



Reserve Capacity Agreement

between

United Energy Distribution Pty Limited

and

[Insert]

THIS AGREEMENT IS MADE ON

BETWEEN:

United Energy Distribution Pty Ltd
ABN 70 064 651 029
of 40 Market Street Melbourne VIC 3000
("UE")

and:

[Insert]
of [insert]
("Customer")

BACKGROUND

1. The parties wish to enter into an agreement for provision by UE to the Customer of reserve capacity services (the **Services**) in accordance with this Agreement.
2. The Services are to be provided to assist the Customer to reduce the likelihood of electricity supply interruptions impacting on their business. The Services exceed the services provided under the standard network tariff and constitute "negotiated services".

TERMS

1. Definitions and Interpretation

1.1 Definitions

Unless the context otherwise requires, the following expressions have the meanings set out below.

Auto Changeover Switch:	A switch which enables electricity supply to be diverted from the Primary Network Path to the Secondary Network Path in the event of a total loss of supply on the Primary Network Path.
Customer:	The person described as such in Schedule 1.
Demand:	Quantity of electricity (kVA) drawn by the Customer's premises at a given time.
Emergency:	An emergency due to the actual or imminent occurrence of an event which in any way endangers or threatens to endanger the safety or health of any person or which destroys or damages, or threatens to destroy or damage, any property.
Force Majeure Event	In respect of a party, a fire, storm, flood, earthquake, war, act of terrorism, general/industry wide labour dispute or any other event, but only to the extent that such event is beyond that party's control.

Location:	The location described in Item 2 of Schedule 1.
Payment Terms:	The Payment Terms set out in Item 7 of Schedule 1.
Personnel	Means all employees, agents, officers and contractors of the Contractor and the Contractor's subcontractors.
Primary Network Path:	The electricity supply path (feeder) by which the Customer is usually supplied, as nominated by UE from time to time.
Reserve Capacity Payment:	The amount payable per reserved kVA per month specified in Item 8 of Schedule 1.
Reserved Capacity:	The amount of Demand (kVA) which UE has agreed to reserve for the Customer on the Secondary Network Path under this Agreement as set out in Item 5 of Schedule 1.
Secondary Network Path:	The electricity supply path (feeder) through which the Customer is not usually supplied, but which has capacity reserved for the Customer to switch to due to a failure of the Primary Network Path, as nominated by UE from time to time.
Term of the Agreement:	Has the meaning given in clause 4.1.

Interpretation

The following rules of interpretation apply in this agreement unless otherwise stated.

- (a) **(Acts, etc)** A reference to an act, regulation, code, licence or other legal instrument is a reference to that act, regulation, code, licence or other legal instrument as it may be amended, re-enacted, consolidated or replaced from time to time.
- (b) **(Singular and plural)** References to the singular include the plural and vice-versa.
- (c) **(Forms)** Other grammatical forms of a word defined in this agreement have a corresponding meaning.
- (d) **(Including)** Examples after the words 'including', 'includes' or 'for example' are descriptive only and are not exhaustive.
- (e) **(Clauses and Schedules)** A reference to a 'clause' or 'Schedule' is to a clause of, or a schedule to, this agreement.

2. Services to be Delivered

- 2.1 UE agrees to provide the Services by reserving the Reserved Capacity on the Secondary Network Path at the Location, in accordance with the terms of this Agreement.

- 2.2 Where fitted by UE, an Auto Changeover Switch will divert electricity supply automatically from the Primary Network Path to the Secondary Network Path.
- 2.3 Where actual or possible network capacity constraints are identified, UE may require the Reserve Capacity payment to be renegotiated.

3. Consideration

In consideration for UE entering into this Agreement, the Customer agrees to pay UE annually the Reserve Capacity Payment.

4. Term of Agreement

- 4.1 The Term of this Agreement is as specified in Item 6 of Schedule 1, subject to earlier termination in accordance with clause 0 or an extension on such terms as agreed in writing by both parties.
- 4.2 If UE provides the Services to the Customer after the end of the Term of this Agreement and the parties have not negotiated an extension of this Agreement, the terms of this Agreement will continue to apply, including the Customer's obligation to pay invoices in accordance with clause 7.2 until such time as a party gives notice to the other party to terminate this Agreement on 3 months' notice.

5. Obligations of UE

- 5.1 UE agrees to provide the Reserved Capacity on a Secondary Network Path for the Term of this Agreement except :
 - (a) where there is an Emergency or doing so would likely cause an Emergency;
 - (b) where there is a Force Majeure Event;
 - (c) where otherwise required by law;
 - (d) where there is a fault on the Secondary Network path caused by a matter beyond UE's reasonable control; or
 - (e) where there is a fault on UE's Distribution Network caused by a matter beyond UE's reasonable control that requires temporary abnormal feeder configurations to restore the Customer's supply
- 5.2 Where UE reasonably determines that maintenance, improvements or modifications to the UE's Distribution Network requires an interruption to the capability to provide the Reserved Capacity on a Secondary Network, UE will use reasonable endeavours to notify the Customer of the time and period of the interruption to the Reserve Capacity capability.
- 5.3 UE will manage the UE Distribution Network with the intent of retaining the ability to allow the Reserved Capacity on the Secondary Network Path in accordance with this Agreement unless such access causes or would be likely to cause an emergency.

6. Obligations of the Customer

- 6.1 The Customer must, during the Term of this Agreement:
 - (a) ensure that the Secondary Network Path is only used in the event of total loss of supply to the Primary Network Path used;

- (b) Limit the peak demand drawn on the Secondary Network Path to the Reserved Capacity;
 - (c) Advise UE of any change in its Reserved Capacity requirement greater than 5% of the Reserved Capacity. For the avoidance of doubt, no revision in Reserved Capacity will occur unless agreed by the parties in writing;
 - (d) Arrange its electrical installation so that the usual and otherwise everyday 'electricity supply is taken from the Primary Network Path