciding whether or not it is satisfied, as referred to above, the Distributor's decision must be made on an objective and reasonable basis.

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15.2 By Distributor

The Distributor may assign, mortgage or charge any or all of its rights or obligations under this Agreement without the consent or approval of the Customer.

15.3 Alteration in Trust to Constitute Assignment

The following circumstances will constitute an assignment:

- The replacement or removal of Permanent Trustee Australia Limited as trustee of BT Hotel Trust;
- The passing of a resolution or giving of a direction by a beneficiary of the BT Hotel Trust for the winding up or termination of the BT Hotel Trust or for distribution of the BT Hotel Trust fund;

The Customer shall give notice to the Distributor forthwith upon any of the above matters being proposed. The Customer shall continue to be bound by this Agreement until such time as the Distributor has executed the Deed of Covenant referred to in Clause 15.1(b) and from that time the Customer shall cease to be bound by this Agreement.

16. NOTICES

16.1 Notice

- (a) A notice, account, communication or other document required or authorised to be given or served upon a party under this Agreement ("Notice") must be in writing in the English language and may be given or served by hand, facsimile, prepaid post or ordinary post to that party at its address or facsimile number specified in Item 13 of Schedule 1 or such other address or facsimile number as that party may notify in writing to the other party in accordance with the provisions of this Clause 16.
- (b) Any Notice sent by facsimile shall be confirmed and sent by mail, by hand or by courier.

16.2 Deemed Service

A Notice or statement given under this Agreement will be taken to have been given:-

- (a) in the case of service by hand, on delivery;
- (b) in the case of service by facsimile, on the next Business Day after the same is dispatched; and
- (c) in the case of service by certified mail and ordinary mail, on the third Business Day following posting.

16.3 Notice of Change of Retailer

If the Customer chooses to purchase electricity for supply to the Facility through the Distributor's distribution network from a retail entity other than the retail entity specified in Item 4 of Schedule 1, the Customer must ensure that the Distributor is notified of the details of that substitute retail entity.

17. CONFIDENTIALITY

17.1 Information Confidential

Except as is provided in Clause 17.2, neither party will, without the consent of the other party at any time, whether before or after the expiration of the Term, divulge or communicate or suffer or permit any of its representatives to divulge or communicate to any person any of the contents of this Agreement or any information concerning the operation or carrying out of or other implementation of this Agreement or any information which may come to its knowledge in the course of carrying out the terms of this Agreement concerning the operations, dealings, transactions, financial arrangements or affairs of the other party.

17.2 Information may be Disclosed in Certain Circumstances

The restrictions imposed by Clause 17.1 will not apply to the disclosure of any information:

- (a) which is now in or hereafter comes into the public domain other than through a breach of Clause 17.1;
- (b) which is required by the Code or any other law to be communicated to a person who is authorised by the Code or any other law to receive the information; or
- (c) to a court, arbitrator, expert or administrative tribunal in the course of proceedings before it to which the party disclosing the information is a party;
- (d) to a financier or potential financier or potential purchaser of the Facility (which in this paragraph (d) includes any representative of any such person) of the Customer in order to permit such financier to consider a request from the Customer for the financing or refinancing of the Customer's works or operation connected with its obligations under this Agreement or to any investors or potential investors in the Customer provided that any such person, agrees to observe the same or similar obligations as imposed by this Clause 17;
- (e) to a party's consultants and advisers who undertake in writing to be bound by the confidentiality undertaking in Clause 17.1 as if they were a party to it;

- (f) to the Retailer or any prospective retailer to the Customer of electricity for the Facility to be delivered via the Distributor's distribution network;
- (g) to any shareholding Minister under the *Government Owned Corporations Act 1993* of the Distributor or under any Act of Queensland or to the Parliament of Queensland or the Government of Queensland or any of its agencies, including the Queensland Electricity Reform Unit, with respect to any matter or thing relating to the Distributor,
- (h) which is required to enable the Customer's employees, financial advisers, brokers and others to keep investors and potential investors in the BT Hotel Group properly informed with regard to their investment or proposed investment in the Group to the same extent as information is currently provided in respect of other hotel properties acquired by the BT Hotel Group.

PROVIDED THAT in the event of any disclosure under paragraphs (b), (c), (d), (e) (f) or (g) it shall be expressly stated that information so disclosed is the subject of a confidentiality agreement between the parties.

18. DISPUTE RESOLUTION

18.1 Scope

- (a) If both the Distributor and the Customer are Code participants or unless otherwise expressly agreed to the contrary in this Agreement, the dispute resolution regime provided for in Clause 8.2 of the Code applies to any disputes which may arise between the parties under or in relation to this Agreement with respect to the application of the Code.
- (b) Unless otherwise expressly agreed to the contrary in this Agreement, Clauses 18.2 to 18.8 apply to any disputes which may arise between the parties under or in relation to this Agreement other than with respect to the application of this Code.

18.2 Chief Executive Resolution

The parties hereby agree that any dispute to be referred to the dispute resolution procedure under this Clause 18 on relevant matters arising out of this Agreement shall be referred in the first instance to the chief executives of the parties for resolution. Failing such resolution within ten (10) Business Days of the referral as aforesaid, the relevant dispute shall be referred for resolution by an Expert in accordance with Clause 18.3 below.

18.3 Expert

- (a) Where any matter may be referred to an Expert pursuant to Clause 18.2 or otherwise in accordance with the terms of this Agreement, an Expert shall be appointed by the parties, or in default of agreement upon such appointment within ten (10) Business Days of their agreement to refer

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the matter to an Expert or of it being required pursuant to Clause 18.2, in the case of financial matters, by the President for the time being of the Institute of Chartered Accountants, Australia, and, in the case of technical matters, the President for the time being of the Institution of Engineers, Australia.

(b) In any event, the Expert will:-

- (i) have reasonable qualifications, commercial and practical experience in the area of the dispute;
- (ii) have no interest or duty which conflicts or may conflict with his function as Expert, he being required to fully disclose any such interest or duty before his appointment; and
- (iii) not be an employee of any of the parties or of their respective Related Corporations.

(c) The Expert will:-

- (i) promptly fix a reasonable time and place for receiving submissions or information from the parties or from any other persons as he may think fit;
- (ii) accept oral or written submissions from the parties as to the subject matter of the dispute within fourteen (14) Business Days of his appointment;
- (iii) not be bound by the rules of evidence;
- (iv) make his decision only in relation to matters expressly referred to an Expert in accordance with Clause 18.3(a) and will have no discretion to come to any other decision on any matter except with the prior agreement of the parties;
- (v) have power (in relation to changes to this Agreement referred to the Expert in default of agreement between the parties) to order changes to this Agreement which are binding on the parties;
- (vi) prior to making a binding determination, publish a draft determination to the parties within twenty-eight (28) days of his appointment and thereafter the parties may within thirty-four (34) days of his appointment make written submissions on the same to the Expert and the Expert may amend his draft determination prior to making his final determination; and
- (vii) state his final determination in writing within thirty-seven (37) days of his appointment.

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- (d) The Expert must undertake to keep confidential matters coming to his knowledge by reason of his appointment and performance of his duties.
- (e) The Expert will have the following powers:-
 - (i) to inform himself independently as to facts and if necessary technical and/or financial matters to which the dispute relates;
 - (ii) to receive written submissions sworn and unsworn written statements and photocopy documents and to act upon the same;
 - (iii) to consult with such other professionally qualified persons as he in his absolute discretion thinks fit; and
 - (iv) to take such measures as he thinks fit to expedite the completion of the dispute resolution.
- (f) Any person nominated as an Expert hereunder shall be deemed not to be an arbitrator but an expert and the law relating to arbitration including the Commercial Arbitration Act 1990 (Qld), as amended, will not apply to him or his determination or the procedures by which he may reach his determination.
- (g) The dispute resolution will be held in Mackay, Queensland unless the parties otherwise agree.

18.4 Decisions of Expert

In the absence of manifest error, the decision of the Expert will be valid and binding upon the parties.

18.5 Costs

The costs of the Expert and any advisers will be borne by the parties equally.

18.6 Information and Representation

The parties will give the Expert all information and assistance that the Expert may reasonably require. The parties shall be entitled to be legally represented in respect of any representations that they may wish to make to the Expert, whether orally or in writing.

18.7 Other Methods of Dispute Resolution

Instead of a dispute being referred to an Expert under Clause 18.3 the parties may agree to refer any dispute under this Agreement to arbitration in accordance with the rules and procedures of any arbitral body that the parties may agree upon, or in accordance with such rules and procedures as the parties may determine from time to time.

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18.8 Obligations Continuing

Notwithstanding a reference to the dispute resolution procedure in this Clause 18, the parties will, so far as it is reasonably practicable, continue to perform and comply with their respective obligations under this Agreement.

19. GOVERNING LAW

19.1 Queensland

This Agreement is governed by and is to be construed in accordance with the laws of the State of Queensland.

19.2 Courts

Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the Courts having jurisdiction in Queensland and courts of appeal from them.

20. MISCELLANEOUS

20.1 Stamp Duty

The Customer is, as between the parties, liable for and must duly pay all stamp duty (including any fine or penalty) on or relating to this Agreement and any document executed under it. If the Distributor pays any stamp duty (including any fine or penalty) on or relating to this Agreement or any document executed under it, the Customer must pay that amount to the Distributor upon demand.

20.2 Legal Costs

Subject to any express provision in this Agreement to the contrary, each party will bear its own legal and other costs and expenses relating directly or indirectly to the preparation of, and performance of its obligations under, this Agreement.

20.3 Amendment

This Agreement may only be varied or replaced by a document in writing duly executed by the parties.

20.4 Rights Cumulative

Subject to any express provision in this Agreement to the contrary, the rights of a party under this Agreement are cumulative and are in addition to any other rights of that party.

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20.5 Approvals and Consent

Subject to any express provision in this Agreement to the contrary, a party may conditionally or unconditionally give or withhold any consent to be given under this Agreement and is not obliged to give its reasons for doing so.

20.6 Further Assurance

Each party will promptly execute all documents and do all things that any other party from time to time reasonably requires of it to effect, perfect or complete the provisions of this Agreement and any transaction contemplated by it.

20.7 Preservation of Accrued Rights

The expiration or determination of this Agreement:

- (a) will not affect the provisions expressed or implied to operate or have effect after such expiration or determination; and
- (b) will be without prejudice to any right of action already accrued to any party in respect of any breach of this Agreement by the other party.

20.8 Invalidity

If any term, Clause or provision of this Agreement is or is taken or judged to be invalid for any reason, such invalidity will not affect the validity or operation of any other term, Clause or provision of this Agreement except to the extent necessary to give effect to such invalidity.

20.9 Entire Understanding

This Agreement embodies the entire understanding and agreement between the parties as to the subject matter of this Agreement. All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this Agreement are merged in and superseded by this Agreement and are of no force or effect whatever and no party is liable to the other party in respect of those matters. No oral explanation or information provided by any party to the other party affects the meaning or interpretation of this Agreement or constitutes any collateral agreement, warranty or understanding between the parties.

20.10 Liability of the Customer

Notwithstanding anything else contained in this agreement:

- (a) the Distributor acknowledges that the Customer enters into this Agreement only in its capacity as trustee of BT Hotel Trust and not otherwise and that all of the obligations or warranties of the Customer pursuant to this Agreement are undertaken or given by it only in its capacity as trustee of that Trust; and

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- (b) the Distributor acknowledges that the Customer's liability pursuant to this Agreement is limited to the Customer's right of indemnity out of the assets of BT Hotel Trust from time to time and in no circumstances will the Customer be liable to pay or satisfy any of the obligations imposed on it by this Agreement, express or implied, out of any assets held by the Customer personally, as trustee of any other trust or on behalf of any other person.

The limitation of the Customer's liability as contained in this Clause does not affect the rights of recovery of, or the amount that may be recovered by the Distributor under the Bank Guarantee referred to in Clause 9.

- (c) It is acknowledged that the limitation of liability referred to in subclause (b) above applies notwithstanding an assignment by or the replacement of Permanent Trustee in its capacity as Trustee of BT Hotel Trust as the Customer, whether with or without the consent of MEB, and whether with or without a Deed of Covenant being executed as required by the Agreement.

20.11 Trustee Provisions

The Customer in its capacity as Trustee of the BT Hotel Trust represents and warrants to the Distributor that:

- (i) **Sole Trustee:** it is the only trustee of the BT Hotel Trust;
- (ii) **No removal of Customer:** to the best of the Customer's knowledge and belief, no resolution has been passed or direction or notice been given removing the Customer as trustee of the BT Hotel Trust;
- (iii) **Authority:** it has power and authority as trustee of the BT Hotel Trust to enter into and perform its obligations under this Agreement;
- (iv) **Authorisations:** to the best of the Customer's knowledge and belief, it has taken all necessary action to authorise the execution, delivery and performance of this Agreement and the transaction contemplated by it in accordance with their terms;
- (v) **Right to Indemnity:** it has a right to be indemnified out of the BT Hotel Trust Fund in respect of obligations incurred by it under this Agreement in accordance with the terms of the BT Hotel Trust Deed;
- (vi) **No Termination of Trust:** no resolution has been passed or direction been given by the beneficiaries of the BT Hotel Trust for the winding up or termination of the BT Hotel Trust.

21. INTERPRETATION

Contracting Out of Electricity Act

The parties agree that Sections 40G(a) and (b) and Section 40E(e) of the Electricity Act do not apply to this Agreement.

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21.2 References

Whilst the parties acknowledge that the Distributor has power in certain circumstances to interrupt or disconnect supply of electricity to the Customer and/or Facility subject to the provisions of Clause 4.3, the Distributor shall use its best endeavours to as far as possible avoid such interruptions or disconnections.

21.3 Amendments

Any reference to "this Agreement" or to any other agreement or document is a reference to this Agreement, or, as the case may be, the relevant other agreement or document (including any schedule thereto) as amended, supplemented, assigned or novated from time to time and includes a reference to any document which amends, waives, is supplemental to or assigns or novates this Agreement or, as the case may be, the relevant other agreement or document.

21.4 Legislation

A reference to:

- (a) the Code, any other code, Australian Standard, guideline or instrument or any provision of any of them includes any variation revision or replacement of that code, standard, guideline, instrument or provision;
- (b) a statute, ordinance, licence or other law includes regulations and other instruments under, and consolidations, amendments, re-enactments, extensions or replacements of that statute, ordinance licence or law; and
- (c) a person which has ceased to exist or has been reconstituted, amalgamated, reconstructed or merged or the functions of which have become exercisable by any other person in its place is taken to refer to the person established or constituted in its place or by which its functions have become exercisable.

21.5 Group References

A reference to a thing (including, without limitation, an amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to any one or more of them.

21.6 References to Persons

- (a) The word 'person' or 'entity' includes a natural person, firm, body corporate, partnership (whether limited or otherwise), joint venture, trust, unincorporated association and an authority.

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- (b) A reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and assigns.

21.7 Gender and Plurals

- (a) A reference to one gender includes all genders.
- (b) The singular includes the plural and vice versa.

21.8 Period of Time

If a period of time is specified and the period:

- (a) dates from a given day or the day of an act or event, it is to be calculated exclusive of that day; and
- (b) commences on a given day or the day of any act or event, it is to be calculated inclusive of that day.

21.9 References to Time

Unless expressed otherwise, a reference to:

- (a) time is a reference to Brisbane time;
- (b) a day is a reference to a period of time commencing immediately after midnight and ending the following midnight;
- (c) a reference to a week is a reference to the period of time commencing immediately after midnight each Saturday and ending 7 days later; and
- (d) a month is a reference to a calendar month.

21.10 Definitions

If a word or phrase is specifically defined in this Agreement, then other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

21.11 Headings

Headings are inserted for convenience and do not affect the interpretation of this Agreement.

21.12 Including

A reference to "including" means including without limitation.

21.13 Measurement

Measurements are in System Internationale (S.I.) units.

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21.14 Money

References to monetary amounts are to be taken to be expressed in Australian currency.

22. DEFINITIONS

In this Agreement, the following words and expressions have the following respective meanings, unless the context otherwise requires:

Account Period means the period specified in Item 12 of Schedule 1.

Affected Party means a party which is prevented from or delayed in performing any of its Non-Financial Obligations for reasons attributable to a Force Majeure.

Authorisation means any approval, authorisation, authority, certificate, consent, exemption, filing, licence, notarisation, permission, permit, recording, registration, ruling, statutory required policy of insurance, waiver, and any renewal or variation of any of them, by, from or with a Government Agency or Code Agency.

Authorised Demand means the maximum rate of half hourly Demand in kilowatts that the Customer is permitted under the terms of this Agreement. The quantity is specified in Item 9 of Schedule 1.

Authorised Level means the charge set out in Item 10(b)(i) as amended by Clause 8.2(c) for the Authorised Demand per month.

Bank Bill Rate means the one month Australian Bank Bill Swap Reference Mid Rate specified by Reuters Monitor Service page BBSY at or about 10.00 am (Sydney time) on the first Business Day of each calendar month provided that if the Bank Bill Rate cannot be so determined, then Bank Bill Rate shall mean such rate as may be determined in accordance with the dispute resolution procedure in Clause 18.

Business Day means a day, other than a Saturday, Sunday or public holiday upon which the banks are open for business in Brisbane.

Charges means an amount the Customer must pay to the Distributor for Customer Connection Services.

Code means:

- (a) the Market code under the Electricity Act until the commencement of the National Electricity Code under the National Electricity (Queensland) Law; and
- (b) the Code under the National Electricity (Queensland) Law after its commencement under the *Electricity - National Scheme (Queensland) Act 1997*.

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Code Agency means any one or more of:

- (a) the entity which, from time to time, administers the market under the Code;
- (b) the entity which, from time to time, operates the market under the Code;
- (c) the System Operator;
- (d) the person or entity which, from time to time, regulates the electricity market in the State; or
- (e) any agent acting on behalf of any of the above.

Compensation means compensation for loss or damage suffered by a Non-Defaulting Party as a result of Default payable in accordance with this Agreement, as agreed between the Non-Defaulting Party and the Defaulting Party or pursuant to the dispute resolution procedure in Clause 18.

Connection Assets has the meaning given in the Code.

Connection Point means the connection point between the Facility and the Distributor's distribution network as described and shown diagrammatically in Schedule 2.

CPI means the consumer price index published by the Australian Bureau of Statistics in Catalogue 6401.0-Table 1, Consumer Price Index - All Groups - All Capital Cities or if the index is suspended or discontinued, the index substituted for it by the Australian Bureau of Statistics.

Credible Contingency Event has the meaning given in the Code.

Customer means the corporation specified in Item 3 of Schedule 1.

Customer Connection Service has the meaning given in the Electricity Act.

Default means a Financial Default, Performance Default or an Insolvency Default.

Default Notice means a written notice given by the Non-Defaulting Party to the Defaulting Party specifying the Default that has occurred.

Defaulting Party means, in relation to a Default by the Customer, the Customer, and in relation to a Default by the Distributor, the Distributor.

Default Rate means the rate of two per cent (2%) per annum above the then current Bank Bill Rate.

Demand means twice the number of kilowatt hours measured in respect of the Connection Point by the Metering Provider as being supplied to the Customer by the Distributor during any one half hour period.

Demand Charge means the charges set out in Item 10(b) of Schedule 1 relating to the Authorised Level as amended under Clause 8.2(e).

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Directive means any present or future requirement, instruction, direction or order of a Government Agency or Code Agency which is binding on or which would customarily be observed by a reasonable and prudent owner, operator or designer of facilities such as the Distributor's distribution network (in the case of the Distributor) and the Facility (in the case of the Customer), and any modification, extension or replacement thereof from time to time in force.

Distribution Authority has the meaning given in the Electricity Act.

Distribution Entity has the meaning given in the Electricity Act.

Distribution Network has the meaning given in the Code.

Distributor means the distribution entity specified in Item 2 of Schedule 1.

Distributor's automatic disconnection equipment means equipment installed by the Distributor which may automatically disconnect the Facility from the Distributor's distribution network in order to protect the Distributor's distribution network.

Effective Date means the date specified in Item 6 of Schedule 1.

Electrical Installation has the meaning given in the Electricity Act.

Electricity Act means the Electricity Act 1994 (Qld).

Electricity Industry has the meaning given in the Electricity Act.

Energy Charge means the charge set out in Item 10(c) of Schedule 1 as adjusted under Clause 8.2(c).

Escalated at CPI means, where it is used in relation to a number in this agreement, the number is to be adjusted by reference to a factor (not less than one):-

- (a) the numerator of which is the CPI in respect of the last Quarter preceding the Quarter in which the adjustment is to be made; and
- (b) the denominator of which is the CPI for the second last Quarter preceding the Quarter in which the adjustment is to be made.

Expert means a person who is appointed in accordance with the dispute provisions under Clause 18.

Facility means the Customer's electrical installation or premises particularised in Item 5 of Schedule 1.

Facility Connection Requirements means the requirements specified in Schedule 3.

Facility Deficiency means where the Facility does not comply in any respect with the requirements of this Agreement, the Electricity Act, National Electricity Law, the Code or relevant Australian Standards.

Facility Deficiency Notice means a notice given under Clause 3.4(a).

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Facility Technical Data means the requirements specified in Schedule 3.

Financial Default means:

- (a) a failure by a party to pay Compensation within 10 Business Days after the amount of such compensation has been agreed or finally determined to be due; and
- (b) a failure by a party to pay any amount (including interest thereon) as and when due under this agreement and a failure to remedy such non-payment within 10 Business Days after written demand therefor from the other Party.

Financial Obligation means an obligation under this Agreement to pay or cause to be paid an amount of money.

First Tier Customer has the meaning given in the Code.

Fixed Charge means the charge set out in Item 10(a) of Schedule 1 as adjusted under Clause 8.2(c).

Force Majeure means any event, act, occurrence or omission, or combination of them, which (notwithstanding the observance of good electricity industry practice) is beyond the reasonable control of the party affected thereby, which may include, without limitation, the following:

- (a) acts of God, lightning strikes, earthquakes, floods, droughts, storms, mudslides, radioactive or chemical contamination, explosions, fires or other natural disasters, acts of war, acts of public enemies, riots, civil commotions, malicious damage, sabotage, blockades and revolutions;
- (b) industrial disputes;
- (c) action or inaction by any Government Agency, including a denial, refusal or failure to grant any Authorisation;
- (d) mechanical and electrical breakdown and failure of equipment which is not due to any negligence or fault on the part of the Distributor;
- (e) failure of suppliers (being parties with whom the party affected may contract from time to time) of goods and services to provide such goods or services by reason of force majeure.

FM Notice means notice given under Clause 11.1(a)(i) of the occurrence of Force Majeure by the Affected Party to the other party.

Good Electricity Industry Practice has the meaning given in the Code.

Government Agency means a government, a government department, a governmental, semi-governmental or judicial person or a person (whether autonomous or not) charged with administration of any applicable Law. The term includes NEMMCO.

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Insolvency Default means, in respect of the Customer,

- (a) a receiver, a receiver and manager, an administrator or other controller is appointed in respect of the Customer or the Customer's estate or interest in the Facility and such appointment has not been revoked, discharged, stayed, enjoined or withdrawn within 20 Business Days of the appointment of any encumbrancer who takes possession of the assets or undertaking of the Seller and does not relinquish possession within 20 Business Days thereof;
- (b) after all final appeal rights have been exhausted, any execution or other like process of law in respect of an amount exceeding \$100,000 is issued against or levied upon the Customer's estate or interest in this Agreement or the Facility and is not paid out, satisfied or withdrawn within 20 Business Days of the date of issue against or levy upon such estate or interest;
- (c) a liquidator or provisional liquidator is appointed or an order is made or an effective resolution is passed for the liquidation of the Customer and such appointment, order or resolution is not revoked, discharged, stayed, enjoined or withdrawn within 20 Business Days or the Customer enters into an arrangement or composition with its creditors within the meaning of the *Corporations Law*;
- (d) a failure to satisfy, have withdrawn or set aside, a statutory demand under Section 459F of the *Corporations Law*; or
- (e) a resolution has been passed or direction given by the beneficiaries of the BT Hotel Trust for the winding up or termination of the BT Hotel Trust or for distribution of the BT Hotel Trust Fund.

and, in respect of the Distributor

- (a) anything analogous to that in (a) to (d) above;
- (b) the Governor-in-Council authorising the regulator to take over the operation of the Distributor pursuant to section 130 of the Electricity Act.

Instantaneous Demand means the rate in kilowatts at any particular time, measured by equipment provided by the Distributor, at which electricity is delivered at the Connection Point.

Jurisdictional Regulator has the meaning given in the Code, and at the time of commencement of this agreement, the Jurisdictional Regulator is the Queensland Competition Authority.

Maximum Demand means the maximum demand in kilowatts recorded in any month.

Meter Charges shall be the meter charges agreed in accordance with Clause 7.2(e) and adjusted in accordance with Clause 7.2(f).

Metering Equipment means those devices complying with Australian Standards which measure and record the production or consumption of electrical energy.

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Metering Provider has the meaning given in the Code.

National Electricity Law means Electricity - National Scheme (Queensland) Act 1997 (Qld).

NEMMCO means National Electricity Market Management Company Limited ACN 072 010 327.

Network has the meaning given in the Code.

Non-Defaulting Party means the Distributor where the Defaulting Party is the Customer and, the Customer where the Defaulting Party is the Distributor.

Non-Financial Obligation means an obligation under this Agreement that is not a Financial Obligation.

Notice includes a notice, account, communication or other document required to be given or served upon a party under this Agreement

Notice of Requested Increased Demand means a notice given under Clause 5.2(a).

Performance Default means, in respect of either party, a party's failure to perform or comply with any of its Non-Financial Obligations while that obligation is not suspended by the provisions of Clause 11.2.

Power System Security and Reliability Standards has the meaning given in the Code.

Powerlink means Queensland Electricity Transmission Corporation Limited ACN 078 849 233 trading as Powerlink Queensland.

Premises has the meaning given in the Electricity Act.

Quarter/Quarterly means a period of three consecutive calendar months commencing on 1 January, 1 April, 1 July and 1 October in each calendar year.

Responsible Person has the meaning given in the Code.

Related Corporation has the meaning given in the Corporations Law

Retailer means the retail entity nominated in Item 4 of Schedule 1 as varied from time to time by the Customer and notified to the Distributor under Clause 16.3 or the actual retail entity supplying the Customer's Facility via the Distributor's distribution network, if different.

Retail Entity has the meaning given in the Electricity Act.

Sell has the meaning given in the Electricity Act.

Second Tier Customer has the meaning given in the Code.

State electricity entity has the meaning given in the Electricity Act 1994.

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Steady Load means a load with Instantaneous Demand that does not vary by more than 10% during any half hour period commencing at any time.

System Operator has the meaning given in the Code.

Initial Term means the period specified in Item 7 of Schedule 1.

Term means the period, in accordance with Clause 1, from which this Agreement commences and during which this Agreement continues, including any renewals.

Transmission Network Connection Point means the connection point or points as specified in Item 15 of Schedule 1 at and from which electricity purchased by the Customer from the Customer's Retailer will be fed into the Distributor's distribution network for delivery to the Customer under this Agreement.

BT Hotel Trust means the BT Hotel Trust established under the BT Hotel Trust Deed.

BT Hotel Trust Deed means the Deed of Trust dated 18 March 1996 between the Customer, BT Funds Management Limited (ACN 002 916 458) and Permanent Trustee Company Limited (ACN 000 000 993) as varied by a Supplemental Deed dated 8 May 1996.

BT Hotel Trust Fund means the property held on trust by the Customer as trustee under the BT Hotel Trust Deed.

Escalated Annually at CPI means, where it is used in relation to a number in this agreement, the number is to be adjusted by reference to a factor (less than one):

- (a) the numerator of which is the CPI in respect of the last quarter preceding the quarter in which the adjustment is to be made; and
- (b) the denominator of which is the CPI for the fifth last quarter preceding the quarter in which the adjustment is to be made.

NEMMCO Settlements Charges - Any charges that NEMMCO may allocate to second tier customers to cover NEMMCO's settlements costs.

Meter Data Agent - Agent appointed by the Retailer or Customer to provide metering data to NEMMCO for settlements.

SCHEDULE 1

Item 1: *Date of Connection Agreement*

Date 5 November 1998

Item 2: *Name & Address of Distributor*

Mackay Electricity Corporation Limited
(Trading as "MEB")
ACN 078 848 889
P O Box 259
MACKAY QLD 4740

Item 3: *Name & Address of Customer*

Permanent Trustee Australia Limited
ACN 008 412 913
in its capacity as trustee of BT Hotel Trust, its successors, administrators and
permitted assigns
Ground Floor
23-25 O'Connell Street
SYDNEY NSW 2000

Item 4: *Name & Address of Initial Retail Entity*

Central Electricity Retail Corporation
(Trading as "Ergon Energy")
Ground Floor, 61 Mary Street
BRISBANE QLD 4000

Item 5: *Details of Facility*

The electrical system on the Hayman Island Resort - a tourist destination on
Hayman Island Refer to Schedule 2 for Electrical equipment ownership
boundaries.

Item 6: *Effective Date*

9 Nov 99

The effective date will be a date as mutually agreed between parties.

Item 7: *Initial Term*

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The period of 15 years plus the aggregate of the periods for which payment by the Customer is suspended under Clause 8.2(e), to a maximum period of 16 years.

Item 8: (a) *Nominal Voltage*

██████████

(b) *Target Range of Voltage Magnitude*

████████████████████

Item 9: *Authorised Demand*

██████████

Item 10: (a) *Fixed Charge*

██████████ per month

of which ██████████ per month is constant, not subject to Clause 8.2 or increases by the jurisdictional regulator.

(b) *Demand Charge*

(i) *Authorised Level*

██████████ of Authorised Demand/month

(c) *Energy Charge*

██████████

(charges based on MEB purchase of Hamilton Island's mainland assets at offered price and estimated value of the contract for supply and delivery of the connection assets of \$7.638m)

Item 11: Value of Financial Security

Initial Value	\$
First Anniversary (of effective date)	[REDACTED]
Second Anniversary	[REDACTED]
Third Anniversary	[REDACTED]
Fourth Anniversary	[REDACTED]
Fifth Anniversary	[REDACTED]
Sixth Anniversary	[REDACTED]
Seventh Anniversary	[REDACTED]
Eighth Anniversary	[REDACTED]
Ninth Anniversary	[REDACTED]
Tenth Anniversary	[REDACTED]
Eleventh Anniversary	[REDACTED]
Twelfth Anniversary	[REDACTED]
Thirteenth Anniversary	[REDACTED]
Fourteenth Anniversary	[REDACTED]
Fifteenth Anniversary	[REDACTED]

9/11/99
00
01
02
03
04
05
06
07

Item 12: Account Period

The account period will be monthly.

Item 13: (a) Customer

General Manager
Hayman Island
NORTH QUEENSLAND QLD 4801

Phone (07) 4940 1234
Facsimile (07) 4940 5678

(b) Distributor

Chief Executive Officer
MEB
P O Box 259
MACKAY QLD 4740

Phone (07) 49571 888
Facsimile (07) 49512 036

Item 14: *Metering Provider*

Mackay Electricity Corporation Limited

Item 15: *Transmission Network Connection Point*

Proserpine bulk supply substation

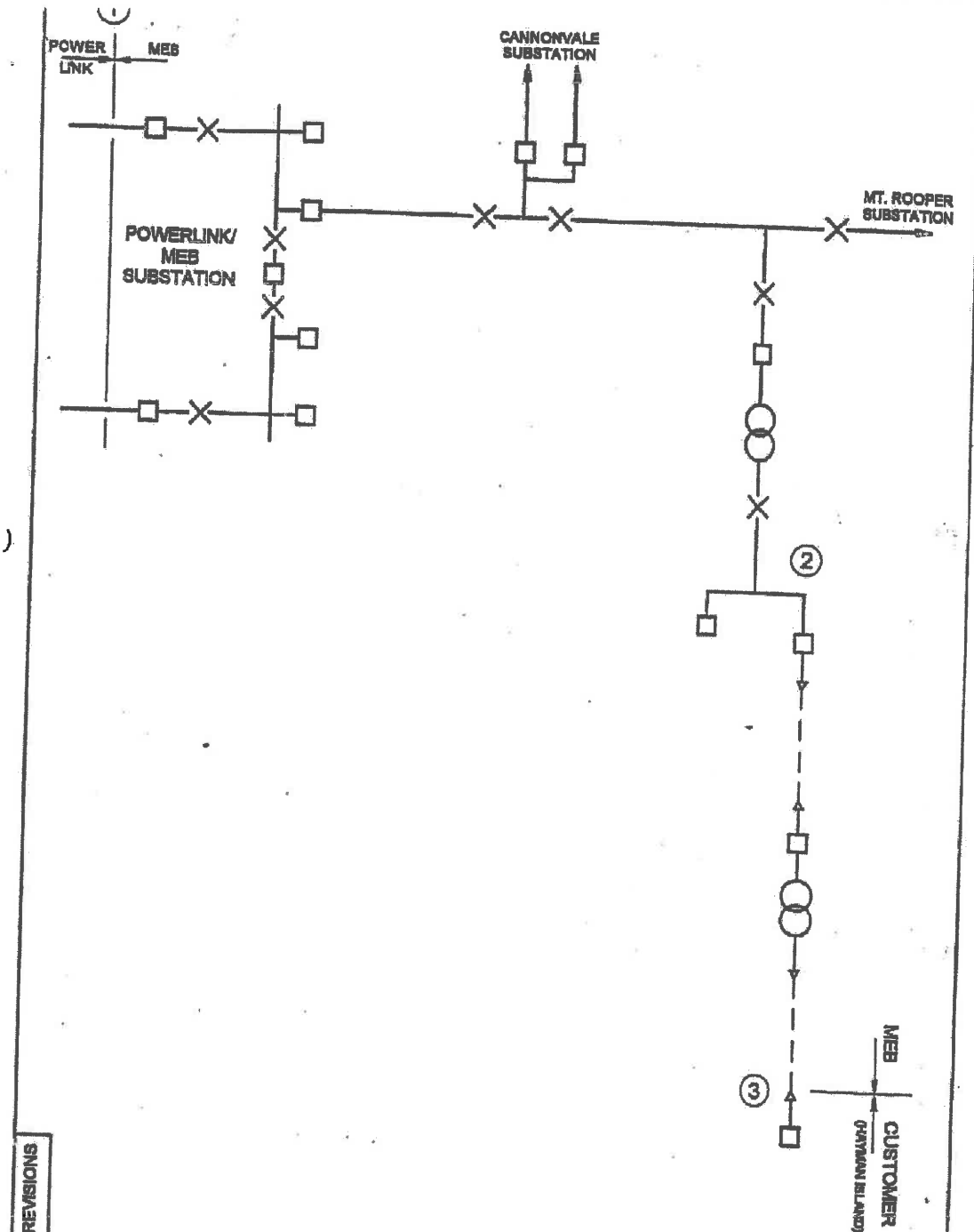
SCHEDULE 2

THE CONNECTION POINT


There will be three defined points in relation to this network connection contract.

- 1. Transmission Network Connection Point (as defined). This point is otherwise known as the bulk supply point and is MEB's connection to the transmission network (Powerlink).*
- 2. Distribution Network Connection Point. This point may be defined as the point at which the assets which are exclusively used by a single customer are connected to the shared distribution network.*
- 3. Connection Point. This is defined as the point at which the energy is delivered to the Customer and the electrical installation becomes the responsibility of the Customer*

Diagram is attached.



REVISIONS

DRG REFS	DESIGNER	 MACKAY ELECTRICITY CORPORATION	FILE NAME:
	CHECKED		VDRG/CADM/FRAM/SC/A4400247
	APPROVED / DATE		A4400247
POINTS OF CONNECTION HAYMAN ISLAND			ISSUE A

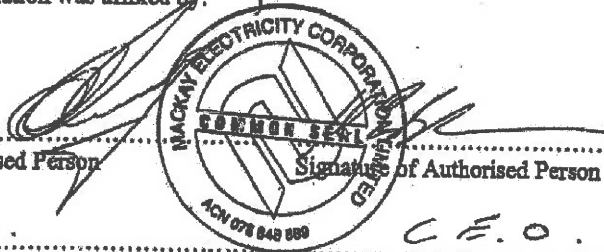
SCHEDULE 3

FACILITY CONNECTION REQUIREMENTS AND FACILITY TECHNICAL DATA

Code to apply.

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THE COMMON SEAL of MACKAY
ELECTRICITY CORPORATION
LIMITED was affixed in accordance with
its Articles of Association was affixed by:



Signature of Authorised Person

Signature of Authorised Person

Chairman

CEO

Office held

Office held

Colin Francis Meng

Keith Ernest Brown

Name of Authorised Person (Print Name)

Name of Authorised Person (Print Name)

Permanent Trustee Australia Limited ACN
008 412 913 by its duly constituted attorney
(here insert name)

Julia

Anthony

Signature of Attorney

JULIA ELIZABETH BROOKE SCOTT

ANTHONY VALENTINE STEELE

Full Name of Attorney

Registered Number and/or Date of Instrument
Appointing Attorney

Schedule 2 – Ergon Energy Annual Review 1999 – page 13- Project Cost

One challenge for the coming year will be to implement effective workplace practices that deliver improved performance in vegetation management, maintenance programs and system improvement.

THE YEAR IN BRIEF

Throughout the course of the year, the group completed a significant number of projects across regional Queensland, including the \$50 million Carpentaria Minerals project, connection of Hayman Island to mainland supply, construction of a major network for the operation of South Walker and Copabella mines in Central Queensland, and replacement of the Birdsville and Bedourie power stations.

The Carpentaria Minerals project was completed after three years of extensive and complex design and construction, with more than 400 kilometres of 220 kV powerline connecting electricity supply from the Mico Creek Power Station to the Pasminco Century Zinc mine. Along the way, electricity supply was also connected to Ernest Henry Mine near Clancurry, Hilton and Gunpowder. The project, the catalyst for expansion of the mining industry in North-West Queensland, provides a platform for further expansion of rural Queensland and provides an opportunity for remote communities in the Burke Shire to be connected to the electricity grid in the future.

A supply agreement secured during the year with Bankers Trust, owners of Hayman Island in the Whitsundays, will see Ergon Energy connect mainland electricity supply to the 5-star international tourist resort in November this year.

The \$8 million project, one of the largest of its kind ever undertaken in Australia, involves the laying of a continuous length of undersea cable for 30 kilometres from Shute Harbour to the island.



WORKPLACE SAFETY

Management of Workplace Health and Safety issues continued to be a priority for the group during the year.

The focus was on risk management in the Ergon Energy workplace. This involved identification of hazards in the workplace and reduction of risks through structured risk assessment processes.

Our high safety standards were recognised this year, with the Mackay and Capricornia regions achieving 5-star recognition from the National Safety Council of Australia for their workplace Health and Safety management systems.

The objective for the coming twelve months will be to develop a consistent approach to workplace health and safety across all Ergon Energy operations. This will involve the implementation of common systems and processes.



DRAFT

**Customer Connection Agreement
(Hayman Island)**

1st Amendment to Agreement

**Ergon Energy Corporation Limited
(ABN 50 087 646 062)**

**Permanent Trustee Australia Limited
(ABN 28 008 412 913) as Trustee of BT Hotel Trust**

CONTENTS

1.	INTERPRETATION	1
	1.1 Definitions	1
	1.2 Interpretation	1
	1.3 Headings	2
2.	AMENDMENT OF CUSTOMER CONNECTION AGREEMENT	2
3.	EFFECTIVE DATE	2
4.	COSTS	2
5.	LAW AND JURISDICTION	2
	5.1 Governing Law	2
	5.2 Submission to Jurisdiction	2
6.	GENERAL	2
	6.1 Balance of Document Unaffected	2
	6.2 Counterparts	3
	SCHEDULE 1 - AMENDMENTS TO THE CUSTOMER CONNECTION AGREEMENT	4
	Amendment of Clause 8.1 (a)	4
	Amendment of Clause 8.2 (e)	5
	Amendment of Schedule 1 Item 7	5
	Amendment of Schedule 1 Item 10	5
	Amendment of Schedule 2	7
	Points of Connection Hayman Island	8

AMENDMENT TO AGREEMENT

DATE

PARTIES

ERGON ENERGY CORPORATION LIMITED (ABN 50 087 646 062) (the "Distributor")

PERMANENT TRUSTEE AUSTRALIA LIMITED (ABN 28 008 412 913) AS TRUSTEE OF BT HOTEL TRUST (the "Customer")

RECITALS

- A. The parties are parties to a negotiated connection agreement (for connection to a distribution network) dated 5 November 1998, which records the arrangement between the Distributor and the Customer in relation to the provision by the Distributor to the Customer of customer connection services in respect of the Facility; ("the Customer Connection Agreement").
- B. The Distributor will upgrade the Shutehaven Substation in June 2007. On the completion of these Works the Distributor will transfer the Shutehaven Substation and associated mainland assets from the unregulated asset register to the regulated asset register. From 1 July 2007 regulated network charges will apply for these mainland assets, and the unregulated network charge for these mainland assets will cease, apart from a monthly charge which represents the remaining ROA component of the mainland assets under the existing Customer Connection Agreement. The existing unregulated charge for the undersea cable and other Distributor owned assets on the Island will continue.
- C. The regulated network connection point for Hayman Island will be on Stoney Beach where the existing bundled cables terminate.
- D. The parties wish to amend the Customer Connection Agreement in the manner set out in this Amendment to Agreement.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 Definitions

In this Amendment, unless the context otherwise requires:

- a) "Effective Date" means 1 July 2007.
- b) Definitions in the Customer Connection Agreement apply in this Amendment unless the context requires otherwise or the relevant term is defined in this Amendment.

1.2 Interpretation

In this Amendment, unless the context otherwise requires:

- a) the singular includes the plural and vice versa;
- b) a reference to any gender includes all genders;

-
- c) a reference to an individual or person includes a corporation, firm, partnership, joint venture, association, authority, trust, state or government and vice versa;
 - d) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, restated or replaced from time to time;
 - e) a reference to any party to this Amendment or any other document or arrangement includes that party's executors, administrators, substitutes, successors and permitted assigns; and
 - f) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning.

1.3 **Headings**

In this Amendment, headings are for convenience of reference only and do not affect interpretation.

2. **AMENDMENT OF CUSTOMER CONNECTION AGREEMENT**

On and from the Effective Date the Distributor and the Customer agree that the Customer Connection Agreement is amended in accordance with the amendments detailed in Schedule 1 to this Amendment.

3. **EFFECTIVE DATE**

This Amendment takes effect, and the parties agree to be bound by the Customer Connection Agreement as amended by this Amendment, from the Effective Date.

4. **COSTS**

Each party shall bear and is responsible for its own costs (including without limitation legal costs) in connection with the negotiation, preparation, execution, completion and carrying into effect of this Amendment.

5. **LAW AND JURISDICTION**

5.1 **Governing Law**

This Amendment is governed by the law in force in Queensland.

5.2 **Submission to Jurisdiction**

The parties submit to the exclusive jurisdiction of the courts exercising jurisdiction in Queensland and any courts that may hear appeals from those courts in respect of any proceedings in connection with this Amendment.

6. **GENERAL**

6.1 **Balance of Document Unaffected**

Nothing contained in or effected by this Amendment abrogates, prejudices, diminishes or otherwise affects any powers, rights, remedies or obligations of any person arising before the Effective Date.

6.2 Counterparts

This Amendment may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

SCHEDULE 1 - AMENDMENTS TO THE CUSTOMER CONNECTION AGREEMENT

Amendment of Clause 8.1 (a)

Clause 8.1 (a) is amended by:

1) deleting the following:

- "(a) The Customer must pay to the Distributor the charges being:
- (i) the Fixed Charge;
 - (ii) a Demand Charge for the Authorised Level;
 - (iii) an Energy Charge; and
 - (iv) any part of charges levied on the Distributor by Powerlink, that the Distributor is permitted at law to pass on to the Customer, unless it is already included in paragraphs (i) to (iii).

The amounts applicable other than for paragraph (iv) at the commencement of this Agreement are specified in Item 10 of Schedule 1. In respect of the Fixed Charges referred to in Clause 8(a)(i), [REDACTED] per month will remain constant for the duration of the Initial Term and will not be subject to Clause 8.2."

2) & replacing with the following:

"(a) The Customer is responsible for payment to the Distributor of all charges billed under this Agreement. The Customer must pay to the Distributor the charges being:

(i) Regulated Charges

All network charges associated with the regulated network connection up to but not including the 22kV undersea cable at Stoney Beach as approved by the Jurisdictional Regulator; and

Any part of charges levied on the Distributor by Powerlink, that the Distributor is permitted at law to pass on to the Customer, unless it is already included in paragraph (i).

and;

(ii) Unregulated Charges

Charge 1

The fixed charges for the unregulated network assets associated with the supply of electricity from Stoney Beach to the Island, these assets being the undersea cable and other distributor Owned assets on the Island."

Charge 2

The fixed charge representing the unrecovered asset network charge component of the assets which have now been transferred to the Distributors Regulated Network.

The amounts applicable at the commencement of this Amendment to Agreement are specified in Item 10 of Schedule 1. In respect of the Fixed Charge 1 [REDACTED] per month will remain constant for the duration of the Initial Term and will not be subject to Clause 8.2 or increases by the jurisdictional regulator."

Amendment of Clause 8.2 (e)

Clause 8.2 (e) is amended by:

- 1) deleting the following:

"Should an outage exceed 24 hours for any reason (whether caused by Force Majeure or otherwise), the charges will be adjusted on a pro rata daily basis for every day (or part thereof) for the period from the time of the outage until full supply is provided. This applies to all charges in 8.1(a) except for the Energy Charge."

- 2) & replacing with the following:

"Should an outage exceed 24 hours for any reason (whether caused by Force Majeure or otherwise), the charges will be adjusted on a pro rata daily basis for every day (or part thereof) for the period from the time of the outage until full supply is provided. This applies only to the unregulated fixed charges in clause 8.1(a) (ii)."

Amendment of Schedule 1 Item 7

Schedule 1 Item 7 is amended by:

- 1) Including the following clause

"The parties agree that the fixed unregulated charges will be suspended for a 1 month period, for the month of June 2007 in accordance with clause 8.2 (e) - due to the outage required to upgrade the Shutøhaven substation. A period of 1 month will be added to the initial term of 15 years, due to the suspension of the fixed unregulated charges."

Amendment of Schedule 1 Item 10

Schedule 1 Item 10 is amended by:

- 1) deleting the following:

"(a) *Fixed Charge*

[REDACTED] per month

of which [REDACTED] per month is constant, not subject to Clause 8.2 or increases by the jurisdictional regulator.

(b) *Demand Charge*

(i) Authorised Level

██████████ of Authorised Demand/month

(c) Energy Charge

██████████

(charges based on MEB purchase of Hamilton Island's mainland assets at offered price and estimated value of the contract for supply and delivery of the connection assets of \$7.638m)"

2) & replacing with the following:

"(a) Regulated Charges

GST Exclusive Network Charges effective from 1 July 2007

Customer	Hayman Island
Transmission Node Identifier (TNI)	QPRO
Distribution Loss Factor (DLF/Code)	██████████
Authorised Demand (AD) in kW	██████████
Average Demand (AD) in kW	██████████
Annual Energy in GWh	██████████
DUOS charges:	
NDFC - Fixed Charge (\$/day)	██████████
NDCC - Capacity Charge (\$/kW of AD/month)	██████████
NDADC - Actual Demand Charge (\$/kW/month)	██████████
NDVC - Volume Charge (\$/kWh)	██████████
TUOS charges:	
NTFC - Fixed Charge (\$/day)	██████████
NTCC - Capacity Charge (\$/kW of AD/month)	██████████
NTCGC - Common Service & General Charge (\$/day)	██████████
NTVC - Volume Charge (\$/kWh)	██████████

Where the actual demand exceeds the authorised demand in any one month, the actual demand will be substituted for the authorised demand in the calculation of the DUOS and TUOS Capacity Charges for that month.

(b) Unregulated Charges

Fixed Charge 1 - [REDACTED] per month GST Exclusive.

(of which [REDACTED] per month is constant, not subject to Clause 8.2 or increases by the jurisdictional regulator)

Fixed Charge 2 - [REDACTED] per month GST Exclusive"

Amendment of Schedule 2

Schedule 2 – The Connection Point is amended by:

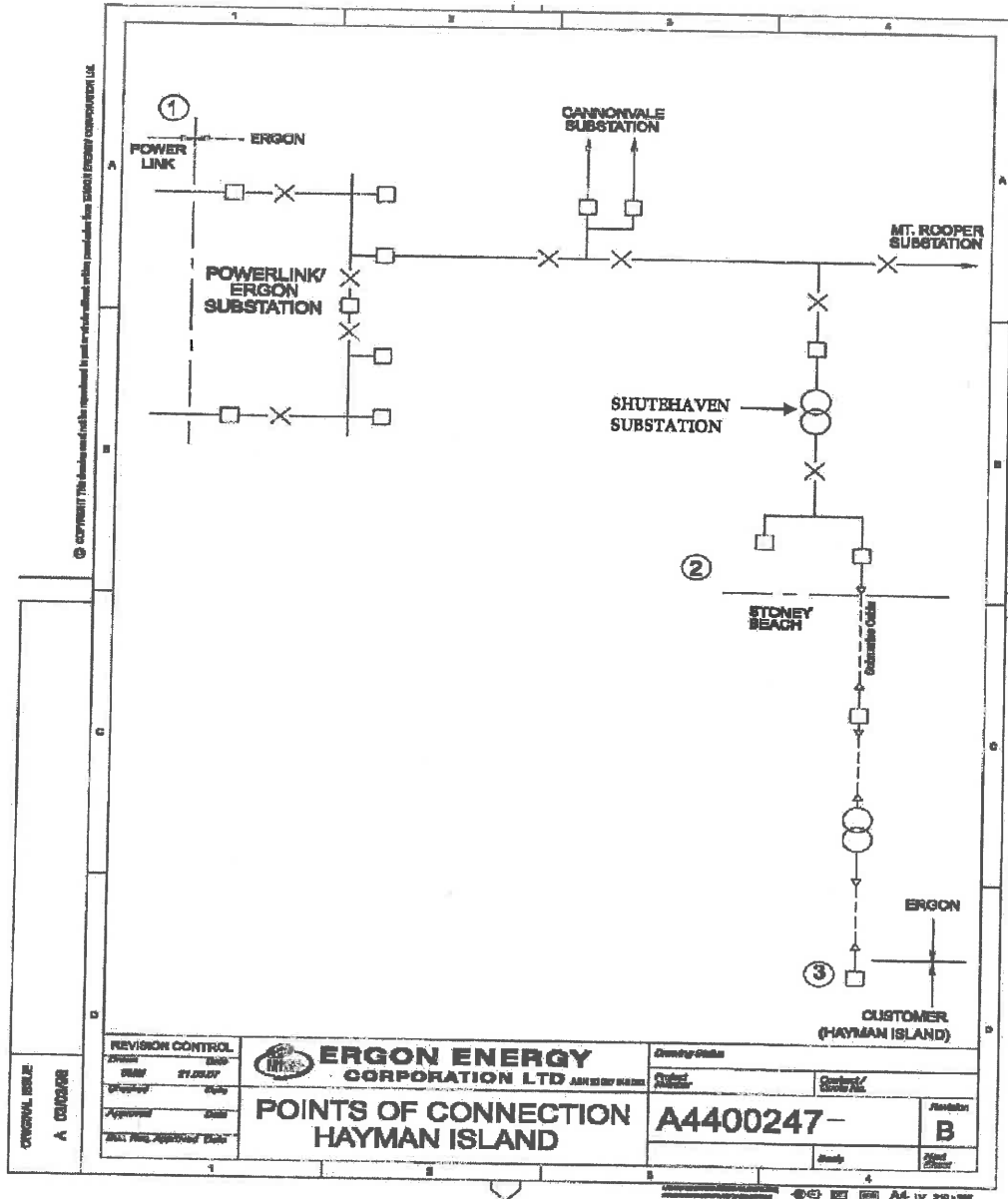
1) deleting the following:

"Diagram A4400247 Issue A"

2) & replacing with the following:

"Diagram A4400247 Revision B"

Points of Connection Hayman Island



Executed as an Agreement

SIGNED for and on behalf of
ERGON ENERGY CORPORATION
LIMITED by:

Signature of Manager Network Connection &
Pricing

Signature of Witness

Name of Manager Network Connection &
Pricing

Name of Witness

Date: _____

SIGNED for and on behalf of the
CUSTOMER by:

Signature of

Signature of witness

Name of

Name of witness

Title: _____

Date: _____

Schedule 4 – 16/12/2005 – Ergon Letter

Ref: MP 9/3/0043

16 December 2005



Carl Van Den Heever
Manager Engineering Services
Hayman Island Resort
Great Barrier Reef
QLD 4801

32-46 Dalrymple Road
Garbutt QLD 4814
PO Box 1090
Townsville QLD 4810

Dear Carl

ERGON ENERGY'S SHUTEHAVEN SUBSTATION UPGRADE: CHANGE OF COMMERCIAL CONDITIONS - HAYMAN ISLAND'S CUSTOMER CONNECTION AGREEMENT

Thank you for taking the time to attend the recent meeting between representatives of Hamilton Island, Hayman Island and Ergon Energy on 28 December 2005 - with regards to Ergon Energy upgrading the distribution network to facilitate Hamilton Island's request for an increased authorised demand to Hamilton Island.

At this meeting Ergon Energy presented a detailed proposal outlining what would be required both technically and commercially to satisfy the requirements of all the parties. At the conclusion of this meeting the parties agreed in principle to proceed with the distribution network upgrade under the commercial and technical conditions as outlined in the summary documentation presented at the meeting.

As outlined in the proposal the planned network upgrade at Shutehaven Substation will effect the current commercial terms and network charges included in the Customer Connection Agreement that is currently in place for the provision of network connection services to Hayman Island. Before proceeding with the upgrade works Ergon Energy Corporation Limited ("Ergon Energy") seeks final acceptance from Hayman Island Resort ("Hayman Island") under the terms and conditions as set out in our Offer below:

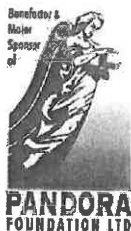
OFFER TO AMEND THE CURRENT CUSTOMER CONNECTION AGREEMENT BETWEEN ERGON ENERGY AND HAYMAN ISLAND TO FACILITE ERGON ENERGY'S UPGRADE OF THE SHUTEHAVEN SUBSTATION:

Ergon Energy has proposed to upgrade the Shutehaven Substation in 2007 to facilitate an increase in the Authorised Demand capacity to Hamilton Island. Hayman Island has not sought an increase in Authorised Demand under the terms of their Customer Connection Agreement at this time.

1. Ergon Energy Works - Scope

To satisfy Hamilton Island's request for an increase in network capacity Ergon Energy will be required to complete the following distribution network upgraded works:

- Replace the 66/22kV transformer at Ergon Energy's Shutehaven substation with a 15/20/25MVA ONAN/ONAF/ODAF On-Line-TapChanging unit, and recover the 22kV voltage regulators in both 22kV feeder bays.
- Replace 22kV transformer CTs with 750/5A units.
- Replace the 66kV CTs with 250/5A units.
- Upgrade the 22kV strung bus to 850A rating.



Page 1 of 7

Ergon Energy Corporation Limited ABN 50 087 646 062

- Check condition and rating of all other substation plant, and adjust protection settings to suit the new transformer.
- associated substation works as required

Ergon Energy will require a planned network outage to complete the Works. It is anticipated this outage could be for a duration of up to two weeks. The outage will be planned in advance, agreed and coordinated with representatives of both Hayman Island and Hamilton Island.

2. Current connection arrangements and charges

The existing Customer Connection Agreement between Ergon Energy and Hayman Island commenced 1 June 1999 for a term of 15 years. The current network charges included in the Agreement comprise both a regulated and unregulated component.

- Regulated network charges apply up to the 66kV connection point adjacent to the Shutehaven substation.
- All connection assets after this point are currently unregulated and charged separately. The unregulated component of Hayman Island's current network charges include:
 1. a component for the shared use of Ergon Energy's mainland assets which include the Shutehaven substation (shared with Hamilton Island) and bundled cable from the substation to Stony Beach; and
 2. a dedicated component for the use of the undersea cable to from Stony Beach to Hayman Island.

The current unregulated charge is billed on Hayman Island's franchise account as a separate connection fee.

3. Unregulated Assets

Ergon Energy's corporate direction for unregulated assets is based on the criteria that all mainland assets to be regulated where possible, with unregulated assets to be either off-shore or on customer's property. With the planned transformer upgrade project pending Ergon Energy considers this an appropriate time to modify the existing connection arrangement for both Hamilton Island and Hayman Island to satisfy our current corporate direction for unregulated assets. Hamilton Island and Hayman Island will also have to agree to modify their existing Customer Connection Agreements / arrangements.

4. New connection arrangements and charges

On the completion of Ergon Energy's Works, Ergon Energy will transfer the Shutehaven Substation and associated mainland assets from Ergon Energy's unregulated asset register to the regulated asset register the regulated network connection point for both Hamilton Island and Hayman Island will be on Stony Beach where the existing bundled cables terminate.

From the time the Ergon Energy's Works are completed:

- A regulated network charge will apply for the use of all Ergon Energy's network assets up to the network connection point on Stony Beach.

- The current unregulated network charge for the share of the mainland assets would discontinue.
- The unregulated component of the network charge for the undersea cable will continue under the terms of the current agreement.

An estimate of future network charges is included in Appendix A.

5. Contractual Considerations

To enable Ergon Energy to proceed with the Works and transfer of the Shutehaven Substation and associated mainland assets from Ergon Energy's unregulated asset register to the regulated asset register the following actions will be required:

- Hayman Island will need to agree to amend the Customer Connection Agreement so that the mainland assets will become regulated assets, effective from when the Works are complete.
- Hayman Island will be required to pay out the remaining ROA component of the mainland asset part of the Customer Connection Agreement, paid monthly over the remaining term of the Agreement and effective from when the Works are complete.
- Ergon Energy will discontinue the unregulated charge for the mainland assets, effective from when the Works are complete.
- The existing unregulated charge for the undersea cable will continue.
- Hamilton Island will also agree to terminate their existing unregulated charge agreement, effective from when the Works are complete.
- Ergon Energy to proceed with the transformer and substation upgrade project at Shutehaven substation – the Works.
- The cost of supply and construction of Works will be fully funded by Ergon Energy.
- Ergon Energy will transfer the mainland assets to regulated when the Works are completed.

6. Anticipated Works Completion Date

Ergon Energy's anticipated Works completion date is expected to be between June and September 2007 subject to:

1. An early acceptance of this *Offer* by Hayman Island. Ergon Energy can not commence any project development works until Hayman Island accepts the conditions of this *Offer* in full;
2. Availability of the network outage required to enable Ergon Energy to complete the Works (which is expected to be two weeks). Hayman Island agreeing to the planned outage. The outage will be planned, agreed and coordinated with both Hayman Island and Hamilton Island;
3. Hamilton Island also accepting an *Offer* from Ergon Energy to change the provisions of the current unregulated network connection arrangements;

4. Suitable availability and supply of plant and equipment and the availability of design and construction resources;
5. Delays caused by wet weather.

7. Acceptance of Offer

To finalise acceptance of this *Offer*, you will need to initial each page of this letter, sign the attached acceptance slip and return to Ergon Energy Corporation Limited by 16 January 2006, one signed copy of this letter. Our offer is open for acceptance until 16 January 2006.

If our offer is not accepted by that date and Hayman Island subsequently seeks to reconsider proceeding after that date, it will be necessary for us to review our terms and conditions and to make a new offer. Until such time as this offer is accepted in the manner stated, no arrangements can be considered to exist for provision of Ergon Energy's Work's to upgrade the network.

Connection Manager

Mark Palmer, Network Connection Manager, has been allocated to manage this project for Ergon Energy. Mark can be contacted by telephone on (07) 4957 1821. The mailing address is PO Box 259, Mackay QLD 4740.

If you require additional information please contact Mark.

Yours sincerely



J M Dougan
MANAGER NETWORK CONNECTION & PRICING


Acceptance Slip

I / We, Hayman Island Resort (ABN 17 070 662 627), agree to:


- Agree to a planned network outage, which is required by Ergon Energy to complete the Works, as referenced in Item 1. This outage will be planned by Ergon Energy and coordinated and agreed with representatives of both Hayman Island and Hamilton Island;
- Agree to amend the current Customer Connection Contract to include the shared mainland assets in the regulated network charges, effective from the time the Works are complete;
- Agree to pay out remaining ROA component of the sub and bundled cable part of the agreement as referenced in Item 5, paid monthly over the remaining term of the agreement, effective from the time the Works are complete;
- Acknowledges that provision of these network connection services will be based on a standard regulated network asset installation for all the mainland assets after the completion of Ergon Energy's Works as referenced in Item 4;
- Acknowledge that the unregulated charge for the undersea cable will remain unchanged;
- Acknowledge that this connection is based on a single connection and is not designed to withstand a credible single contingency. Accordingly, Hamilton Island accepts that there may be interruptions in supply when outages occur.

**SIGNED FOR AND ON BEHALF of HAYMAN
ISLAND RESORT (ABN 17 070 662 627)**

by:



Signature of



Signature of witness

C. J. VAN DEN HEEVER

Name of

FRANK DAVIDSON

Name of witness

Date: 03.01.06.

Appendix A

Summary of the anticipated financial impacts to Hayman Island.

- Hayman Island will be required to pay out the remaining ROA component of the mainland assets, paid monthly over the remaining term of the Agreement (7 years) and effective from when the Works are complete - approximately \$12,800 per annum (@ 1 November 2007);
- The monthly account will reduce by the unregulated charge amount for the mainland assets, anticipated to be \$6270 per month (\$75,242 per annum) effective from when the Works are complete when the new transformer is commissioned (1 November 2007);
- The existing unregulated charge for the undersea cable will continue;
- No changes to regulated charges other than as a result of normal franchise tariff impact;
- If Hayman Island stay on franchise tariff, the monthly account will reduce by the unregulated charge amount for the mainland assets;
- If Hayman Island elect to enter the contestable electricity market, network charges will be increased by \$48,741 per annum (estimate based on approved 05/06 rates). Reduction in unregulated charge amount (\$75,242 per annum) still applies.

Note: ROA component of annual unregulated charges is \$52,376, PV of remaining 7 years \$268,086; PV of unregulated assets recovered/transferred is \$202,513; Shortfall = \$65,573.

Relevant Data

Proposed change to mainland assets - upgrade 10/12MVA transformer to 25MVA
 Cost of Project Proposal Estimate \$1,539,000

User Load

(Estimates) change)	Existing -	<u>Hamilton</u>	6800kW Max, 4210kW Average
		<u>Hayman</u>	3400kW Max, 2660kW Average
	Anticipated -	<u>Hamilton</u>	9200kW Max, 7500kW Average
		<u>Hayman</u>	3400kW Max, 2660kW Average (No

Regulated Revenue (Annual)

Current regulated DUOS	<u>Hayman</u>	\$191,045 @ 05/06 rates
Estimated revised regulated DUOS (after 25MVA upgrade)	<u>Hayman</u>	\$239,786 @ 05/06 rates

Unregulated Revenue (Annual)

Unregulated as at 1/11/07	<u>Hayman</u> - Sub,bundle	\$75,242
	- Undersea cable	\$1,166,924
Revised unregulated - (after 25MVA upgrade)	<u>Hayman</u> - Sub,bundle	Nil
	- Undersea cable	\$1,166,924

Leave agreement

Assumed Start Date New Sub 1 November 2007

Note: these estimates only apply if the assets are treated as regulated when the upgrade is done - assumed start date 1 November 2007 - actual date will be the completion date of the Works.

*Contestable
1 price energy
1 price network*

Schedule 5 – Amended Customer Connection Agreement

Amended Customer Connection Agreement

Ergon Energy Corporation Limited (Distributor)
Permanent Trustee Australia Limited (Customer)



ADDISONS

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Table of Contents

1.	Term and Termination	1
2.	Customer Connection Services	2
3.	Scope of Connection and Technical Specifications	3
4.	Supply Reliability, Quality, Interruptibility and Other Customers	3
5.	Authorised Demand and Authorised Load Swing	4
6.	Compliance with Authority, Code and Act	6
7.	Metering	7
8.	Charges and Billing	8
9.	Missing clause	10
10.	Missing clause	10
11.	Missing clause	10
12.	Liability and Indemnity	11
13.	DEFAULT AND TERMINATION	12
14.	DISTRIBUTOR'S RECOVERY OF COSTS OF STRANDED ASSETS	14
15.	ASSIGNMENT AND ENCUMBRANCE	14
16.	NOTICES	15
17.	CONFIDENTIALITY	15
18.	DISPUTE RESOLUTION	16
19.	GOVERNING LAW	19
20.	MISCELLANEOUS	19
21.	INTERPRETATION	21
22.	Definitions	23
	Schedule 1	30
	Schedule 2 – The Connection Point	34
	Schedule 3 – Facility Connection Requirement and Facility Technical Data	36

**NEGOTIATED CONNECTION AGREEMENT
(FOR CONNECTION TO A DISTRIBUTION NETWORK)**

THIS AGREEMENT is made on the date specified in Item 1 of Schedule 1

Date:

Parties

(1) Ergon Energy Corporation Limited (Distributor)

ABN 50 087 646 062
Address

(2) Permanent Trustee Australia Limited as Trustee of BT Hotel Trust (Customer)

ABN 28 008 412 913
Address

IT IS AGREED:

1. Term and Termination

1.1 Initial Term

Subject to clauses 1.2, 1.3(a) and 13.4, this Agreement commences on the Effective Date and continues for the term specified in Item 7 of Schedule 1 (**Initial Term**).

1.2 Termination

Notwithstanding clause 1.1 or any other provision in this Agreement, if commissioning of the works so as to enable the Customer Connection Services to be provided is not completed by 31 March 2000 either party may terminate this Agreement by notice in writing to the other. This Agreement cannot be terminated other than in accordance with the provisions of this clause, clause 1.3(a) or clause 13.4.

1.3 Further Agreement

(a) Upon expiration of the Initial Term specified in Item 7 of Schedule 1, this Agreement will automatically renew for the further term referred to in clause 1.3(b)(i), unless prior to the date of expiration of the Initial Term or within twelve months thereafter, the Customer gives written notice to the Distributor that it does not wish to renew this Agreement in which event this Agreement shall terminate three months after the date of such notice or at the expiration for the Initial Term, whichever is the later. Where such date of termination is after the expiration of the Initial Term the Charges payable until termination shall be calculated in accordance with clause 1.3(b)(ii).

(b) The terms of that further agreement are to be:

- (i) a further term of 15 years or as may be mutually agreed;
- (ii) Charges payable will be based on the then current connection charges (with no regard to the capital and interest repayment of the connection

asset with the intention that the Charges will enable the Distributor to recover depreciation (based on straight line depreciation over 35 years), operating and maintenance costs only); and

- (iii) otherwise identical to the terms of this Agreement.

The Distributor will provide Customer Connection Services for the Facility during any further term in accordance with clause 2.1.

2. Customer Connection Services

2.1 Provision of Services by the Distributor

From the Effective Date, the Distributor must provide Customer Connection Services to the Customer using the Distributor's distribution network at the Connection Point:

- (a) to allow the supply of electricity, as reduced by any electrical losses, from the Transmission Network Connection Point via the Distributor's distribution network to the Facility up to the Authorised Demand;
- (b) to permit the taking of electricity by the Customer to service the requirements of the Facility, up to the Authorised Demand,

in accordance with the terms of this Agreement, the Code and the Electricity Act.

2.2 Acceptance of Services by the Customer

- (a) The Customer will:
 - (i) accept from the Distributor the services mentioned in clause 2.1; and
 - (ii) take electricity at the Connection Point up to but not beyond the Authorised Demand,

in accordance with the terms of this Agreement, the Code and the Electricity Act.

- (b) The Customer's obligations under this Agreement are not affected by the continued existence, variation or termination of any other agreement including any agreement between the Customer and the Retailer.

- (c) The Customer warrants that at the Effective Date it is lawfully entitled:

- (i) under customer sale contracts with one or more retailers; or
- (ii) through transactions in the spot market,

to be sold electricity in quantities that are, at least, sufficient to enable the Distributor to comply with its obligations or exercise its rights under this Agreement. The Customer is aware of no reason why this should not remain the case throughout the Term of the agreement.

- (d) Nothing in this Agreement affects the right of the Distributor to exercise any of its rights against the Retailer, save that the Distributor must nevertheless comply with its obligations to the Customer.

3. Scope of Connection and Technical Specifications

3.1 Connection Requirements Applicable to the Customer

The Customer must ensure that, at all times during the Term, the Facility complies with the Facility Connection Requirements.

3.2 Facility Technical Specifications

Unless otherwise agreed the Customer must ensure that, at all times during the Term, the Facility complies with, and is operated in accordance with, the Facility Technical Data.

3.3 Compliance Testing

At any time, after giving reasonable notice, the Distributor may inspect and, where necessary, test the Facility to satisfy itself that the Facility is acceptable for connection and complies in all respects with the requirements of this Agreement, the Code and all relevant Australian Standards.

3.4 Non-compliance

(a) If at any time during the Term in the Distributor's opinion:

(i) there is a Facility Deficiency; and

(ii) that Facility Deficiency could have or is having a material adverse effect on the Connection Point or the Distributor's distribution network to which it is connected, if the Facility continued to be connected to the Connection Point;

then (other than in the case of an emergency) the Distributor must give the Customer a notice specifying the nature of the Facility Deficiency and a reasonable period (having regard to the nature of the Facility Deficiency and the possible effect of the Facility Deficiency) in which to rectify the Facility Deficiency.

(b) If the Customer fails to remedy the Facility Deficiency to the satisfaction of the Distributor within the time specified in the Facility Deficiency Notice or in the case of an emergency related to the Facility Deficiency, the Distributor may disconnect the Facility from the Distributor's distribution network.

The Distributor will not be required to reconnect the Facility to the Distributor's distribution network until the Customer remedies the Facility Deficiency to the entire satisfaction of the Distributor.

4. Supply Reliability, Quality, Interruptibility and Other Customers

4.1 System of Supply

(a) Electricity delivered at the Connection Point will be provided from a three phase system.

(b) Subject to the electrical characteristics of electricity which is supplied to the Distributor's distribution network from the Transmission Network Connection Point being in conformity with the requirements of the Code and subject to the Customer drawing a Steady Load, the electricity delivered at the Connection Point will be:

(i) at a nominal voltage as specified in Item 8(a) of Schedule 1; and

(ii) within a range of voltage as specified in Item 8(b) of Schedule 1.

(c) The Distributor must use its best endeavours to exercise its rights and enforce the obligations of Powerlink owed to the Distributor under the Code

4.2 Distributor Quality Standards

(a) The Distributor must operate and manage its distribution network so that the reliability and quality of supply requirements for the distribution network at the Connection Point are in accordance with the Code and other applicable laws.

(b) The parties acknowledge that the agreed configuration for the connection of the Facility does not include duplication of equipment and that a Credible Contingency Event may cause loss of the capability to supply and accept electricity at the Connection Point.

(c) The Distributor will prepare contingency plans for the restoration of supply to the customer in the shortest reasonable time and will provide such contingency plans to the customer within six months of the date of this Agreement. The parties will then negotiate in good faith to achieve agreement on the contingency plans

4.3 Other Customers

The Distributor may provide Customer Connection Services to any other person using the Distributor's distribution network, including those parts used to connect or supply the Customer provided that:

(a) when submitting information in support of the charges to the Jurisdictional Regulator, the Distributor includes an appropriate recognition for the use of the those parts of its distribution network which are used exclusively for supply of electricity to the Customer ; and

(b) the supply does not adversely affect the Customer's use of any part of the Authorised Demand or the supply of electricity to the Connection Point; and

(c) the Customer will not suffer loss or damage as a result of the provision of Customer Connection Services to any other person by connecting the other person to the distribution network as long as the Customer is complying with the provisions of this Agreement, all relevant provisions of the Electricity Act, the Code and other applicable laws.

It is provided however that if at any time it is proposed to provide Customer Connection Services to any person other than the Customer using those parts of the Distributor's distribution network used to connect or supply the Customer, the Distributor shall first notify the Customer of such proposal. If within 21 days of such notification the Customer advises that it will utilise that part of the capacity of the relevant part or parts of the distribution network proposed to be used in respect of the proposal relating to the other person then the Distributor will not enter into the proposed arrangement with that other person.

5. Authorised Demand and Authorised Load Swing

5.1 Authorised Demand

(a) Subject to any variation of the Authorised Demand made under this clause 5, the Authorised Demand is the capacity specified in Item 9 of Schedule 1.

(b) The Distributor is not obliged to make supply available to a capacity greater than the Authorised Demand + 10%.

5.2 Variation of Authorised Demand by Customer

- (a) The Customer may by notice to the Distributor request an increase in the Authorised Demand.
- (b) The Notice of Requested Increased Demand must state the number of kilowatts by which the Authorised Demand is required to be increased and the specified date from which the increase is to be effective. The required increase shall not be less than 500 kilowatts.
- (c) The parties will then negotiate in good faith as to the conditions under which the increase may occur and when it may occur,
- (d) A Customer may not:
 - (i) serve a Notice of Requested Increased Demand more than once in any period of twelve calendar months; or
 - (ii) withdraw a Notice of Requested Increased Demand.
- (e) the Customer may request a reduction of the Authorised Demand by no more than 20% with two years notice and the Distributor will accept this request.

5.3 Variation by the Distributor

- (a) Should any recorded monthly Maximum Demand exceed the Authorised Demand, the Distributor may:
 - (i) take no action other than substituting the Maximum Demand for the Authorised Demand in calculating the Authorised Level and such Authorised Demand for the remaining part of the Term (other than as modified under 5.2(d) and (e));
 - (ii) require the Customer to take action to ensure that the Authorised Demand is not exceeded, using the procedure under clause 13; or,
 - (iii) require the Customer to enter into good faith negotiations as to whether an increase in the Authorised Demand is required.
- (b) The Distributor may temporarily discontinue the supply of electricity or reduce the quantity of electricity to be supplied where:
 - (i) the Distributor, through any circumstances that are not due to its own negligence or default, is temporarily unable to continue the supply of electricity to the Customer or is temporarily required to restrict such supply of electricity; or
 - (ii) the method of operation of the Customer's plant results in undue interference or damage to the Distributor's or the Transmission Network Service Provider's works.
- (c) Should the Distributor need to interrupt supply for other than Force i Majeure, timing is to be coordinated with the Customer.
- (d) Where the Distributor exercises its rights in clause 5.3(b), the Distributor must use its best endeavours to ensure that any permitted reductions are of minimum duration and consistent with the contingency arising.

6. Compliance with Authority, Code and Act

6.1 Parties to Comply

- (a) Notwithstanding anything else contained in this Agreement:
- (i) the Distributor must comply with its distribution authority, the Code, (except where the Code permits this Agreement to prevail where it is inconsistent with the Code), the Electricity Act, applicable laws, Directives and Authorisations; and
 - (ii) the Customer must comply with the Code, the Electricity Act, applicable laws, Directives and Authorisations,
- despite that compliance being inconsistent with any term of this Agreement and resulting in breach of a term of this Agreement.
- (b) If a party becomes aware of an inconsistency mentioned in clause 6.1(a), that party must notify the other party as soon as practicable of the inconsistency. The parties must negotiate in good faith to modify this Agreement to resolve the inconsistency but neither party is obliged to agree to any modification.
- (c) If a party's breach of a provision of this Agreement (other than its obligations in clause 6.1(a)) occurs as a result of complying with its obligations under clause 6.1(a) then the other party will not have any right or remedies with respect to that breach under this Agreement.

6.2 Authorisations

Each party will obtain, and use its reasonable endeavours to maintain, all Authorisations necessary for it to perform its obligations under this Agreement.

6.3 Obligations of the Parties to Meet Improved Standards

- (a) If after the date of this Agreement:
- (i) there is a change in any law, or any Directive, or change in the Code, which requires standards of technical performance by the Distributor in the operation of the Distributor's distribution network to be higher than that which existed prior to such change; and
 - (ii) in order for the Distributor to comply with its obligations brought about by such change it is necessary for the Customer to modify the operations, or the manner of operations, of the Facility;
- then the Distributor may serve a notice on the Customer setting out the actions or works the Customer must do to enable compliance with such change including who is to bear the cost of carrying out any works and whether any Charges must be altered to take account of the cost of compliance with such change.
- The nature of the actions or the works and who is to bear the cost of the actions and/or the works must be reasonable and appropriate in the circumstances.
- (b) Within thirty (30) days of its receipt of a notice under clause 6.3(a) the Customer must give a notice to the Distributor:
- (i) advising whether or not it accepts the matters in the notice; or

- (ii) suggesting alternative options for dealing with works required for compliance with such change, including the Distributor undertaking the works and charging the Customer for those works over a period of time.
- (c) If the Customer does not give a notice under clause 6.3(b), then the Customer will be taken to agree with the matters in the notice.
- (d) If the Customer gives a notice under clause 6.3(b), the parties shall meet to agree on the works or actions that are required to be undertaken to enable compliance with the change referred to in clause 6.3(a).
- (e) If the parties cannot reach agreement on the works or actions to be undertaken in accordance with clause 6.3(d) within 30 days, then the dispute resolution process in clause 18 will apply.

7. Metering

7.1 Responsible Person

This clause applies if the Distributor is the person who has the responsibility for the provision, installation and maintenance of the Metering Equipment for the Connection Point and therefore is the responsible person for the purposes of Chapter 7 of the Code with the associated responsibilities as set out in the Code.

7.2 Terms and Conditions on which Distributor agrees to be the Responsible Person

- (a) Metering Equipment, including the necessary current transformers, voltage transformer, and communications equipment, must be provided, owned, and maintained by the Distributor. Such equipment shall be fitted with reverse running detents to prevent the registration of electrical energy flows back from the Customer to the Distributor's distribution network.
- (b) If the Metering Equipment was installed prior to the date of this Agreement, title in the Metering Equipment will be deemed to be held by the Distributor.
- (c) The Customer shall meet the costs of any modifications to the Metering Equipment required to ensure compliance with the Code.
- (d) Where check metering is installed it must be maintained by the Distributor in accordance with the level of accuracy of check metering required under the Code.
- (e) In the absence of a separate agreement between the parties, the Distributor will act as the responsible person and as the Metering Provider and the Customer must pay the Meter Charges as agreed between the parties. If the parties cannot agree, the dispute resolution procedure in clause 18 will apply.
- (f) Subject to any contrary change in the Code or Act or Directives or Authorisation of the Jurisdictional Regulator, the Meter Charges will be escalated at CPI.
- (g) The Distributor must deliver to the Customer an invoice for the Meter Charges in the Account Period which includes the anniversary of the Effective Date.
- (h) The Customer must pay the amount set out in the invoice within 30 days following receipt of that invoice.
- (i) The Customer, if a Second Tier Customer, must pay any NEMMCO Settlement Charges levied upon the Distributor in relation to it being a Second Tier Customer.

- (j) The Customer must pay the Distributor, within 30 days of receipt of notice specifying the amount payable, for any work performed other than Metering Equipment maintenance resulting from a direction of NEMMCO, or at the request of the Meter Data Agent, at the cost to the Distributor plus 10%.
- (k) The Customer must provide reasonable access to the Customer's premises for the Distributor, and load conditions during normal working hours to allow the testing or calibration of Metering Equipment at intervals as specified in the Code.

8. Charges and Billing

8.1 Charges

- (a) The Customer is responsible for payment to the Distributor of all charges billed under this Agreement. The Customer must pay to the Distributor the charges being:

- (i) Regulated Charges

All network charges associated with the regulator network connection up to but not including the 22kV undersea cable at Stoney Beach as approved by the Jurisdictional Regulator; and

Any part of charges levied on the Distributor by Powerlink, that the Distributor is permitted at law to pass on to the Customer, unless it is already included in paragraph (i).

and ;

- (ii) Unregulated Charges

Charge 1

The fixed charges for the unregulated network assets associated with the supply of electricity from Stoney Beach to the island, these assets being the undersea cable and other distributor Owned assets on the land.

Charge 2

The fixed charge representing the unrecovered asset network charge component of the assets which have now been transferred to the Distributors Regulated Network.

The amounts applicable at the commencement of this Amendment to Agreement are specified in item 10 of Schedule 1. In respect of the Fixed Charge 1 [REDACTED] per month will remain constant for the duration of the Initial Term and will not be subject to clause 8.2 or increases by the jurisdictional regulator.

- (b) The parties acknowledge that the Charges payable by the Customer have been calculated on the basis that the Distributor will enter into agreements and/or an agreement which will enable the Distributor to have access to or use of certain assets presently associated with the supply of electricity to Hamilton Island in sufficient time prior to the Distributor providing the Customer Connection Services to the Facility, so as to enable the Distributor to incorporate such assets in the project for the provisions of Customer Connection Services to the Facility. If such agreement or agreements are not entered into in sufficient time prior to the provisions of the Customer Connection Services, then the Charges and the Effective Date will be altered as agreed between the parties having regard to the

increased cost to the Distributor as a consequence of the agreements or agreement not having been entered into. If agreement is unable to be reached then the dispute resolution procedure referred to in Clause 18 of this Agreement shall apply.

8.2 Variation of Charges

- (a) The parties acknowledge that the Queensland Competition Authority is the Jurisdictional Regulator at the Effective Date for the purposes of the regulation of distribution network service pricing and will from time to time fix the Charges.
- (b) If the Jurisdictional Regulator publishes a ruling after the date of this Agreement the result of which is that the Charges to be levied by the Distributor are different from those applicable under this Agreement at the date of the ruling, the Charges shall be adjusted so that they are in accordance with the ruling, and apply from the date of commencement of the ruling.
- (c) If the Jurisdictional Regulator fails to approve charges for the relevant period, the Charges shall be adjusted Quarterly in accordance with the following formula:

$$\text{New Charges} = \text{Old Charges} \times \frac{\text{CPI}}{\text{CPI}_{\text{Base}}}$$

Where:

- New Charges = the Charges payable from the date of the adjustment;
 - Old Charges = means the Charges payable in the Quarter immediately preceding the new Quarter;
 - CPI = CPI in respect of the Quarter preceding the Quarter in which the adjustment is to be made; and
 - CPI_{Base} = means the CPI in respect of the second last Quarter preceding the Quarter in which the adjustment is to be made.
- (d) As soon as practicable after the last day of each Account Period the Distributor must deliver to the Customer an invoice, detailing the calculation of the Charges which became payable at the end of that Account Period, including details of the measured quantities, billed quantities, prices and amounts charged for each component of the Charges.
 - (e) Should an outage exceed 24 hours for any reason (whether caused by Force Majeure or otherwise), the charges will be adjusted on a pro rata daily basis for every day (or part thereof) for the period from the time of the outage until full supply is provided. This applies only to the unregulated fixed charges in clause 8.1(ii).
 - (f) If the Distributor becomes obliged to grant access to another customer through its distribution system (including the submarine cable), the Distributor must adjust the Charges as from the date of such access so that the return on assets to the Distributor contemplated by this Agreement is shared between the Customer under this Agreement and those other customers in proportion to their respective Authorised Demands.

8.3 Payments

- (a) The Customer must pay the Distributor the amount set out in the invoice (whether disputed or not) within 10 days or as mutually agreed following receipt of that invoice. It is acknowledged that the Customer may appoint the Retailer as its agent to make the payment under this clause.

MISSING

PAGES 15 AND 16 FROM ORIGINAL CONTRACT

9. Missing clause

10. Missing clause

11. Missing clause

11.1 Missing clause

11.2 Suspension of Obligation

- (a) For the duration of the Force Majeure the rights and Non-Financial Obligations of the parties under this Agreement will be suspended in whole or in part, as the case may require, to the extent that the ability of the Affected Party to perform any of its Non-Financial Obligations is adversely affected by a Force Majeure that is the subject of a FM Notice or a notice given under clause 11.1(a)(ii).
- (b) Suspension of any Non-Financial Obligations under this Clause 11.2 will not affect any rights or obligations which may have accrued prior to that suspension or, if the Force Majeure affects only some Non- Financial Obligations, any other obligations or rights of the parties.
- (c) The period of suspension under clause 11.2(a) of the Non-Financial Obligations of the Affected Party will exclude any delay in the Affected Party's performance of those Non-Financial Obligations which is attributable to a failure by the Affected Party to comply with clause 11.3.

11.3 Mitigation

- (a) Subject to clause 11.3(b) the Affected Party will use all reasonable endeavours to avoid or remove the circumstances constituting the Force Majeure and to mitigate the effect of the Force Majeure and the other party will co-operate and give such assistance as the Affected Party may reasonably request in connection with the Force Majeure.
- (b) Nothing in this clause 11 requires the Affected Party to settle any industrial dispute otherwise than in a way that is commercially reasonable and no delay in making the settlement will deprive the Affected Party of the benefit of clause 11.2(a) provided that the Affected party has complied with relevant industrial orders, awards or agreements.

11.4 End of Force Majeure Event

- (a) The Affected Party must as soon as reasonably possible after the end of a Force Majeure resume performance of any obligation suspended as a result of it.
- (b) If the Affected Party gave a Force Majeure Notice then the Affected Party must give notice to the other party of the end of the Force Majeure as soon as practicable after the end of the Force Majeure.

12. Liability and Indemnity

12.1 Liability with Respect to Third Parties

(a) The Customer indemnifies and holds harmless the Distributor and its officers, employees and agents against any and all third party claims for loss, damage or expense arising out of:

- (i) the operation and maintenance of the Facility;
- (ii) a breach by the Customer of its obligations or warranties under this Agreement,

except to the extent that any such claim has arisen directly due to a negligent act or omission, breach of contract or breach of statutory duty on the part of the Distributor or its officers, employees or agents (to the extent that the Distributor is liable by the operation of Sections 96 and 97 of the Electricity Act or Section 78 of the National Electricity Law (whichever is applicable) or to the extent that the Distributor is liable to the Customer for a breach of this Agreement).

(b) The Distributor indemnifies the Customer and its officers, employees and agents against any and all third party claims for loss, damage or expense arising out of:

- (i) the operation or maintenance of the Distributor's distribution network; or
- (ii) a breach by the Distributor of its obligations under this Agreement,

except to the extent that any such claim has arisen directly due to a negligent act or omission, breach of contract or breach of statutory duty on the part of the Customer or its officers, employees or agents.

12.2 Liability of Distributor

(a) Notwithstanding the protective provisions, the Distributor agrees that it is liable (in damages and otherwise) to the Customer for any total or partial failure to supply or sell electricity or perform an obligation under this Agreement concerning the supply or sale of electricity, but only if that failure was caused by:

- (i) the negligence of the Distributor or a person acting for it; or
- (ii) contravention by the Distributor, or a person acting for it, of the Electricity Act, the Code or a condition of the Distributor's distribution authority; or
- (iii) breach of duty on the part of the Distributor or a person acting for it (whether the duty be imposed by statute or the Code).

Notwithstanding anything hereinbefore contained the Distributor shall only be liable where Section 97 of the Act or Section 78 of the National Electricity Law applies or where the Distributor is liable to the Customer for breach of the provisions of this Agreement.

(b) In this Clause, the protective provisions are:

- (i) sections 96 and 97 of the Electricity Act 1994 (Qld); and
- (ii) section 78 of the Electricity - National Scheme (Queensland) Act 1997,

in each case as amended from time to time.

- (c) The Distributor agrees that it is liable (in damages and otherwise) to the Customer for each breach of this Agreement, not being a breach constituting a total or partial failure to supply or sell electricity or to perform an obligation under this Agreement concerning the supply or sale of electricity.

12.3 Disconnection at Request of the Retailer

- (a) The Customer acknowledges that the Distributor may exercise any right it may have under the Electricity Act to disconnect or reduce supply to the Customer upon request by the Retailer. -
- (b) The Customer for itself, and all persons claiming through it, releases and discharges the Distributor and any of its employees, officers, agents or contractors from any claims (including legal costs and claims for consequential loss), liabilities, demands, actions, suits or proceedings in any way connected with or arising out of a disconnection or reduction of supply and at the request of the Retailer as referred to in clause 12.3(a) and agrees that this release and discharge may be pleaded in defense of, and as a bar to, any such claims, liabilities, demands, actions suits or proceedings.
- (c) The Distributor will not disconnect the Customer without consulting with the Customer.

12.4 Limitation of Liability

Under no circumstance and notwithstanding any other term or condition of this Agreement or any other document, or any law, regulation, code, provision or other regulatory instrument, where the Distributor has liability to the Customer or is required to indemnify the Customer the maximum amount payable by the Distributor under any such liability and indemnity shall be ██████████ per week in total during any relevant period or periods for which the Distributor shall be liable to the Customer and the maximum total amount payable by the Distributor during the term of this Agreement, any extension or at any other time relating to this Agreement shall not exceed ██████████. The amounts of ██████████ and ██████████ shall be escalated annually in accordance with CPL.

13. DEFAULT AND TERMINATION

13.1 Default Notice

If a Default occurs, the Non-Defaulting Party may give the Defaulting Party a written notice ("Default Notice") specifying the Default that has occurred.

13.2 Cure Period

Upon receipt of a Default Notice, the Defaulting Party will have:

- (a) in the case of a Financial Default, 7 days from the date of receipt of the Default Notice to remedy that Default;
- (b) in the case of a Performance Default which is capable of remedy, 30 days from the date of receipt of the Default Notice to remedy the Default provided that the Defaulting Party diligently pursues a cure of the Performance Default; or
- (c) in the case of a Performance Default which is agreed by the parties (or in default of agreement, determined in accordance with clause 18) to be incapable of remedy:

- (i) 14 days, after the agreement upon, or determination of, the Compensation within which to pay that Compensation to the Non-Defaulting Party; and
- (ii) 14 days from the date of receipt of the Default Notice to take all reasonable steps to prevent re-occurrence of the Performance Default;
- (d) in the case of an Insolvency Default, 30 days from the date of receipt of the Default Notice to remedy the Default.

13.3 Remedy of Curable Performance Default

Any remedy of a Performance Default undertaken by or on behalf of a Defaulting Party must be in accordance with Good Electricity Industry Practice.

13.4 Rights of Termination

- (a) If the relevant Default remains unremedied at the end of the applicable cure period the Non-Defaulting Party may at any time after the end of the cure period providing the relevant Default is still, subsisting, terminate this Agreement by notice to the Defaulting Party.
- (b) Termination of this Agreement by a party under clause 13.4(a) is without prejudice to the other rights and remedies which a party may have in respect of the Default.

13.5 Effect of and Remedies Upon Termination

- (a) If either party elects to terminate this Agreement pursuant to its rights under clause 13.4 then upon termination this Agreement will, subject to clause 13.5(c), be of no further force and effect,
- (b) Upon termination of this Agreement, the party electing to terminate may do any or all of the following, without prejudice to its rights at law or otherwise:
 - (i) sue the Defaulting Party to recover damages or Compensation for that Default; or
 - (ii) exercise all available legal and equitable remedies including injunctive relief or such other orders as it considers appropriate.
- (c) Upon termination of this Agreement by either party (and without prejudice to the Distributor's other rights and remedies) the Distributor may do any or all of the following:
 - (i) subject to clause 13.6, de-energise the Connection Point;
 - (ii) disconnect the Facility from the Connection Point; and
 - (iii) decommission and remove any of its assets associated with the Connection Point,

In doing so, the Distributor must not do anything to prejudice the operation of the Plant and Facility.

- (d) Each party must remove any item of its property located on premises occupied or under the control of the other party within 60 days of the date of termination and must make good any damage done in doing so. Any property not so removed will be taken to be abandoned,

13.6 Right to De-Energise

If the Distributor elects to de-energise the Connection Point, it may only do so on it giving 14 days' notice to the Customer stating its intention to do so if the relevant Default is not remedied within the applicable cure period and remains unremedied at the expiry of that notice period.

13.7 Contingency Plans

The provisions of this clause regarding termination will be subject to the provisions of clause 4.2(c). Where contingency plans referred to in clause 4.2(c) are applicable to any circumstance which would otherwise constitute a default, neither party shall have a right of terminating this Agreement.

14. DISTRIBUTOR'S RECOVERY OF COSTS OF STRANDED ASSETS

14.1 Recovery Right

If this Agreement is terminated by the Distributor pursuant to clause 13 then, in addition to all other monies payable by the Customer to the Distributor, the Customer will forfeit to the Distributor the bank guarantee held under clause 9.

15. ASSIGNMENT AND ENCUMBRANCE

15.1 By Customer

- (a) The Customer must not assign, mortgage, charge or attempt or purport to assign, mortgage or charge any or all of its rights, title or interest under this Agreement, without the prior written consent of the Distributor.
- (b) If the Distributor consents to an assignment the assignee must enter into a deed of covenant in favour of the Distributor whereby the assignee agrees to be bound by the provisions of this Agreement as if the assignee had been a party to this Agreement in place of the customer.
- (c) The Distributor agrees that it will not unreasonably withhold its consent to an assignment, mortgage, novation or charge.
- (d) The Distributor shall be under no obligation to consent to any of the matters referred to in this clause without first being satisfied that:
 - (i) it will not be disadvantaged as a result of giving such consent; and
 - (ii) it will be in no worse position than it is under the provisions of this agreement,

including but not limited to in relation to the execution of appropriate documents to protect the Distributor's interests under this agreement, the provision of appropriate financial security and the technical and financial capacity and competence of any proposed third party.

In deciding whether or not it is satisfied, as referred to above, the Distributor's decision must be made on an objective and reasonable basis.

15.2 By Distributor

The Distributor may assign, mortgage or charge any or all of its rights or obligations under this Agreement without the consent or approval of the Customer.

15.3 Alteration in Trust to Constitute Assignment

The following circumstances will constitute an assignment:

- The replacement or removal of Permanent Trustee Australia Limited as trustee of BT Hotel Trust;
- The passing of a resolution or giving of a direction by a beneficiary of the BT Hotel Trust for the winding up or termination of the BT Hotel Trust or for distribution of the BT Hotel Trust fund;

The Customer shall give notice to the Distributor forthwith upon any of the above matters being proposed. The Customer shall continue to be bound by this Agreement until such time as the Distributor has executed the Deed of Covenant referred to in clause 15.1(b) and from that time the Customer shall cease to be bound by this Agreement.

16. NOTICES

16.1 Notice

- (a) A notice, account, communication or other document required or authorised to be given or served upon a party under this Agreement ("Notice") must be in writing in the English language and may be given or served by hand, facsimile, prepaid post or ordinary post to that party at its address or facsimile number specified in Item 13 of Schedule 1 or such other address or facsimile number as that party may notify in writing to the other party in accordance with the provisions of this clause 16.
- (b) Any Notice sent by facsimile shall be confirmed and sent by mail, by hand or by courier.

16.2 Deemed Service

A Notice or statement given under this Agreement will be taken to have been given:

- (a) in the case of service by hand, on delivery;
- (b) in the case of service by facsimile, on the next Business Day after the same is dispatched; and
- (c) in the case of service by certified mail and ordinary mail, on the third Business Day following posting.

16.3 Notice of Change of Retailer

If the Customer chooses to purchase electricity for supply to the Facility through the Distributor's distribution network from a retail entity other than the retail entity specified in Item 4 of Schedule 1, the Customer must ensure that the Distributor is notified of the details of that substitute retail entity.

17. CONFIDENTIALITY

17.1 Information Confidential

Except as is provided in clause 17.2, neither party will, without the consent of the other party at any time, whether before or after the expiration of the Term, divulge or communicate or suffer or permit any of its representatives to divulge or communicate to any person any of the contents of this Agreement or any information concerning the operation or carrying out of or other implementation of this Agreement or any information which may come to its knowledge in the course of carrying out the terms of this Agreement concerning the operations, dealings, transactions, financial arrangements or affairs of the other party.

17.2 Information may be Disclosed in Certain Circumstances

The restrictions imposed by clause 17.1 will not apply to the disclosure of any information:

- (a) which is now in or hereafter comes into the public domain other than through a breach of clause 17.1;
- (b) which is required by the Code or any other law to be communicated to a person who is authorised by the Code or any other law to receive the information;
- (c) to a court, arbitrator, expert or administrative tribunal in the course of proceedings before it to which the party disclosing the information is a party;
- (d) to a financier or potential financier or potential purchaser of the Facility (which in this paragraph (d) includes any representative of any such person) of the Customer in order to permit such financier to consider a request from the Customer for the financing or refinancing of the Customer's works or operation connected with its obligations under this Agreement or to any investors or potential investors in the Customer provided that any such person, agrees to observe the same or similar obligations as imposed by this clause 17;
- (e) to a party's consultants and advisers who undertake in writing to be bound by the confidentiality undertaking in clause 17.1 as if they were a party to it;
- (f) to the Retailer or any prospective retailer to the Customer of electricity for the Facility to be delivered via the Distributor's distribution network;
- (g) to any shareholding Minister under the Government Owned Corporations Act 1993 of the Distributor or under any Act of Queensland or to the Parliament of Queensland or the Government of Queensland or any of its agencies, including the Queensland Electricity Reform Unit, with respect to any matter or thing relating to the Distributor;
- (h) which is required to enable the Customer's employees, financial advisers, brokers and others to keep investors and potential investors in the BT Hotel Group properly informed with regard to their investment or proposed investment in the Group to the same extent as information is currently provided in respect of other hotel properties acquired by the BT Hotel Group.

PROVIDED THAT in the event of any disclosure under paragraphs (b), (c), (d), (e) (f) or (g) it shall be expressly stated that information so disclosed is the subject of a confidentiality agreement between the parties.

18. DISPUTE RESOLUTION

18.1 Scope

- (a) If both the Distributor and the Customer are Code participants or unless otherwise expressly agreed to the contrary in this Agreement, the dispute resolution regime provided for in Clause 8.2 of the Code applies to any disputes which may arise

between the parties under or in relation to this Agreement with respect to the application of the Code.

- (b) Unless otherwise expressly agreed to the contrary in this Agreement, clauses 18.2 to 18.8 apply to any disputes which may arise between the parties under or in relation to this Agreement other than with respect to the application of this Code.

18.2 Chief Executive Resolution

The parties hereby agree that any dispute to be referred to the dispute resolution procedure under this clause 18 on relevant matters arising out of this Agreement shall be referred in the first instance to the chief executives of the parties for resolution. Failing such resolution within ten (10) Business Days of the referral as aforesaid, the relevant dispute shall be referred for resolution by an Expert in accordance with clause 18.3 below.

18.3 Expert

- (a) Where any matter may be referred to an Expert pursuant to clause 18.2 or otherwise in accordance with the terms of this Agreement, an Expert shall be appointed by the parties, or in default of agreement upon such appointment within ten (10) Business Days of their agreement to refer the matter to an Expert or of it being required pursuant to clause 18.2, in the case of financial matters, by the President for the time being of the Institute of Chartered Accountants, Australia, and, in the case of technical matters, the President for the time being of the Institution of Engineers, Australia.
- (b) In any event, the Expert will:
- (i) have reasonable qualifications, commercial and practical experience in the area of the dispute;
 - (ii) have no interest or duty which conflicts or may conflict with his function as Expert, he being required to fully disclose any such interest or duty before his appointment; and
 - (iii) not be an employee of any of the parties or of their respective Related Corporations.
- (c) The Expert will:
- (i) promptly fix a reasonable time and place for receiving submissions or information from the parties or from any other persons as he may think fit;
 - (ii) accept oral or written submissions from the parties as to the subject matter of the dispute within fourteen, (14) Business Days of his appointment;
 - (iii) not be bound by the rules of evidence;
 - (iv) make his decision only in relation to matters expressly referred to an Expert in accordance with Clause 18.3(a) and will have no discretion to come to any other decision on any matter except with the prior agreement of the parties;
 - (v) have power (in relation to changes to this Agreement referred 1 to the Expert in default of agreement between the parties) to

- (vi) order changes to this Agreement which are binding on the parties;
 - (vii) prior to making a binding determination, publish a draft determination to the parties within twenty-eight (28) days of his appointment and thereafter the parties may within thirty-four (34) days of his appointment make written submissions on the same to the Expert and the Expert may amend his draft determination prior to making his final determination; and
 - (viii) state his final determination in writing within thirty-seven (37) days of his appointment.
- (d) The Expert must undertake to keep confidential matters coming to his knowledge by reason of his appointment and performance of his duties.
- (e) The Expert will have the following powers:
- (i) to inform himself independently as to facts and if necessary technical and/or financial matters to which the dispute relates;
 - (ii) to receive written submissions sworn and unsworn written statements and photocopy documents and to act upon the same;
 - (iii) to consult with such other professionally qualified persons as he in his absolute discretion thinks fit; and
 - (iv) to take such measures as he thinks fit to expedite the completion of the dispute resolution.
- (f) Any person nominated as an Expert hereunder shall be deemed not to be an arbitrator but an expert and the law relating to arbitration including the Commercial Arbitration Act 1990 (Qld), as amended, will not apply to him or his determination or the procedures by which he may reach his determination.
- (g) The dispute resolution will be held in Mackay, Queensland unless the parties otherwise agree.

18.4 Decisions of Expert

In the absence of manifest error, the decision of the Expert will be valid and binding upon the parties.

18.5 Costs

The costs of the Expert and any advisers will be borne by the parties equally.

18.6 Information and Representation

The parties will give the Expert all information and assistance that the Expert may reasonably require. The parties shall be entitled to be legally represented in respect of any representations that they may wish to make to the Expert, whether orally or in writing.

18.7 Other Methods of Dispute Resolution

Instead of a dispute being referred to an Expert under clause 18.3 the parties may agree to refer any dispute under this Agreement to arbitration in accordance with the rates and procedures of any arbitral body that the parties may, agree upon, or in accordance with such rules and procedures as the parties may determine from time to time.

18.8 Obligations Continuing

Notwithstanding a reference to the dispute resolution procedure in this clause 18, the parties will, so far as it is reasonably practicable, continue to perform and comply with their respective obligations under this Agreement.

19. GOVERNING LAW

19.1 Queensland

This Agreement is governed by and is to be construed in accordance with the laws of the State of Queensland.

19.2 Courts

Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the Courts having jurisdiction in Queensland and courts of appeal from them.

20. MISCELLANEOUS

20.1 Stamp Duty

The Customer is, as between the parties, liable for and must duly pay all stamp duty (including any fine or penalty) on or relating to this Agreement and any document executed under it. If the Distributor pays any stamp duty (including any fine or penalty) on or relating to this Agreement or any document executed under it, the Customer must pay that amount to the Distributor upon demand.

20.2 Legal Costs

Subject to any express provision in this Agreement to the contrary, each party will bear its own legal and other costs and expenses relating directly or indirectly to the preparation of, and performance of its obligations under, this Agreement.

20.3 Amendment

This Agreement may only be varied or replaced by a document in writing duly executed by the parties.

20.4 Rights Cumulative

Subject to any express provision in this Agreement to the contrary, the rights of a party under this Agreement are cumulative and are in addition to any other rights of that party.

20.5 Approvals and Consent

Subject to any express provision in this Agreement to the contrary, a party may conditionally or unconditionally give or withhold any consent to be given under this Agreement and is not obliged to give its reasons for doing so.

20.6 Further Assurance

Each party will promptly execute all documents and do all things that any other party from time to time reasonably requires of it to effect, perfect or complete the provisions of this Agreement and any transaction contemplated by it.

20.7 Preservation of Accrued Rights

The expiration or determination of this Agreement:

- (a) will not affect the provisions expressed or implied to operate or have effect after such expiration or determination; and
- (b) will be without prejudice to any right of action already accrued to any party in respect of any breach of this Agreement by the other party.

20.8 Invalidity

If any term, clause or provision of this Agreement is or is taken or judged to be invalid for any reason, such invalidity will not affect the validity or operation of any other term, clause or provision of this Agreement except to the extent necessary to give effect to such invalidity.

20.9 Entire Understanding

This Agreement embodies the entire understanding and agreement between the parties as to the subject matter of this Agreement. All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this Agreement are merged in and superseded by this Agreement and are of no force or effect whatever and no party is liable to the other party in respect of those matters. No oral explanation or information provided by any party to the other party affects the meaning or interpretation of this Agreement or constitutes any collateral agreement, warranty or understanding between the parties.

20.10 Liability of the Customer

Notwithstanding anything else contained in this agreement:

- (a) the Distributor acknowledges that the Customer enters into this Agreement only in its capacity as trustee of BT Hotel Trust and not otherwise and that all of the obligations or warranties of the Customer pursuant to this Agreement are undertaken or given by it only in its capacity as trustee of that Trust; and
- (b) the Distributor acknowledges that the Customer's liability pursuant to this Agreement is limited to the Customer's right of indemnity out of the assets of BT Hotel Trust from time to time and in no circumstances will the Customer be liable to pay or satisfy any of the obligations imposed on it by this Agreement, express or implied, out of any assets held by the Customer personally, as trustee of any other trust or on behalf of any other person.

The limitation of the Customer's liability as contained in this Clause does not affect the rights of recovery of, or the amount that may be recovered by the Distributor under the Bank Guarantee referred to in clause 9.

- (c) It is acknowledged that the limitation of liability referred to in subclause (b) above applies notwithstanding an assignment by or the replacement of Permanent Trustee in its capacity as Trustee of BT Hotel Trust as the Customer, whether with or without the consent of MEB, and whether with or without a Deed of Covenant being executed as required by the Agreement.

20.11 Trustee Provisions

The Customer in its capacity as Trustee of the BT Hotel Trust represents and warrants to the Distributor that:

- (i) **Sole Trustee:** it is the only trustee of the BT Hotel Trust;
- (ii) **No removal of Customer:** to the best of the Customer's knowledge and belief no resolution has been passed or direction or notice been given removing the Customer as trustee of the BT Hotel Trust;
- (iii) **Authority:** it has power and authority as trustee of the BT Hotel Trust to enter into and perform its obligations under this Agreement;
- (iv) **Authorisations:** to the best of the Customer's knowledge and belief, it has taken all necessary action to authorise the execution, delivery and performance of this Agreement and the transaction contemplated by it in accordance with their terms;
- (v) **Right to Indemnity:** it has a right to be indemnified out of the BT Hotel Trust Fund in respect of obligations incurred by it under this Agreement in accordance with the terms of the BT Hotel Trust Deed;
- (vi) **No Termination of Trust:** no resolution has been passed or direction been given by the beneficiaries of the BT Hotel Trust for the winding up or termination of the BT Hotel Trust.

21. INTERPRETATION

21.1 Contracting Out of Electricity Act

The parties agree that Sections 40G(a) and (b) and Section 40E(e) of the Electricity Act do not apply to this Agreement.

21.2 References

Whilst the parties acknowledge that the Distributor has power in certain circumstances to interrupt or disconnect supply of electricity to the Customer and/or Facility subject to the provisions of clause 4.3, the Distributor shall use its best endeavours to as far as possible avoid such interruptions or disconnections.

21.3 Amendments

Any reference to "this Agreement" or to any other agreement or document is a reference to this Agreement, or, as the case may be, the relevant other agreement or document (including any schedule thereto) as amended, supplemented, assigned or novated from time to time and includes a reference to any document which amends, waives, is supplemental to or assigns or novates this Agreement or, as the case may be, the relevant other agreement or document.

21.4 Legislation

A reference to:

- (a) the Code, any other code, Australian Standard, guideline or instrument or any provision of any of them includes any variation revision or replacement of that code, standard, guideline, instrument or provision;

- (b) a statute, ordinance, licence or other law includes regulations and other instruments under, and consolidations, amendments, re-enactments, extensions or replacements of that statute, ordinance licence or law; and
- (c) a person which has ceased to exist or has been reconstituted, amalgamated, reconstructed or merged or the functions of which have become exercisable by any other person in its place is taken to refer to the person established or constituted in its place or by which its functions have become exercisable.

21.5 Group References

A reference to a thing (including, without limitation, an amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to any one or more of them.

21.6 References to Persons

- (a) The word 'person' or 'entity' includes a natural person, firm, body corporate, partnership (whether limited or otherwise), joint venture, trust, unincorporated association and an authority.
- (b) A reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and assigns.

21.7 Gender and Plurals

- (a) A reference to one gender includes all genders.
- (b) The singular includes the plural and vice versa.

21.8 Period of Time

If a period of time is specified and the period:

- (a) dates from a given day or the day of an act or event, it is to be calculated exclusive of that day; and
- (b) commences on a given day or the day of any act or event,

it is to be calculated inclusive of that day.

21.9 References to Time

Unless expressed otherwise, a reference to:

- (a) time is a reference to Brisbane time;
- (b) a day is a reference to a period of time commencing immediately after midnight and ending the following midnight;
- (c) a reference to a week is a reference to the period of time commencing immediately after midnight each Saturday and ending 7 days later; and
- (d) a month is a reference to a calendar month.

21.10 Definitions

If a word or phrase is specifically defined in this Agreement, then other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

21.11 Headings

Headings are inserted for convenience and do not affect the interpretation of this Agreement.

21.12 Including

A reference to "including" means including without limitation.

21.13 Measurement

Measurements are in System Internationale (S.I.) units.

21.14 Money

References to monetary amounts are to be taken to be expressed in Australian currency.

22. Definitions

In this Agreement, the following words and expressions have the following respective meanings, unless the context otherwise requires:

Account Period means the period specified in Item 12 of Schedule 1.

Affected Party means a party which is prevented from or delayed in performing any of its Non-Financial Obligations for reasons attributable to a Force Majeure.

Authorisation means any approval, authorisation, authority, certificate, consent, exemption, filing, licence, notarisation, permission, permit, recording, registration, ruling, statutory required policy of insurance, waiver, and any renewal or variation of any of them, by, from or with a Government Agency or Code Agency.

Authorised Demand means the maximum rate of half hourly Demand in kilowatts that the Customer is permitted under the terms of this Agreement. The quantity is specified in Item 9 of Schedule 1.

Authorised Level means the charge set out in Item 10(b)(i) as amended by clause 8.2(c) for the Authorised Demand per month.

Bank Bill Rate means the one month Australian Bank Bill Swap Reference Mid Rate specified by Reuters Monitor Service page BBSY at or about 10.00 am (Sydney time) on the first Business Day of each calendar month provided that if the Bank Bill Rate cannot be so determined, then Bank Bill Rate shall mean such rate as may be determined in accordance with the dispute resolution procedure in clause 18.

Business Day means a day, other than a Saturday, Sunday or public holiday upon which the banks are open for business in Brisbane.

Charges means an amount the Customer must pay to the Distributor for Customer Connection Services.

Code means:

- (a) the Market code under the Electricity Act until the commencement of the National Electricity Code under the National Electricity (Queensland) Law; and
- (b) the Code under the National Electricity (Queensland) Law after its commencement under the Electricity – National Scheme (Queensland) Act 1997.

Code Agency means any one or more of:

- (a) the entity which, from time to time, administers the market under the Code;
- (b) the entity which, from time to time, operates the market under the Code;
- (c) the System Operator;
- (d) the person or entity which, from time to time, regulates the electricity market in the State; or
- (e) any agent acting on behalf of any of the above.

Compensation means compensation for loss or damage suffered by a Non-Defaulting Party as a result of Default payable in accordance with this Agreement, as agreed between the Non-Defaulting Party and the Defaulting Party or pursuant to the dispute resolution procedure in clause 18.

Connection Assets has the meaning given in the Code.

Connection Point means the connection point between the Facility and the Distributor's distribution network as described and shown diagrammatically in Schedule 2.

CPI means the consumer price index published by the Australian Bureau of Statistics in Catalogue 6401.0-Table 1, Consumer Price Index - All Groups - All Capital Cities or if the index is suspended or discontinued, the index substituted for it by the Australian Bureau of Statistics.

Credible Contingency Event has the meaning given in the Code.

Customer means the corporation specified in Item 3 of Schedule 1.

Customer Connection Service has the meaning given in the Electricity Act.

Default means a Financial Default, Performance Default or an Insolvency Default.

Default Notice means a written notice given by the Non-Defaulting Party to the Defaulting Party specifying the Default that has occurred.

Defaulting Party means, in relation to a Default by the Customer, the Customer, and in relation to a Default by the Distributor, the Distributor.

Default Rate means the rate of two per cent (2%) per annum above the then current Bank Bill Rate.

Demand means twice the number of kilowatt hours measured, in respect of the Connection Point by the Metering Provider as being supplied to the Customer by the Distributor during any one half hour period.

Demand Charge means the charges set out in Item 10(b) of Schedule 1 relating to the Authorised Level as amended under clause 8.2(c).

Directive means any present or future requirement, instruction, direction or order of a Government Agency or Code Agency which is binding on or which would customarily be observed by a reasonable and prudent owner, operator or designer of facilities such as the Distributor's distribution network (in the case of the Distributor) and the Facility (in the case of the Customer), and any modification, extension or replacement thereof from time to time in force.

Distribution Authority has the meaning given in the Electricity Act.

Distribution Entity has the meaning given in the Electricity Act.

Distribution Network has the meaning given in the Code.

Distributor means the distribution entity specified in Item 2 of Schedule 1.

Distributor's automatic disconnection equipment means equipment installed by the Distributor which may automatically disconnect the Facility from the Distributor's distribution network in order to protect the Distributor's distribution network.

Effective Date means the date specified in Item 6 of Schedule 1.

Electrical Installation has the meaning given in the Electricity Act.

Electricity Act means the Electricity Act 1994 (Qld).

Electricity Industry has the meaning given in the Electricity Act.

Energy Charge means the charge set out in Item 10(c) of Schedule 1 as adjusted under Clause 8.2(c).

Escalated at CPI means, where it is used in relation to a number in this agreement, the number is to be adjusted by reference to a factor (not less than one):

- (a) the numerator of which is the CPI in respect of the last Quarter preceding the Quarter in which the adjustment is to be made; and
- (b) the denominator of which is the CPI for the second last Quarter preceding the Quarter in which the adjustment is to be made.

Expert means a person who is appointed in accordance with the dispute provisions under clause 18.

Facility means the Customer's electrical installation or premises particularised in Item 5 of Schedule 1.

Facility Connection Requirements means the requirements specified in Schedule 3.

Facility Deficiency means where the Facility does, not comply in any respect with the requirements of this Agreement, the Electricity Act, National Electricity Law, the Code or relevant Australian Standards.

Facility Deficiency Notice means a notice given under clause 3.4(a).

Facility Technical Data means the requirements specified in Schedule 3.

Financial Default means:

- (a) a failure by a party to pay Compensation within 10 Business Days after the amount of such compensation has been agreed or finally determined to be due; and
- (b) a failure by a party to pay any amount (including interest thereon) as and then due under this agreement and a failure to remedy such non-payment within 10 Business Days after written demand therefor from the other Party.

Financial Obligation means an obligation under this Agreement to pay or cause to be paid an amount of money.

First Tier Customer has the meaning given in the Code.

Fixed Charge means the charge set out in Item 10(a) of Schedule 1 as adjusted under clause 8.2(c).

Force Majeure means any event, act, occurrence or omission, or combination of them, which (notwithstanding the observance of good electricity industry practice) is beyond the reasonable control of the party affected thereby, which may include, without limitation, the following:

- (a) acts of God, lightning strikes, earthquakes, floods, droughts, storms, mudslides, radioactive or chemical contamination, explosions, fires or other natural disasters, acts of war, acts of public enemies, riots, civil commotions, malicious damage, sabotage, blockades and revolutions;
- (b) industrial disputes;
- (c) action or inaction by any Government Agency, including a denial, refusal or failure to grant any Authorisation;
- (d) mechanical and electrical breakdown and failure of equipment which is not due to any negligence or fault on the part of the Distributor;
- (e) failure of suppliers (being parties with whom the party affected may contract from time to time) of goods and services to provide such goods or services by reason of force majeure.

FM Notice means notice given under clause 11.1(a)(i) of the occurrence of Force Majeure by the Affected Party to the other party.

Good Electricity Industry Practice has the meaning given in the Code.

Government Agency means a government, a government department, a governmental, semi-governmental or judicial person or a person (whether autonomous or not) charged with administration of any applicable Law. The term includes NEMMCO.

Insolvency Default means, in respect of the Customer:

- (a) a receiver, a receiver and manager, an administrator or other controller is appointed in respect of the Customer or the Customer's estate or interest in the Facility and such appointment has not been revoked, discharged, stayed, enjoined or withdrawn within 20 Business Days of the appointment of any encumbrancer who takes possession of the assets or undertaking of the Seller and does not relinquish possession within 20 Business Days thereof;

- (b) after all final appeal rights have been exhausted, any execution or other like process of law in respect of an amount exceeding \$100,000 is issued against or levied upon the Customer's estate or interest in this Agreement or the Facility and is not paid out, satisfied or withdrawn within 20 Business Days of the date of issue against or levy upon such estate or interest;
- (c) a liquidator or provisional liquidator is appointed or an order is made or an effective resolution is passed for the liquidation of the Customer and such appointment, order or resolution is not revoked, discharged, stayed, enjoined or withdrawn within 20 Business Days or the Customer enters into an arrangement or composition with its creditors within the meaning of the Corporations Law,
- (d) a failure to satisfy, have withdrawn or set aside, a statutory demand under Section 459F of the Corporations Law; or
- (e) a resolution has been passed or direction given by the beneficiaries of the BT Hotel Trust for the winding up or termination of the BT Hotel Trust or for distribution of the BT Hotel Trust Fund,

and, in respect of the Distributor:

- (a) anything analogous to that in (a) to (d) above;
- (b) the Governor-in-Council authorising the regulator to take over the operation of the Distributor pursuant to section 130 of the Electricity Act.

Instantaneous Demand means the rate in kilowatts at any particular time, measured by equipment provided by the Distributor, at which electricity is delivered at the Connection Point.

Jurisdictional Regulator has the meaning given in the Code, and at the time of commencement of this agreement, the Jurisdictional Regulator is the Queensland Competition Authority.

Maximum Demand means the maximum demand in kilowatts recorded in any month.

Meter Charges shall be the meter charges agreed in accordance with clause 7.2(e) and adjusted in accordance with clause 7.2(f).

Metering Equipment means those devices complying with Australian Standards which measure and record the production or consumption of electrical energy Metering Provider has the meaning given in the Code.

National Electricity Law means Electricity - National Scheme (Queensland) Act 1997 (Qld).

NEMMCO means National Electricity Market Management Company Limited ACN 072 010 327.

Network has the meaning given in the Code.

Non-Defaulting Party means the Distributor where the Defaulting Party is the Customer and, the Customer where the Defaulting Party is the Distributor.

Non-Financial Obligation means an obligation under this Agreement that is not a Financial Obligation.

Notice includes a notice, account, communication or other document required to be given or served upon a party under this Agreement

Notice of Requested Increased Demand means a notice given under Clause 5.2(a).

Performance Default means, in respect of either party, a party's failure to perform or comply with any of its Non-Financial Obligations while that obligation is not suspended by the provisions of Clause 11.2.

Power System Security and Reliability Standards has the meaning given in the Code.

Powerlink means Queensland Electricity Transmission Corporation Limited ACN 078 849 233 trading as Powerlink Queensland.

Premises has the meaning given in the Electricity Act.

Quarter/Quarterly means a period of three consecutive calendar months commencing on 1 January, 1 April, 1 July and 1 October in each calendar year.

Responsible Person has the meaning given in the Code.

Related Corporation has the meaning given in the Corporations Law

Retailer means the retail entity nominated in Item 4 of Schedule 1 as varied from time to time by the Customer and notified to the Distributor under clause 16.3 or the actual retail entity supplying the Customer's Facility via the Distributor's distribution network, if different.

Retail Entity has the meaning given in the Electricity Act.

Sell has the meaning given in the Electricity Act.

Second Tier Customer has the meaning given in the Code.

State electricity entity has the meaning given in the Electricity Act 1994.

Steady Load means a load with Instantaneous Demand that does not vary by more than 10% during any half hour period commencing at any time.

System Operator has the meaning given in the Code.

Initial Term means the period specified in Item 7 of Schedule 1.

Term means the period, in accordance with clause 1, from which this Agreement commences and during which this Agreement continues, including any renewals.

Transmission Network Connection Point means the connection point or points as specified in Item 15 of Schedule 1 at and from which electricity purchased by the Customer from the Customer's Retailer will be fed into the Distributor's distribution network for delivery to the Customer under this Agreement.

BT Hotel Trust means the BT Hotel Trust established under the BT Hotel Trust Deed.

BT Hotel Trust Deed means the Deed of Trust dated 18 March 1996 between the Customer, BT Funds Management Limited (ACN 002 916 458) and Permanent Trustee Company Limited (ACN 000 000 993) as varied by a Supplemental Deed dated 8 May 1996.

BT Hotel Trust Fund means the property held on trust by the Customer as trustee under the BT Hotel Trust Deed.

Escalated Annually at CPI means, where it is used in relation to a number in this agreement, the number is to be adjusted by reference to a factor (less than one):

- (a) the numerator of which is the CPI in respect of the last quarter preceding the quarter in which the adjustment is to be made; and
- (b) the denominator of which is the CPI for the fifth last quarter preceding the quarter in which the adjustment is to be made.

NEMMCO Settlements Charges - Any charges that NEMMCO may allocate to second tier customers to cover NEMMCO's settlements costs.

Meter Data Agent - Agent appointed by the Retailer or Customer to provide metering data to NEMMCO for settlements

Schedule 1

- Item 1:** *Date of Connection Agreement*
Date 5 November 1998
- Item 2:** *Name & Address of Distributor*
Mackay Electricity Corporation Limited
(Trading as "MEB")
ACN 078 848 889
PO Box 259
MACKAY QLD 4740
- Item 3:** *Name & Address of Customer*
Permanent Trustee Australia Limited
ACN 008 412 913
in its capacity as trustee of BT Hotel Trust, its successors, administrators and permitted assigns
Ground Floor
23-25 O'Connell Street
SYDNEY NSW 2000
- Item 4:** *Name & Address of Initial Retail Entity*
Central Electricity Retail Corporation
(Trading as "Ergon Energy")
Ground Floor, 61 Mary Street
BRISBANE QLD 4000
- Item 5:** *Details of Facility*
The electrical system of the Hayman Island Resort – a tourist destination on Hayman Island Refer to Schedule 2 for Electrical equipment ownership boundaries.
- Item 6:** *Effective Date*
The effective date will be a date as mutually agreed between parties.
- Item 7:** *Initial Term*
The period of 15 years plus the aggregate of the periods for which payment by the Customer is suspended under clause 8.2(e), to a maximum period of 16 years.

The parties agree that the fixed unregulated charges will be suspended for a 1 month period, for the month of June 2007 in accordance with clause 8.2(e) – due to the outage required to upgrade the Shutehaven substation. A period of 1 month will be added to the initial term of 15 years, due to the suspension of the fixed unregulated charges.
- Item 8:** (a) *Nominal Voltage*

██████████

(b) Target Range of Voltage Magnitude

████████████████████

Item 9: Authorised Demand

██████████

Item 10: (a) Regulated Charges

GST Exclusive Network Charges effective from 1 July 2007

Customer	Hayman Island
Transmission Node Identifier (TNI)	QPRO
Distribution Loss Factor (DLF/Code)	██████████
Authorised Demand (AD) in kW	██████████
Average Demand (AD) in kW	██████████
Annual Energy in GWh	██████████
DUOS charges:	
NDFC – Fixed Charge (\$/day)	██████████
NDCC – Capacity Charge (\$/kW of AD/month)	██████████
NDDC – Actual Demand Charge (\$/kW/month)	██████████
NDVC – Volume Charge (\$/kWh)	██████████
TUOS charges:	
NTFC – Fixed Charge (\$/day)	██████████
NTCC – Capacity Charge (\$/kW of AD/month)	██████████
NTCGC – Common Services & General Charge (\$/day)	██████████
NTVC – Volume Charge (\$/kWh)	\$0.00302

(b) Unregulated Charges

Fixed Charge 1 - ██████████ per month GST Exclusive.

(of which ██████████ per month is constant, not subject to clause 8.2 or increases by the jurisdictional regulator)

Fixed Charge 2 - ██████████ per month GST Exclusive.

Item 11:

Value of Financial Security

Initial Value	\$ [REDACTED]
First Anniversary	[REDACTED]
Second Anniversary	[REDACTED]
Third Anniversary	[REDACTED]
Fourth Anniversary	[REDACTED]
Fifth Anniversary	[REDACTED]
Sixth Anniversary	[REDACTED]
Seventh Anniversary	[REDACTED]
Eighth Anniversary	[REDACTED]
Ninth Anniversary	[REDACTED]
Tenth Anniversary	[REDACTED]
Eleventh Anniversary	[REDACTED]
Twelfth Anniversary	[REDACTED]
Thirteenth Anniversary	[REDACTED]
Fourteenth	[REDACTED]
Fifteenth	[REDACTED]

Item 12:

Account Period

The account period will be monthly.

Item 13:

(a) *Customer*

General Manager
Hayman Island
NORTH QUEENSLAND QLD 4801

Phone: (07) 4940 1234
Facsimile: (07) 4940 5678

(b) *Distributor*

Chief Executive Office
MEB
PO Box 259
MACKAY QLD 4740

Phone: (07) 4957 1888
Facsimile: (07) 4951 2036

- item 14:** *Metering Provider*
Mackay Electricity Corporation Limited.
- item 15:** *Transmission Network Connection Point*
Proserpine bulk supply substation

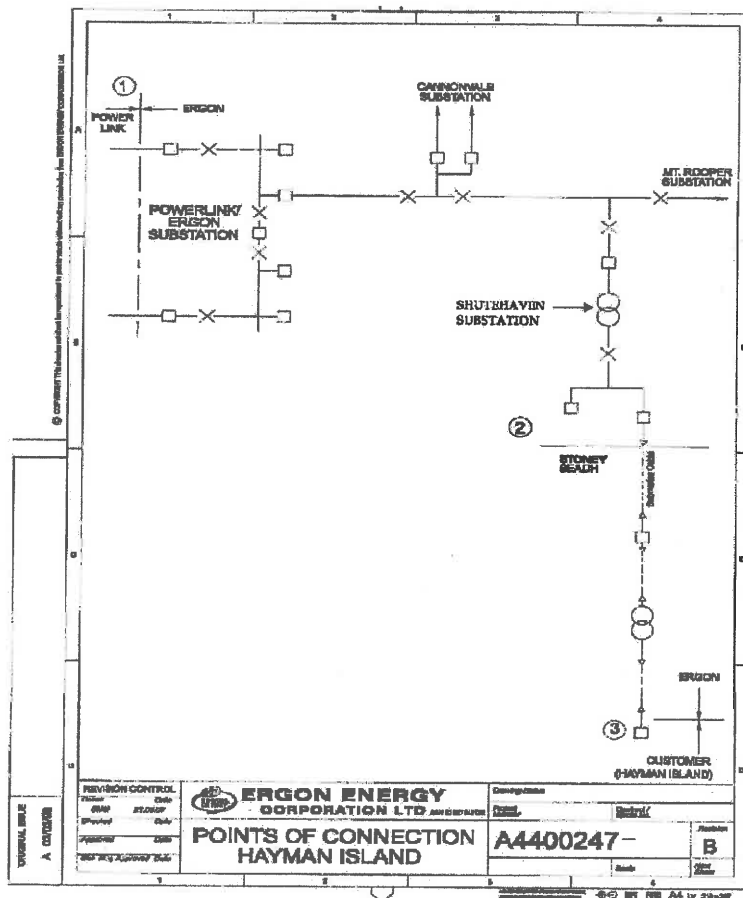
Schedule 2 – The Connection Point

There will be three defined points in relation to this network connection contract.

1. *Transmission Network Connection Point (as defined). This point is otherwise known as the bulk supply point and is MEB's connection to the transmission network (Powerlink).*
2. *Distribution Network Connection Point. This point may be defined as the point at which the assets which are exclusively used by a single customer are connected to the shared distribution network.*
3. *Connection Point. This is defined as the point at which the energy is delivered to the Customer and the electrical installation becomes the responsibility of the Customer.*

Diagram is attached.

Points of Connection Hayman Island



Schedule 3 – Facility Connection Requirement and Facility Technical Date

Code to apply.

1368143_1

21/01/2015 10:15:00 AM

36

Executed as an agreement

THE COMMON SEAL of MACKAY
ELECTRICITY CORPORATION
LIMITED was affixed in accordance with
its Articles of Association was affixed by:



Signature of Authorised Person

Signature of Authorised Person

CHAIR.

C.E.O.

Office held

Office held

COLIN FRANCIS MENE

KEITH EDWARD BURNS

Name of Authorised Person (Print Name)

Name of Authorised Person (Print Name)

Permanent Trustee Australia Limited ACN)
008 412 913 by its duly constituted attorney)
(here insert name)

JULIA

ANTHONY

Signature of Attorney

JULIA ELIZABETH BROOKE SCOTT . ANTHONY VALENTINE STEELE

Full Name of Attorney

Registered Number and/or Date of Instrument
Appointing Attorney

\\ADMHOSN001\CENTRAL\STENCOS\INFRASTR\AGREEMENT\Retain - Agreements\Hayman - Bankers Trust.DOC

Table 31 maps the list of Fee Based Services that the AER included in Appendix B of its F&A Stage 1 to a list of services that Ergon Energy considers that it provides.

Table 31: Ergon Energy's Fee Based Services

Service Listed in F&A Stage 1 Appendix B	Services that Ergon Energy Provides
Specification and design enquiry fees	Subdivision Fees
	Project Fees
De-energisation and Re-energisation	De-energisation during business hours
	Re-energisation during business hours
Re-test	Re-Test Fee (e.g. if premises fails test the first time)
Supply Abolishment	Supply Abolishment
Temporary supply services	Metered Temporary Builders Supplies
Fault response—not DNSP fault	Attend loss of supply
Wasted attendance	Wasted truck visit

For completeness, Table 32 maps the list of Unregulated Services that the AER included in Appendix B of its F&A Stage 1 to a list of services that Ergon Energy considers that it provides. None of these services is regulated by the AER or covered by this Regulatory Proposal.

Table 32: Ergon Energy's Unregulated Services

Service Listed in F&A Stage 1 Appendix B	Services that Ergon Energy Provides
Non-Distribution Services	Non-Distribution Services at customers' request
	Ownership and operation of 33 Isolated Systems Generators;
	Ownership and operation of 34 Isolated Systems Networks;
	Ownership and operation of a network in the North West Minerals Province (near Mount Isa);
	An undersea cable;
	Works for Powerlink;
	Certain electrical assets within customers' electrical installations;
	Sale of Remote Area Power Stations and Solar PV Systems;
	Non-competing Retail entity selling to retail customers on Qld gazetted Notified Prices only;
	Wholesale fibre telecommunications services;
	IT Services to support Ergon Energy and ENERGEX's business operations.
Distribution Services provided in a competitive market:	High load escorts – scoping and contractor approvals
	Watchman Lights - Provision and O&M
<ul style="list-style-type: none"> • High load escorts • Type 1-4 metering • Watchman lights 	MDA Types 1-4
	Erection of extra poles (on customer's installation)
	Location of underground cables
	Voltage & Load Check - Fault Found on Customer's Installation

Schedule 7 – Supporting Documentation – pages 13 & 14 of Section 03.01.01

2.1.5 Adjustments to recognise changes in service classifications that occur on 1 July 2015

We own an undersea cable to Hayman Island which, at the start of the regulatory control period 2010-15, was not included in the RAB for Standard Control Services but will be transferred to the RAB for Standard Control Services at the commencement of the regulatory control period 2015-20.

In addition, there are Type 5-6 metering assets which, at the start of the regulatory control period 2010-15 were included in the RAB for Standard Control Services but will be removed the RAB for Standard Control Services at the commencement of the regulatory control period 2015-20 by virtue of the reclassification of Type 5-6 metering services as Alternative Control Services from 1 July 2015.

Table 3: Ergon Energy's net adjustments to recognise changes in service classifications (\$M nominal)

Asset	Standard Control Service RAB Asset Class affected	Value as at 1 July 2015
Hayman Island 22kV Undersea Cable	Underground Sub-Transmission Cables	7.31
less Type 5-6 metering	Metering	(61.60)
Net RAB adjustment		(54.29)

Consistent with Schedule 1 clause 27.3 of the Reset RIN, the following sections provide details on:

- The applicable NER requirements relating to RAB adjustments due to service reclassifications
- The assets which are being included or removed from the RAB as at 1 July 2015.

2.1.5.1 Relevant NER requirements

Clause S6.2.1(e)(7) of the NER requires that:

The previous value of the regulatory asset base must be reduced by the value of an asset where the asset was previously used to provide Standard Control Services (or their equivalent under the previous regulatory system) but, as a result of a change to the classification of a particular service under Part B, is not to be used for that purpose for the relevant regulatory control period.

And clause S6.2.1(e)(8) of the NER requires that:

The previous value of the regulatory asset base may be increased by the value of an asset to which this subparagraph applies to the extent that:

- The AER considers the asset to be reasonably required to achieve one or more of the capital expenditure objectives, and*
- The value of the asset has not been otherwise recovered.*

This subparagraph applies to an asset that:

- (i) *Was not used to provide Standard Control Services (or their equivalent under the previous regulatory system) in the previous regulatory control period but, as a result of a change to the classification of a particular service under Part B, is to be used for that purpose for the relevant regulatory control period; or*
- (ii) *Was never previously used to provide Standard Control Services (or their equivalent under the previous regulatory system) but is to be used for that purpose for the relevant regulatory control period.*

The following sections sets out the adjustments to the RAB being proposed and how these are in accordance with clause S6.2.1(e)(7) and clause S6.2.1(e)(8) of the NER.

2.1.5.2 Changes in RAB values due to service reclassifications - additions

We have a number of assets to which clause S6.2.1(e)(8) of the NER applies, including the Hayman Island 22kV undersea cable. With the exception of this undersea cable, we have chosen not to adjust the Standard Control Services RAB to include a number of assets which previously provided unregulated service during the regulatory control period 2010-15. This is because of the complexity associated with extracting the asset values and the immaterial value of these assets given their age.

The Hayman Island 22kV undersea cable meets the requirements of S6.2.1(e)(8) of the NER because it:

- Has never previously been classified by the AER as providing Standard Control Services and was never previously classified by the Queensland Competition Authority as providing Prescribed Services (the equivalent of Standard Control Services) under previous regulatory arrangements
- Will be used for the provision of Standard Control Services in the regulatory control period 2015-20
- Have not been otherwise recovered by customers of Standard Control Services or Prescribed Services
- Is required to achieve the following capital expenditure objectives:
 - (1) Meet or manage the expected demand for Standard Control Services during the regulatory control period 2015-20
 - (2) Comply with all applicable regulatory obligations or requirements associated with the provision of Standard Control Services

We have confirmed, in discussions with the AER in May 2014, that the Hayman Island 22kV Undersea Cable will be included in the Standard Control Service RAB from 1 July 2015. This is because the undersea cable, substation and associated assets provide distribution services which are consistent with the AER's Classification of Services for Standard Control Services.

We have adjusted the Standard Control Services opening RAB in the PTRM for the regulatory control period 2015-20 to recognise the written down value of the Hayman Island 22kV Undersea Cable (from our unregulated asset register) as at 2015-16 (the year in which it transfers to the RAB). The asset value of \$7.31 million is added to the Underground Sub-Transmission Cables asset class in the PTRM as an opening RAB adjustment (i.e. it is not recognised as capital expenditure in 2015-16).

Schedule 8 – 26/11/2013 Ergon Letter



420 Flinders Street, Townsville QLD 4810
PO Box 1080, Townsville QLD 4810
ergon.com.au

26th November 2013

Mr Greg Timar
Mulpha Australia Limited
Level 5, 99 Macquarie Street
Sydney NSW 2000

Dear Greg,

We refer to the Customer Connection Agreement between Ergon Energy Corporation Limited (Ergon Energy) (as successor in law of Mackay Electricity Corporation Limited) and The Trust Company (PYAL) Limited (Hayman Island) dated 5 November 1998 and due to expire on 30 June 2014 (Connection Agreement).

Giving the impending expiry of the Initial Term of the Connection Agreement, a legal and regulatory review of the Connection Agreement has been undertaken.

This review resulted in a finding that, in applying Charges in accordance with the terms of the Connection Agreement, Ergon Energy is in breach of its obligations under the National Electricity Law.

Accordingly, Ergon Energy must promptly act to ensure compliance with that Law, as required under clause 6.1(a)(i) of the Connection Agreement.

This letter constitutes notice under clause 6.1(b).

Ergon Energy must immediately move to recalculate the Charges (at least going forward) to reflect the fact that the undersea cable provides Standard Control Services to Hayman Island – effectively, all of the assets will be classified as providing regulated services under the National Electricity Law.

That is, Ergon Energy has no basis for classifying these assets as unregulated going forward.

Ergon Energy would like to commence negotiations to enter into a new Customer Connection Agreement with Hayman Island as soon as possible to mitigate any breaches of the relevant legislation.

Ergon Energy Corporation Limited ABN 50 087 646 062
Ergon Energy Queensland Pty Ltd ABN 11 121 177 802

Network Charges – expected charges (all figures are exclusive of GST)

The estimated annual charges to be incurred under the Connection Agreement for 2013-14 are:

Category	Estimated usage for year	Estimated annual charge
Distribution Use of System Charges	Authorised Demand 3.4MW Average Demand 2.4MW Annual energy 16.4GWh	\$478,111
Transmission Use of System Charges	Authorised Demand 3.4MW Average Demand 2.4MW Annual energy 16.4GWh	\$366,778
Unregulated Charges		\$1,196,352
Total		\$2,041,241

Indicative annual charges under a new, compliant, agreement (based on 2013-14 prices)

Category	Estimated usage for year	Estimated annual charge
Distribution Use of System Charges	Authorised Demand 3.4MW Average Demand 2.4MW Annual energy 16.4GWh	\$1,911,255
Transmission Use of System Charges	Authorised Demand 3.4MW Average Demand 2.4MW Annual energy 16.4GWh	\$366,778
Unregulated Charges		\$Nil
Total		\$2,278,033

The alternative to the above is consideration by Hayman Island to purchase the undersea cable and associated equipment located on the island.

We look forward to entering into discussions with you at your earliest convenience to discuss and proceed with negotiations to enter into a new Customer Connection Agreement.

Please contact Jane Schober on 07 4432 8755 or jane.schober@ergon.com.au to discuss.

Kind Regards

Jane Schober

Digitally signed by Jane Schober
DN: cn=Jane Schober,
o=Ergon Energy,
ou=Major Projects,
email=jane.schober@ergon.com.au, c=AU
Date: 2013.11.26 15:34:24
+1000'

Jane Schober
Major Customer Intelligence & Performance Manager, Major Projects
Ergon Energy
Phone: 07 4432 8755
Mobile: 0439 725 213
Email: jane.schober@ergon.com.au

Schedule 9 – 23/12/2013 Mulpha Letter

From: Greg Timar [<mailto:GTimar@mulpha.com.au>]
Sent: Monday, 23 December 2013 7:28 AM
To: SCHOBBER Jane (NQ)
Subject: FW: Letter re Hayman Island connection agreement

Hi Jane

Apologies for the delay in replying.

I refer to our discussions and your letter to me dated 26 November 2013.

Whilst we don't necessarily agree with the contents of your letter or its conclusions, it might be best at this stage if Ergon clarified the basis upon which it believes that it is now providing Standard Control Services (and the date upon which Ergon believes that it commenced to provide such Standard Control Services).

In addition, you state in your letter that Ergon in applying the Charges in accordance with the terms of the Connection Agreement is in breach of its obligations under the National Electricity Law. Please let me know which obligations under the National Electricity Law you believe that Ergon is in breach of and when such breaches first commenced.

We will be in a better position to respond to your letter when you have provided the clarification and information requested above.

Rgds

Greg
Greg Timar
Director Group Asset Development & Projects / Mulpha Australia Limited [Mulpha Australia Limited]MAIL Level 5, 99 Macquarie Street, Sydney, NSW, 2000 PHONE +612 9239 5516 FAX +612 9239 5599 MOBILE +61 419 691 209 EMAIL GTimar@mulpha.com.au
<<mailto:GTimar@mulpha.com.au>> WEB www.mulpha.com.au <<http://www.mulpha.com.au>>
[cid:image006.jpg@01CF0C5A.92E40240]<<http://www.sanctuarycove.com/events/sanctuary-cove-christmas-carnival>>

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Schedule 10 – 8/1/2014 Ergon Letter

From: "SCHOBER Jane (NQ)" <jane.schober@ergon.com.au<mailto:jane.schober@ergon.com.au>>
Date: 8 January 2014 10:15:37 am AEST
To: Greg Timar <GTimar@mulpha.com.au<mailto:GTimar@mulpha.com.au>>
Subject: RE: Letter re Hayman Island connection agreement

Hi Greg,

Thank you for your email and apologies for the delay in responding due to my absence on leave.

Ergon Energy Corporation Limited (Ergon Energy), as a distribution network service provider (DNSP) under the National Electricity Rules (the Rules) (as established under the National Electricity (South Australia) Act 1996 (SA) and applied as a law of Queensland by way of the Electricity – National Scheme (Queensland) Act 1997 (Qld)), is subject to an economic regulatory regime that is broadly designed to result in Ergon Energy pricing services as if it were part of a competitive market and not a monopoly service provider.

The economic regulatory regime under the Rules broadly provides for services provided by DNSPs to be classified in a certain manner, and, once this classification is applied, then either the pricing applicable to, or the revenue recoverable from, those services is regulated by the Australian Energy Regulator (AER). This is a highly complex process and Ergon Energy is not able to provide advice to Hayman Island as to the specific operation of this regime.

However, Ergon Energy notes that, very generally:

- a distribution system includes:
 - o a distribution network, being apparatus, equipment, plant and buildings used to convey, or control the conveyance of, electricity to customers; and
 - o connection assets, which broadly provide for the connection of the customer to the distribution network at a physical point (where the customer's assets meet the DNSP's assets);
- the undersea cable comprises apparatus and equipment used to convey electricity to Hayman Island, and thus forms part of Ergon Energy's distribution network and hence its distribution system;
- any services provided by means of, or in connection with, a distribution system are classified as either unclassified or direct control services. For services classified as direct control services either the price for these services, or the revenue recoverable in respect of the provision of these services, is regulated under a distribution determination;
- direct control services are subdivided into standard control services and alternative control services, where standard control services are regulated based on a total revenue requirement; and
- the AER classifies the operation and maintenance of Ergon Energy's distribution network as direct control services and more specifically as standard control services.

On this basis, Ergon Energy considers that the service of operating and maintaining the undersea cable is a standard control service and Ergon Energy's revenue recoverable from such service must be determined in accordance with the building block determination promulgated by the AER in its distribution determination valid for the period 1 July 2010 to 30 June 2015. Further, the prices to recover that revenue must be determined in accordance with the Rules and distribution determination. Clearly, the commercial prices stated in the Connection Agreement have not been calculated in accordance with this building block determination and Rules, and hence Ergon Energy considers that it needs to amend its prices to comply with the requirements of the Rules.

Prior to 1 July 2010, the relevant jurisdictional regulator for Ergon Energy was the Queensland Competition Authority (rather than the AER), and the relevant economic services were classified in a different manner to those applying today. Accordingly, at this stage, Ergon Energy has not attempted to review the precise service classification applicable for the period prior to 1 July 2010, although it

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notes that Ergon Energy's regulatory proposal to the AER in July 2009 stated that the operation of the undersea cable was treated by the QCA as an unregulated service under that prior regime based on it pre-dating the National Electricity Code (now the Rules).

Unfortunately, Ergon Energy has not been able to locate an analogous applicable exemption under the current regime.

Greg I am happy to discuss this further with you and clarify any further queries.

Thanks for your help with this matter.

Regards,

Regards,

Jane Schober
Major Customer Intelligence & Performance Manager, Major Projects Ergon Energy Level 5, 420
Flinders Street Townsville QLD 4810 PO Box 1090, Townsville QLD 4810 P 07 4432 8755 M 0439
725 213 F 07 4432 8051 E jane.schober@ergon.com.au <<mailto:jane.schober@ergon.com.au>>
ergon.com.au <<http://ergon.com.au>>

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Schedule 11 – 19/2/2014 Mulpha Letter



Mulpha Australia Limited
ACN 002 888 039
ABN 44 002 888 039

L5, 99 Macquarie Street, Sydney NSW 2000 Australia
T 61 2 9239 5500 F 61 2 9239 5599
www.mulpha.com.au

19 February 2014

Australian Energy Regulator
Sent by email to QLDelectricity2015@aer.gov.au

Dear Sir or Madam

Written Submission to AER re Ergon Determination 2015-2020

We understand from the AER website that the proposed closing date for submissions in relation to the Ergon Determination referred to above is close of business on 19 February 2014 (today).

As you might be aware, there is an undersea cable which supplies electricity to Hayman Island. Hayman Island is effectively controlled by the Mulpha Group. We have a long term contract with Ergon in relation to the undersea cable.

A dispute has arisen in relation to the fundamental terms of the contract (in particular whether it should continue to be considered an unregulated asset under the Code), which we were hoping to be able to resolve with Ergon before the closing date for submissions. Unfortunately, this has not yet occurred although we have a teleconference scheduled with Ergon for next week at which we hope to be able to resolve this dispute.

If the dispute can be resolved during that teleconference then there is no need for us to make a more formal submission. However, if the dispute cannot be resolved then we would like to provide a formal submission to the AER at that stage.

Whilst we appreciate that such a submission would be received by the AER after the proposed closing date for submissions, we trust that the AER understands the reasons for the lateness of the submission and the fact that this lateness is caused only by the parties trying to resolve the dispute without making submissions to the AER which might ultimately be unnecessary.

Please let me know as soon as possible if you have any questions in relation to the above.

Yours sincerely

Greg Timar
Director Group Assets Development & Projects

cc. Jane Schober, Major Customer Intelligence & Performance Manager, Ergon Energy

Schedule 12 – 25/2/2014 Ergon Letter

From: SCHOBER Jane (NQ) <jane.schober@ergon.com.au>
Sent: Tuesday, 25 February 2014 10:20 AM
To: Greg Timar; DOYLE Jenny (FN); LINDSAY Fiona (ERGON); FRASER Trudy (ERGON); Steven Mackay; Fiona Lindsay
Subject: Hayman Island - undersea cable and associated substation assets

Hi all,

Thank you again for your time yesterday.

The meeting was held to discuss Ergon Energy's advice regarding the service of operating and maintaining the undersea cable and substation assets as a standard control service (SCS).

Attendees were:

- Greg Timar, Director Group Asset Development & Projects / Mulpha Australia Limited
- Steven Mackay, Addisons Lawyers
- Fiona Lindsay, Legal Counsel, Commercial
- Trudy Fraser, Manager Regulatory Affairs – Policy & Regulation
- Jane Schober, Major Customer Intelligence & Performance Manager

Discussion held on the decision to classify the provision of the assets as a SCS

- Ergon Energy considers that, under the operation of the National Electricity Law, the National Electricity Rules and the AER's Final Distribution Determination, the relevant services are classified as standard control services and hence the price for these services must be calculated in accordance with Chapter 6 of the Rules, and there is nothing in any of these documents that specifically permits this service to be excluded from the economic regulatory regime.
- Mulpha consider that as the AER did not specifically challenge Ergon Energy's submission as to the assets being unregulated, they should not be treated as SCS.
- Mulpha has referred matter to staff within AER
- Ergon Energy to refer matter to AER and advise outcome to Mulpha

Regards,

Jane Schober

Major Customer Intelligence & Performance Manager, Major Projects
Ergon Energy

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Schedule 13 – 27/2/2014 Mulpha Letter

From: Greg Timar
Sent: Thursday, 27 February 2014 4:46 PM
To: Jane Schober (jane.schober@ergon.com.au)
Cc: Emma Lloyd
Subject: Hayman

Hi Jane

Our read of the agreement is that the requirement for us to provide financial security should have lapsed in November of last year.

Can you please confirm whether this is your understanding.

Thanks

Greg

GREG TIMAR

DIRECTOR GROUP ASSET DEVELOPMENT & PROJECTS / MULPHA AUSTRALIA LIMITED



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Schedule 14 – 28/2/2014 Ergon Letter

From: "SCHOBBER Jane (NQ)" <jane.schober@ergon.com.au<mailto:jane.schober@ergon.com.au>>
Date: 28 February 2014 4:28:00 pm AEDT
To: Greg Timar <GTimar@mulpha.com.au<mailto:GTimar@mulpha.com.au>>
Cc: Emma Lloyd <ELloyd@mulpha.com.au<mailto:ELloyd@mulpha.com.au>>
Subject: RE: Hayman

Hi Greg,

My apologies for the delay in responding to you.

A copy of the Bank Guarantee is attached. It notes that it commences upon practical completion of the undersea cable. Our records state that the Connection Agreement commenced on 1 June 1999, so it appears that this may be the effective date to also apply to the Bank Guarantee.

The Connection Agreement has an initial term of 15 years from the effective date, making it 30 May 2014. However, due to works on Hamilton Island, Hayman Island had a month's outage, which, under the provisions of the Agreement, is added to the term, making the end of the initial term 30 June 2014.

The Bank Guarantee is a declining bank guarantee which declines on each anniversary of the date of practical completion of the undersea cable, finally declining to zero on the 15 year anniversary. Given the above, it appears that this is likely to be 30 May 2014.

Accordingly, it appears that the bank guarantee did not end in November 2013, but rather will end on 30 May 2014. I have asked our Credit area to seek confirmation on this from ANZ and will let you know the outcome.

Cheers and have a good weekend.

Regards,

Jane Schober
Major Customer Intelligence & Performance Manager, Major Projects Ergon Energy Level 5, 420
Flinders Street Townsville QLD 4810 PO Box 1090, Townsville QLD 4810 P 07 4432 8755 M 0439
725 213 F 07 4432 8051 E jane.schober@ergon.com.au<mailto:jane.schober@ergon.com.au>

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Schedule 15 – 26/5/2014 Ergon Letter



420 Flinders Street, Townsville QLD 4810
PO Box 1090, Townsville QLD 4810
ergon.com.au

26th May 2014

Mr Greg Timar
Mulpha Australia Limited
Level 5, 99 Macquarie Street
Sydney NSW 2000

Dear Greg,

We refer to the Customer Connection Agreement between Ergon Energy Corporation Limited (**Ergon Energy**) (as successor in law of Mackay Electricity Corporation Limited) and The Trust Company (PTAL) Limited (**Hayman Island**) dated 5 November 1998, which has an Initial Term due to expire on 30 June 2014 (**Connection Agreement**).

As previously discussed, Ergon Energy is concerned that the application of "unregulated" charges in respect of the undersea cable to Hayman Island is a breach of Ergon Energy's obligations under the National Electricity Law. Ergon Energy has raised this particular matter with the Australian Energy Regulator (**AER**).

Ergon Energy has received correspondence from the AER that makes it clear that, at least from the start of the upcoming regulatory control period on 1 July 2015, Ergon Energy will have no choice but to apply regulated "standard control services" charges to the undersea cable to Hayman Island. We have requested approval from the AER to release this correspondence to you. I will advise when a response is received.

Clause 6.1(a)(i) of the Connection Agreement gives Ergon Energy the ability to implement these charges. However, in the interests of clarity and certainty going forward, Ergon Energy suggests that the parties enter into a Deed of Amendment to the Connection Agreement that modifies clause 1.3(b)(ii) of the Connection Agreement to provide for the existing text of that clause to apply up to 30 June 2015, and for Ergon Energy to then charge in accordance with its obligations under the electricity laws.

What this means is that the current arrangement of an "unregulated" charge (in respect of the undersea cable) and a regulated charge (in respect of the other assets supplying Hayman Island) would continue for the period up to 30 June 2015.

Accordingly, attached are the charges for the period 1 July 2014 to 30 June 2015, being:

- a. an "unregulated" charge for the undersea cable and associated assets (calculated in line with clause 1.3(b) of the Connection Agreement); and
- b. an indicative regulated network tariff (to be confirmed once the AER has approved Ergon Energy's 2014-15 Pricing Proposal).

Ergon Energy Corporation Limited ABN 50 097 646 062
Ergon Energy Queensland Pty Ltd ABN 11 121 177 802

As previously discussed, Hayman Island may elect to purchase the undersea cable and associated equipment located on the island to offset these changed charges.

Please contact me on 07 4432 8755 or jane.schober@ergon.com.au to discuss and progress the Deed of Amendment.

Kind regards,

**Jane
Schober**

Digitally signed by Jane Schober
DN: cn=Jane Schober, o=Ergon
Energy, ou=Major Projects,
email=jane.schober@ergon.com.
au, c=AU
Date: 2014.05.26 14:40:20 +10'00'

Jane Schober

Major Customer Intelligence & Performance Manager, Major Projects
Ergon Energy

Phone: 07 4432 8755

Mobile: 0439 725 213

Email: jane.schober@ergon.com.au



**SCHEDULE OF UNREGULATED TARIFFS
EFFECTIVE FROM 1 JULY 2014
UNTIL 30 JUNE 2015**

QDDD000020 HAYMAN ISLAND	(Charges applied as per the agreement termination clause with no regard for the capital and interest repayment of the connection asset)	
Unregulated DUOS charges:	GST Exclusive	GST Inclusive
Fixed Charge (\$/day)	\$ 1,093.00	\$ 1,202.30

Enquiries

Telephone: 13 10 46

E-mail: netprice@ergon.com.au



**SCHEDULE OF *INDICATIVE* NETWORK TARIFFS
EFFECTIVE FROM 1 JULY 2014**

Customer	The Trust Company (PTAL) Limited - Hayman Island	
National Metering Identifier (NMI)	QDDD000020	
Network Tariff Code	ECACA15	
Customer Class	Connection Asset Customer (CAC)	
Transmission Node Identifier (TNI)	QPRO	
Distribution Loss Factor (DLF/Code)	1.034	GEHL
Authorised Demand (AD) in kW	3,400	
DUOS charges:	GST Exclusive	GST Inclusive
NDFC - Fixed Charge (\$/day)	\$307.100	\$337.810
NDCC - Capacity Charge (\$/kW of AD/month)	\$5.9450	\$6.5395
NDADC - Actual Demand Charge (\$/kW/month)	\$4.0120	\$4.4132
NDVC - Volume Charge (\$/kWh)	\$0.00549	\$0.00604
TUOS charges:	GST Exclusive	GST Inclusive
NTFC - Fixed Charge (\$/day)	\$122.341	\$134.575
NTCC - Capacity Charge (\$/kW of AD/month)	\$1.9570	\$2.1527
NTCGC - Common Service & General Charge (\$/day)	\$418.381	\$460.197
NTVC - Volume Charge (\$/kWh)	\$0.00359	\$0.00395

Where the actual monthly maximum demand exceeds the authorised demand in any one month, the actual monthly maximum demand will be substituted for the authorised demand in the calculation of the DUOS and TUOS Capacity Charges for that month.
To calculate the DUOS Actual Demand Charge, the actual monthly maximum demand will be applied.
To determine the total TUOS Volume Charge, the customer's metered energy must be multiplied by the customer DLF and then applied to the TUOS \$/kWh rate.

Please note that additional (unregulated) Network Charges apply for this site. Please refer attached or email Ergon Energy Network Pricing for full details. [netprice@ergon.com.au]

Enquiries

Telephone: 13 10 46
E-mail: netprice@ergon.com.au

Schedule 16 – 3/6/2014 Ergon Letter

From: SCHOBER Jane (NQ) [<mailto:jane.schober@ergon.com.au>]
Sent: Tuesday, 3 June 2014 3:54 PM
To: Greg Tilmar
Cc: SPACCATORE Lisa (Ergon)
Subject: RE: Letter re Hayman Island Connection Agreement

Hi Greg,

Further to my previous email, we have now received further correspondence from the AER (copy attached) which has expanded on the preliminary advice previously given. They in turn, have had further correspondence with the Queensland Competition Authority (which was Ergon Energy's economic regulator prior to 1 July 2010) and advised that the undersea cable and related assets should be treated as unregulated assets through to 30 June 2015.

As you are aware, Ergon Energy will be subject to a new Distribution Determination from 1 July 2015. Our Regulatory Proposal will need to set out our recommended treatment for the next regulatory control period noting that the transitional arrangements that currently exist will not apply into the next period and that the AER has already made a decision on the classification of our services through its Framework and Approach process.

We would appreciate the opportunity to discuss this further with you.

Regards,

Jane Schober

Major Customer Intelligence & Performance Manager, Major Projects
Ergon Energy

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Schedule 17 – 27/5/2014 AER Letter



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Facsimile: (03) 9290 1457
www.aer.gov.au

Our Ref: D14/66142

27 May 2014

Ms Jenny Doyle
Group Manager Regulatory Affairs
Ergon Energy
825 Ann Street, Fortitude Valley QLD 4006
(by email)

Dear Ms Doyle

Regulatory status of the undersea supply cable to Hayman Island

Further to my preliminary advice to you on 6 May 2014 regarding the financial regulatory status of the undersea supply cable to Hayman Island, we have since received confirmation from Queensland Competition Authority (QCA) about the regulatory arrangement prior to the AER making the current distribution determination for Ergon Energy under chapter 11 transitional rules for Queensland of the National Electricity Rules (NER).

QCA advised that the original offer to establish/manage the undersea cable to Hayman Island was made by the former Mackay Electricity Board (MEB) on the basis that the assets would be excluded and not considered as part of the MEB's revenue cap. The exclusion was subsequently accepted by the Queensland government. The undersea supply cable to Hayman Island had since been treated as unregulated asset by QCA up to June 2010 when QCA's economic regulation function ceased.

The current distribution determination for Ergon for the period July 2010 to Jun 2015 was made under chapter 11 transitional rules, in particular rule 11.16.3 (see excerpt below). Under this transitional rule, the service classification arrangements under QCA's 2005 determination must be retained. Hence, all previously unregulated services, including this undersea cable, remain unregulated for the duration of the current regulatory control period.

The service classification status, regulated or unregulated, of the undersea cable was not explicitly dealt with under the F&A for the next regulatory control period. Consequently, the classification of this asset will need to be considered as part of the Determination. We recommend Ergon set out its reasons as to the future regulatory treatment of this asset given the historical approach that has been used to date. We strongly recommend Ergon to consult with the user(s) of this asset in developing the proposed approach for the next regulatory control period.

Excerpt of NER

11.16.3 Treatment of the regulatory asset base

(a) Nothing in Chapter 6 of the *Rules* requires ENERGENX or Ergon Energy to amend the approach allowed in the 2005 determination in relation to the treatment of *standard control services* and other services in the regulatory asset base for the regulatory control period.


(b) The *AER* must accept the approach proposed by ENERGENX and Ergon Energy for the regulatory control period if it is consistent with the approach in the 2005 determination.

(c) The *AER* must provide for any necessary adjustments or mechanisms in the *distribution determination* for the regulatory control period to prevent any cross-subsidies between *standard control services* and other *distribution services*.

Note:

The regulatory asset bases for Ergon Energy and ENERGENX are likely to include assets used to provide services which are not standard control services and accordingly the expected revenue for each year will need to be adjusted to avoid double recovery of those costs.

Yours sincerely



David Chan
Director, Network Operations and Development

Schedule 18 – 1/9/2014 Mulpha Letter



Mulpha Australia Limited
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T 61 2 9239 5500 F 61 2 9239 5599
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1 September 2014

Ms Jane Schober
Major Customer Intelligence & Performance Manager, Major Projects
Ergon Energy
PO Box 1080
TOWNSVILLE QLD 4810

By email: jane.schober@ergon.com.au

Dear Jane

Hayman Island Connection Agreement

Reference is made to your previous correspondence in this matter with the following comments.

1. Current Period 1 July 2010 to 30 June 2015

In your letter of 26 November 2013 (First Ergon Email), you stated that as a result of Ergon's legal and regulatory review of the Connection Agreement, "applying Charges in accordance with the terms of the Connection Agreement, Ergon Energy is in breach of its obligations under the National Electricity Law" (emphasis added). You also stated that Ergon had to act promptly to ensure compliance with the law and as a result had to recalculate the Charges payable under the Connection Agreement.

In my response to you of 23 December 2013, I indicated that Mulpha did not agree and asked you to confirm "which obligations under the National Electricity Law you believe that Ergon is in breach of and when such breaches first commenced".

In your email reply of 8 January 2014 (Second Ergon Email), you stated that the revenue recoverable by Ergon in relation to the undersea cable:

- "must be determined in accordance with the building block determination promulgated by the AER in its distribution determination valid for the period 1 July 2010 to 30 June 2015" (Current Regulatory Period); and
- "Clearly, the commercial prices stated in the Connection Agreement have not been calculated in accordance with this building block determination and Rules, and hence Ergon Energy considers that it needs to amend its prices to comply with the requirements of the Rules".

In other words, the Ergon position was that:

- it had been in breach of the relevant law from at least the commencement of the Current Regulatory Period;
- and remained in breach of that law and therefore had to urgently remedy that breach.

Further, this correspondence suggests that we have an insight into the basis of the current charges. One of our enduring frustrations is that we remain to this date, despite repeated requests for supporting information going back nearly three years, completely unaware on what basis the unregulated charges are formulated.

By letter of 19 February 2014 Mulpha reiterated that we did not agree with the Ergon position and notified the AER generally of the matter (a copy of which was provided to you).

We had a lengthy telecon on 24 February 2014 which included a number of your colleagues and Mulpha's legal counsel. You circulated an email the next day (Third Ergon Email) which amongst other things confirmed that Ergon would refer the matter to the AER.

On 26 May 2014 you wrote to me (Fourth Ergon Email) suggesting that the unregulated charges would continue on an unregulated basis stated in the Connection Agreement until 30 June 2015 (being the end of the Current Regulatory Period).

We understand this therefore to clearly indicate that the position stated by Ergon in the First Ergon Email and Second Ergon Email (ie that it was currently unlawful for Ergon to apply Charges in accordance with the Connection Agreement) was wrong.

This is confirmed by the copy of the letter dated 27 May 2014 to Ergon from the AER (AER Letter) which you attached to your email to me of 3 June 2014 (Fifth Ergon Email).

The AER Letter confirms that the undersea cable remains unregulated for the Current Regulatory Period. In other words, the AER Letter:

- is completely consistent with the position adopted by Hayman Island; and
- confirms that the Ergon position was wrong.

2. Period from 1 July 2015 to 30 June 2020

In relation to the next regulatory period from 1 July 2015 to 30 June 2020 (Next Regulatory Period), the Ergon position as set out in the Fourth Ergon Email, based on correspondence received from the AER (in the AER Letter), is that "it will have no choice but to apply regulated 'standard control services' charges to the undersea cable". The Ergon position appears to be that it desires to honour the express provisions of the Connection Agreement and apply the Charges in accordance with the Connection Agreement, but is unable to do so as this would be unlawful.

Having reviewed the AER Letter, we remain unconvinced by Ergon's claim that it would be unlawful for Ergon to apply the Charges in the Connection Agreement during the Next Regulatory Period. In fact the AER Letter makes it clear that:

- the previous regulator, the Queensland Competition Authority, and the AER (under transitional rules) consider this asset to be unregulated;
- the classification of the undersea cable will need to be dealt with as part of the Ergon Determination for the Next Regulatory Period;
- Ergon is recommended to set out its reasons as to the future regulatory treatment of this asset given the historical approach that has been used to date; and
- Ergon should consult with Hayman Island in developing the proposed approach for the Next Regulatory Period.

Nowhere does the AER Letter require Ergon to remedy any breach of the law for the Current Regulatory Period, or point out that the continued application of the unregulated charges under the Connection Agreement will constitute a breach of the law in the Next Regulatory Period.

To the contrary, the AER Letter points out that the Ergon position was wrong in relation to the Current Regulatory Period and shows no concern whatsoever in relation to the prospect of the continued application of the unregulated charges under the Connection Agreement for the Next Regulatory Period.

in fact we would interpret the AER in the AER Letter as challenging Ergon to in effect "show cause" why there should be any change from the current unregulated arrangements, as they are unable to see any reason themselves for such a change.

Finally, the Fifth Ergon Email states that "the AER has already made a decision on the classification of our services through its Framework and Approval process". However, the AER Letter says that the question of whether the undersea cable is regulated or unregulated "was not expressly dealt with under the F&A for the next regulatory control period".

3. Ergon 2014 - 2015 Pricing Proposal

Ergon's 2014 – 2015 Pricing Proposal to the AER (Pricing Proposal), deals with a number of matters, including in relation to assignment of customers to Ergon's standard control service tariff classes. In particular, Section 6.2.1 of the Pricing Proposal states as follows:

"It is important to note that Ergon Energy does not reassign customers without careful review and adequate justification. Reassignment would only occur in a situation where a customer alters the underlying characteristics of their connection, in terms of size or nature of usage..."

Whilst the First Ergon Email states that Ergon had carried out a legal and regulatory review of the Connection Agreement, it is clear that:

- significant doubts must exist as to how "careful" that review was given the fact that the position adopted by Ergon arising out of that review was wrong as a matter of law;
- there has been no justification put forward by Ergon for any reassignment of the undersea cable services to standard control services other than the position (incorrectly) adopted by Ergon that it was unlawful for it to apply Charges in accordance with the Connection Agreement; and
- in any event, Hayman Island as the customer has not altered the underlying characteristics of its connection in terms of size or nature of usage (which are stated by Ergon as being the "only" circumstances in which reassignment would occur – see above).

Section 6.2.3 of the Pricing Proposal also relevantly provides that Ergon will provide written notification to the customer (prior to any assignment or reassignment occurring) and that such written notice must include:

- advice that the customer may request further information from Ergon and that they may object to the proposed assignment or reassignment;
- a link to Ergon's website where a copy of the internal procedures for reviewing objections is located; and
- advice that the customer is entitled to seek resolution via the dispute resolution process under Part 10 of the National Electricity Law if the objection is not resolved by Ergon to the satisfaction of the customer.

Neither the First Ergon Email, Second Ergon Email, Third Ergon Email, Fourth Ergon Email or Fifth Ergon Email include any of the matters referred to above. In other words, Ergon's attempt to treat the undersea cable as regulated is not only unlawful but is also in breach of the undertakings given by Ergon in the Pricing Proposal.

4. Ergon Position

As a result of the above, we are left completely confused by the approach taken by Ergon to date.

The Customer Connection Agreement provides that the capital and interest repayment charges which applied during the initial 15 year term, do not apply in relation to the term of the renewed Agreement. For this reason, Hayman Island has an expectation that there will be a substantial and permanent decrease in electricity charges under the renewed Customer Connection Agreement.

Based on the most recent invoicing from our electrical retailer ERM Power, it appears that Ergon has now unilaterally decided to cease the unregulated charge (which was \$3,548/day) for the period commencing 1 July 2014 and instead impose a regulated DUOS charge of \$1,093/day but on an interim 12 month basis only. There has been no explanation or transparency as to how Ergon has determined that figure. For this reason, any payment by Hayman Island of any Ergon related charges is not to be taken to be any admission or acceptance by Hayman Island that these charges represent its liability under the Customer Connection Agreement and such charges are paid on a strictly without prejudice basis.

In addition, Mulpha / Hayman Island expects Ergon as a regulated monopoly provider of assets to act reasonably to:

- provide a logical and coherent explanation as to the legal basis for any proposed changes, or otherwise consider the matter of reclassification as effectively closed;
- explain the basis of calculation that Ergon believes applies to the cable charges which are payable under the Customer Connection Agreement between the parties, both pre and post 1 July 2014, including associated financing / interest arrangements; and
- confirm that it will now resolve this issue on a timely basis (given that the Ergon Email was sent almost 9 months ago and we still have not had a satisfactory resolution of the issue or indeed, even sensible answers to our various queries).

We also note that an indicative offer to purchase the undersea cable asset has been previously provided. Again no justification for this price has been provided. As the capital component of the cable should have been repaid during the first term, we would expect that a low or \$Nil value would remain.

Finally, by way of clarification, we note that the Customer Connection Agreement did not expire on 30 June 2014 and there has been no agreed 12 month extension. Both of these points have been put to us by ERM Power as representing Ergon's position on these matters. Please let us know immediately if ERM Power has misrepresented Ergon's position.

6. Summary

In summary, Mulpha finds Ergon's conduct to date as both confused and unacceptable. Ergon has misrepresented to Hayman Island the status of the undersea cable (claiming that it was regulated when clearly it was not regulated – a fact confirmed by the AER Letter). This misrepresentation has occurred as part of an effort by Ergon to convince Hayman Island that:

- It is unlawful for Ergon to apply the Charges in accordance with the Connection Agreement; and
- for this reason, Ergon could take advantage of clause 6.1 of the Connection Agreement to adopt a position where it was not legally required to apply the Charges set out in the Connection Agreement.

Had Hayman Island accepted the position put by Ergon and paid the charges that Ergon asserted were payable (rather than the Charges as set out in the Connection Agreement), then we would have incurred significant expenses that we were under no legal obligation to incur. Such expenses would only have been paid based on the misrepresentations by Ergon.

What is beyond dispute is that:

4

- the AER Letter makes it clear that the undersea cable is unregulated;
- Ergon sought to treat the undersea cable as being regulated, claiming that if it did not do so then it would be acting unlawfully; and
- In reality, any treatment by Ergon of the undersea cable as being regulated would be unlawful and has been undertaken in contravention of its own stipulated processes.

The approach that Ergon has taken is not only incorrect as a legal matter, but it is extremely disappointing from a customer relationship perspective as a major and long standing customer.

Ergon's approach has involved not only the incorrect application of the law but also involved the adoption by Ergon of various positions that are inconsistent and self-contradictory. The increase in proposed charges as set out in Ergon's First Email leaves Mulpha / Hayman Island no choice but to consider the approach that Ergon has taken with the AER is regulatory game playing, designed to effect a re-classification of the undersea cable (without consultation or agreement with Hayman Island) in an attempt to increase Ergon's revenue.

6. Wzy Forward

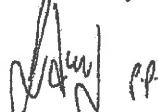
In the absence of any rapid resolution of this matter, Mulpha / Hayman Island will have no option but to involve the AER as arbitrator and / or lodge a detailed submission with respect to the pricing review to ensure that the undersea cable remains unregulated and clarify charges payable.

The AER Letter makes it clear that Ergon needs to consult with Hayman Island in relation to the proposed approach for the Next Regulatory Period and implies that Ergon would require considerable justification to proceed on a basis not agreed to by Hayman Island.

We believe it now time for Ergon to enter into open, honest and transparent consultation with a view of resolving expeditiously the future of the provision of the undersea cable. This should include a common future view on the regulatory position for same.

In the circumstances, please confirm that Ergon will not take any further steps with the AER that might be prejudicial to the position of Hayman Island.

Yours faithfully



Greg Tinnar
Director Group Asset Development & Projects

cc: Mr Ian McLeod

Schedule 19 – 5/11/2014 Ergon Letter



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5 November 2014

Mr Greg Timar
Director Group Asset Development & Projects
Mulpha Australia Limited
Level 5, 99 Macquarie Street, Sydney, NSW, 2000

Dear Greg,

Hayman Island Undersea Cable
COMMERCIAL IN CONFIDENCE
WITHOUT PREJUDICE

I refer to:

- the agreement entitled "Customer Connection Agreement" between Ergon Energy Corporation Limited ABN 50 087 646 062 (Ergon Energy) and Mulpha Australia Limited (Mulpha) dated 5 November 1998, as amended (Connection Agreement);
- your letter dated 1 September 2014 to Jane Schober; and
- our discussion in September 2014.

Thank you again for your time to discuss this matter. I appreciate that this issue has been ongoing for some time and you and I are both keen to resolve it.

Greg, my letter will endeavour to summarise Ergon Energy's view that the undersea cable is a part of Ergon Energy's distribution system, and hence that the services provided by means of, and in connection with, the undersea cable during the next regulatory control period are distribution services. On this basis, it then follows that the Australian Energy Regulator (AER) is required to economically regulate either the price of, or the revenue from, such distribution services. I have attached for your reference extracts from various regulatory instruments that are applicable to the issue of the underground cable to Hayman Island. Also included in Appendix A are the definitions of any words written in *italics* in this letter.

Ergon Energy considers that any services provided to Mulpha by, or in connection with, the undersea cable will, under the relevant economic regulatory regime, from at least 1 July 2015, be regulated by the AER and will fall within the category described as "standard control services" (SCS).

It is Ergon Energy's opinion that the undersea cable and associated infrastructure, comprises apparatus used to convey electricity to customers (namely, Mulpha) and to provide *connection services*, and hence comprises part of Ergon Energy's *distribution system*.

Ergon Energy Corporation Limited ABN 50 087 646 062
Ergon Energy Queensland Pty Ltd ABN 11 121 177 902

Furthermore, the connection of Hayman Island to the *distribution network*, the provision of electricity transfer capacity through the undersea cable, and the operation and maintenance of the undersea cable are all services provided by means of, or in connection with, a *distribution system* and are thus considered to be *distribution services*. Functionally, there is no substantive difference between the undersea cable and associated infrastructure from any other piece of Ergon Energy's distribution infrastructure.

As discussed previously, the submarine cable supplying the Hayman Island resort and associated substation assets on the island have been treated as "unregulated" assets by the Mackay Electricity Board and subsequently, Ergon Energy. The charges for those assets have been calculated in line with the contractual requirements of the Connection Agreement.

Queensland Competition Authority (QCA) was previously the economic regulator of Ergon Energy's services and did not change the classification of the assets from being unregulated during that period.

However, the AER is now the economic regulator of the services provided by Ergon Energy, and the AER's Distribution Determination (which applies for a 5 year regulatory control period) sets out the classification of Ergon Energy's services and how the charges for those services are to be calculated. Ergon Energy is required under the National Electricity Law (NEL) to comply with that Distribution Determination.

As per the letter provided to you on 3rd June 2014, the AER has confirmed that assets that are presently considered to be regulated should remain with that classification until 30 June 2015.

However, a new Distribution Determination will apply to the next 5-year regulatory control period, which commences on 1 July 2015. Whilst the new Determination will not be finalised for some months, the AER has already issued some guidelines and papers on the likely content of that Determination.

Relevantly, the AER issued its Final Framework and Approach paper for Ergon Energy for the regulatory control period of 1 July 2015 to 30 June 2020 in April 2014. This information can be located on the AER web site (<http://www.aer.gov.au/node/20186>). This paper sets out the AER's proposed approach on which services they will regulate, and notes that the current Final Framework & Approach (that is, applicable up to 30 June 2015) will be no longer relevant in the next regulatory control period due to numerous changes to the National Electricity Rules (NER) over the past 5 years.

The paper notes that most distribution services fall within the network services group, which includes poles, wires, and other core infrastructure of a distribution business. The paper states that the AER propose to classify network services as SCS. The costs of providing SCS are recovered through network charges.

We note in the paper that 'unregulated services' are considered to be "services provided by distributors that are not distribution services". These unregulated services are outside the AER's economic regulatory jurisdiction. As noted above, Ergon Energy considers that the services provided by the undersea cable are distribution services, and, hence, cannot continue to be considered an unregulated service from 1 July 2015.

There is no indication in the AER's Framework and Approach paper of anything to the contrary.

As per the AER classification described in Appendix A, SCS are defined as *direct control services* that are subject to a control mechanism based on a DNSP's *total revenue requirement* (that is, the revenue that Ergon Energy can obtain from providing *direct control services* is regulated under the AER's Distribution Determination).

Therefore, as noted above, Ergon Energy considers that all *distribution services* being provided by Ergon Energy in respect of the undersea cable are *direct control services* and are hence subject to economic regulation by the AER by way of a revenue cap.

Conclusion

Greg, this sets out a summary of Ergon Energy's view of why the undersea cable is part of Ergon Energy's *distribution system* and hence why the services provided by means of, and in connection with, the undersea cable during the next *regulatory control period* are *distribution services* (and, specifically, *direct control services*), in respect of which the AER is required to economically regulate either the price of, or the revenue from, such *distribution services*.

There is no indication in the NER, NEL or the AER's current Distribution Determination or its *framework and approach paper* indicating anything to the contrary.

Accordingly, it is Ergon Energy's opinion that clause 6.1(a)(i) of the Connection Agreement requires Ergon Energy to comply with its obligations under the NER (including in respect of the revenue recovered from the provision of such services), notwithstanding that this is inconsistent with any term of the Connection Agreement.

Ergon Energy therefore believes that it is required to recalculate the charges under the Connection Agreement to be compliant with its obligations under the NER, from 1 July 2015.

Please note that this letter is provided to you without prejudice, and is not intended to provide you with legal advice, as this is outside Ergon Energy's purview. Ergon Energy also retains all of its rights, and will not accept any liability, in this regard. Instead, this letter is solely intended to provide you with Ergon Energy's reasoning so that you may obtain your own legal advice in this regard.

Greg I also refer to our discussion (telecon Edmunds/Timar on 4 November 2014) As agreed I will (on a without prejudice basis) look into what the cost might be to Mulpha if Ergon did decide to dispose of the assets/cable. If this option was of interest to Mulpha it would still require approvals from a number of parties including the Ergon Board and as such the outcome would not be guaranteed.

Kind regards,



David Edmunds

Executive General Manager

Network Optimisation

Phone: 07 3851 6449

Mobile: 0438 581 560

Appendix A (Regulatory Instruments and Definitions)

A. Regulatory Instruments and References:

Powers and functions of the AER

The National Electricity Law (NEL) applies in Queensland by virtue of section 6 of the *Electricity – National Scheme (Queensland) Act 1997 (Qld)*. Under section 15(1)(f) of the NEL, the AER has “AER economic regulatory functions and powers”, which includes the economic regulation of services provided by a regulated distribution system operator (such as Ergon Energy) and the making of a distribution determination.

Furthermore, clause 6.1.1 of the National Electricity Rules (NER) makes the AER responsible for the economic regulation of “*distribution services* provided by means of, or in connection with, *distribution systems* that form part of the *national grid*” (italics refer to terms defined in the NER).

Section 14B of the NEL requires a regulated distribution system operator to comply with a distribution determination that applies to the electricity network services provided by that operator.

B. What does the AER’s distribution determination cover?

As noted earlier, the AER’s distribution determination for the 2015-2020 *regulatory control period* has not yet been made, as Ergon Energy is still developing its proposals for the AER for this period. However, guidance as to the likely contents of this distribution determination can be found in the current [distribution determination](#) and the [NER](#) itself.

As stated in the current distribution determination, the AER is required, under Chapter 6 of the NER, to make a distribution determination for each Queensland distribution network service provider (DNSP) (such as Ergon Energy) that includes determinations in respect of “standard control services” (SCS) and “alternative control services” (ACS).

C. Classifications/definition of services

The NER refers to “*distribution services*”. A “*distribution service*” is:

A service provided by means of, or in connection with, a *distribution system*.

A “*distribution system*” is:

A *distribution network*, together with the *connection assets* associated with the *distribution network*, which is connected to another *transmission* or *distribution system*.

A “*distribution network*” is:

A *network* which is not a *transmission network*.

A “*network*” is:

The apparatus, equipment, plant and buildings used to convey, and control the conveyance of, electricity to customers (whether wholesale or retail) excluding any *connection assets*. In relation to a *Network Service Provider*, a *network* owned, operated or controlled by that *Network Service Provider*.

A “*transmission network*”, in Queensland, is, under clause 9.32.1(b) of the NER, essentially the assets owned by Powerlink Queensland.

"Connection assets" are:

Those components of a *transmission or distribution system* which are used to provide *connection services*.

A "connection service" includes:

... an *exit service* (being a service provided to serve a ... *Distribution Customer* or a group of ... *Distribution Customers* ... at a single *connection point*).

D. Types of distribution services

As noted in the AER's distribution determination and clause 6.2.1(a) of the NER, *distribution services* can be classified into:

- *direct control services* (refer section 2B of the NEL) – being electricity network services for which the NER, or the AER's distribution determination, specify that either the price of, or the revenue earned from, that service is regulated under a distribution determination.
- *negotiated distribution services* (refer section 2C of the NEL) – being electrical network services that are not *direct control services* and that either the NER or the AER's distribution determination specify are negotiated network services; and
- *unregulated distribution services* – where the AER has not classified the relevant electricity network service.

Working through this list in reverse order:

- the AER's *framework and approach paper for the 2015-2020 regulatory control period* specifies that only the following *distribution services* are unregulated/unclassified:
 - high load escorts;
 - watchman lights; and
 - Type 1-4 metering; and
- the AER's current distribution determination specifically notes that Ergon Energy does not have any *negotiated distribution services*, and the AER has not classified any *distribution services* as *negotiated distribution services* for the regulatory control period commencing 1 July 2015; and
- the AER has set out its proposed classification of the *direct control services* into either SCS or ACS (reflecting the different levels of regulation that are applied) – relevant classifications are set out in Table A.1 of the AER's distribution determination and:
 - the AER classifies as SCS the activities of planning, designing, constructing, operating and maintaining the *network*. In Ergon Energy's view, the operation and maintenance of the undersea cable (being part of the *network*, as discussed above) are SCS under this category; and
 - the AER classifies as SCS the activities of operating and maintaining *connection assets*.

Schedule 20 – 13/6/2014 Ergon PP – various pages

6 Standard Control Services

- (1) Customers should be assigned to tariff classes on the basis of one or more of the following factors:
 - (i) the nature and extent of their usage
 - (ii) the nature of their connection to the network
 - (iii) whether remotely-read interval metering or other similar metering technology has been installed at the customer's premises as a result of a regulatory obligation or requirement.
- (2) Customers with a similar connection and usage profile should be treated on an equal basis.
- (3) Customers with micro-generation facilities should be treated no less favourably than customers without such facilities but with a similar load profile.
- (4) A DNSP's decision to assign a customer to a particular tariff class, or to re-assign a customer from one tariff class to another should be subject to an effective system of assessment and review.

Further, under clause 6.18.4(b) of the NER and Appendix B of the AER's Final Distribution Determination, Ergon Energy's Pricing Proposal must also contain provisions for an effective system of assessment and review of the basis on which a customer is charged, if the charging parameters for a particular tariff result in a basis of charge that varies according to the usage or load profile of the customer.

Ergon Energy's compliance with these requirements for Standard Control Service tariff classes is set out in the remainder of Section 6.2 below.

6.2.1 Review of a customer's assigned tariff class

Assignment or reassignment of customers to Ergon Energy's Standard Control Service tariff classes occurs as a result of:

- new connections to the network
- existing customers applying for increased capacity on the network
- a change in a customer's National Metering Identifier (NMI) classification
- annual review as part of the process of developing and submitting the Pricing Proposal for approval by the AER
- requests for a review of the assigned network tariff or tariff class by either a customer and/or retailer.

Clauses 6.18.4(a)(1) and (2) are met because Ergon Energy assigns customers to tariff classes on the basis of geographical location, usage and size. Customers are first classified into the East, West or Mount Isa zones, based on geographical location. In order to provide the appropriate economic and cost of supply signals, customers are then assigned into one of four network user groups.

Further, customers with micro-generation facilities are charged the same network tariff for supply to their connection point as any other network customer with a similar load profile (in the absence of micro-generation), thus satisfying clause 6.18.4(a)(3).

Ergon Energy relies on a range of information and has specific criteria for assessing the assignment and reassignment of customers to tariff classes. The following range of information and criteria (as set out in Table 6.2 below) is used when determining a customer's network user group, and tariff class assignment or reassignment details:

- historical consumption data
- expected annual consumption for new customers or those customers who have a written agreement to change their supply capacity
- the customer's geographical location and assets utilised in connecting to the network.

6 Standard Control Services

Ergon Energy also interrogates various internal systems to obtain site specific connection asset arrangements.

It is important to note that Ergon Energy does not reassign customers without careful review and adequate justification. Reassignment would only occur in a situation where a customer alters the underlying characteristics of their connection, in terms of size or nature of usage, in that it would no longer be appropriate for the customer to remain assigned to that tariff class.

Once a customer is identified for reassignment, the connection characteristics and the customer's expected energy consumption are used to determine the appropriate customer group, and hence tariff class, to which the customer should be reassigned.

Table 6.2: Tariff class assignment and reassignment criteria for Standard Control Services

Network user group	Typical characteristics of customers assigned	Criteria for reassigning customers to a different tariff class
SACs	<ul style="list-style-type: none"> Annual consumption is expected to be below 4 GWh p.a. 	<ul style="list-style-type: none"> Annual consumption increases, or is expected to increase, above 4 GWh p.a., and/or A customer requests an increase in supply capacity requiring augmentation to connection assets which results in a dedicated supply system which is quite different and separate from the remainder of the supply network.
CACs	<ul style="list-style-type: none"> Required capacity above 1,500 kVA, or Annual consumption is expected to exceed 4 GWh p.a. 	<p>Reassigned to ICCs:</p> <ul style="list-style-type: none"> Annual consumption increases, or is expected to increase, above 40 GWh p.a., and/or A customer requests an increase in supply capacity requiring augmentation to their connection assets which results in a dedicated supply system which is quite different and separate from the remainder of the supply network. <p>Reassigned to SACs:</p> <ul style="list-style-type: none"> Annual consumption reduces or is expected to reduce below 4 GWh p.a. and their dedicated supply system is not considered to be quite different and separate from the remainder of the supply network, and/or Required capacity falls below 1,500 kVA.¹⁹
ICCs	<ul style="list-style-type: none"> Annual consumption is expected to exceed 40 GWh p.a., or Their dedicated supply system is considered to be quite different and separate from the remainder of the supply network. 	<ul style="list-style-type: none"> Annual consumption reduces or is expected to reduce below 40 GWh p.a. and their dedicated supply system is considered comparable with CACs at the same voltage level.

6.2.2 Review of the charging basis

Consistent with 6.18.4(b) of the NER, Ergon Energy has a system for assessing and reviewing the basis on which a customer is charged.

Ergon Energy may review the charging basis where:

- a change in the usage, load profile or customer classification (i.e. Business or Residential for SACs <100 MWh p.a.) of a customer may mean a different network tariff is more applicable, or

¹⁹ With the exception of those customers who have a dedicated supply system which is quite different and separate from the remainder of the supply network or where inequitable treatment of otherwise comparable customers will arise from the application of the 4 GWh threshold.

- within a network tariff, it is appropriate to change the charging parameter/s because of changes according to the customer's usage. For example, an additional charging parameter may be included once usage reaches a certain level.

Ergon Energy annually reviews the assignment of customers to our tariff classes as part of the process of developing and submitting our Pricing Proposal to the AER for approval. In undertaking this review, Ergon Energy uses set procedures and specific criteria (as set out in Table 6.2 above) to determine when it is appropriate for a customer to be reassigned to a tariff class as a result of material change in the customer's energy consumption or connection characteristics. These procedures, in conjunction with the classification of SACs <100 MWh p.a. as Business or Residential, by default also ensure the customer's underlying network tariff associated with a tariff class also remains appropriate.

In addition to this annual review process, customers and/or retailers can expressly request Ergon Energy to review and change a network tariff assigned to a customer in the event of variation to the customer's usage load profile or classification as a business or residential customer. Provided that Ergon Energy agrees to the change in network tariff, this change can take effect during a regulatory year. Ergon Energy uses the procedures and specific criteria set out above to determine if it is appropriate to change the network tariff assigned to a customer. Further information on network tariff reviews is contained in our "Network Tariff Guide for Standard Control Services".

With respect to variations in the basis of charge within a network tariff, Ergon Energy can confirm that the charging parameters (e.g. fixed, capacity, actual demand and volume charges) within our network tariffs do not alter as the customer's usage or load profile varies. That is, the structure and rates of each charging parameter within a tariff apply equally to each customer assigned to the network tariff regardless of a customer's individual usage or load profile.

However, for SACs <100 MWh p.a. on an IBT, the actual network charges applied to them will vary according to their level of usage. Similarly, for SACs <100 MWh p.a. on TOU tariffs, the network charges will vary according to when their usage occurs.

Should a customer's usage or load profile vary, the customer can either manage their usage by responding to the price signals inherent in the charging parameters of the tariff, or request to be reassigned to an alternative network tariff (if applicable) that may be more cost-effective for the customer's revised requirements.

6.2.3 Notification of a tariff class assignment and reassignment

Once Ergon Energy has assigned or reviewed the assignment of a customer to a Standard Control Service tariff class, written notification is provided to the customer and their retailer prior to the assignment or reassignment occurring. The written notice includes:

- advice that the customer may request further information from Ergon Energy and that they may object to the proposed assignment or reassignment
- a link to Ergon Energy's website where a copy of the internal procedures for reviewing objections is located
- advice that the customer is entitled to seek resolution via the dispute resolution process under Part 10 of the Law, if the objection is not resolved by Ergon Energy to the satisfaction of the customer.

In addition, the "Network Tariff Guide for Standard Control Services" sets out the circumstances when a tariff class assignment and reassignment may occur, and provides details on how the customer or retailer can request further information on a tariff class assignment, and the procedures to follow if the customer objects to a proposed tariff class assignment or reassignment. This information is also available in the "Retailer Handbook" issued and available to retailers operating in Ergon Energy's distribution area.

6.2.4 Objections to a tariff class assignment or reassignment

If either the customer or retailer raises an objection to a tariff class assignment or reassignment, the matter is reviewed and, if required, escalated to the Manager Regulatory Determination and Pricing for reassessment. Following this internal review, should the matter not be resolved to the satisfaction of the customer, the customer is entitled to refer the matter to the AER for resolution via the dispute resolution process available under Part 10 of the Law.

At the time of preparing this Pricing Proposal, Ergon Energy had not received any objections to a tariff class assignment or reassignment relating to Standard Control Services that occurred during the 2013–14 year.

6.3 Tariff charging parameters

The network tariffs comprise a number of charging parameters, each selected and structured to provide signals to network users about the efficient use of the network and the impact of their usage on future network capacity and costs.

The following charging parameters have been adopted in 2014–15.

6.3.1 Fixed charges

The fixed charge has been applied to serve two broad purposes. For some customers within a tariff class, it seeks to reflect the incremental costs that arise from the connection and management of the network user. The fixed charge is also used to help recover a share of residual or sunk elements of Ergon Energy's costs. For example, for SACs <100 MWh p.a., the fixed charge also recovers a portion of the shared network costs.

6.3.2 Capacity and actual demand charges

Shared network costs for ICCs, CACs and SACs >100 MWh p.a. are recovered through the capacity charge and/or actual demand charge components. These charges provide economic signals to the customers on the existing and future use of the shared network on the basis that customers who place greater pressure on the system incur higher charges.

The demand used for the calculation of the capacity charge is the authorised demand or, if there is no authorised demand, the annual maximum demand in the previous full pricing period prior to the setting of prices. Under certain circumstances, where there has been a significant change in demand attributable to a network user's load change after this previous pricing period, a more recent demand may be substituted.

Further, where the actual demand exceeds the authorised demand in any one month, the actual demand will be substituted for the authorised demand in the calculation of the capacity charge for that month.

The demand used for the calculation of the actual demand charge is the annual average demand (i.e. the average of the monthly maximum demands in the previous full pricing period prior to the setting of prices). Under certain circumstances, where there has been a significant change in demand attributable to a network user's load change after this previous pricing period, a more recent average demand may be substituted.

The capacity charge applies to ICC and CAC network users only.

For SACs >100 MWh p.a., an actual demand charge applies. However, the minimum chargeable actual demand charge that applied instead of a capacity charge up until 2013–14 has been restructured into the fixed charge (refer to Section 8.3).

SACs <100 MWh p.a. do not have either a capacity charge or an actual demand charge.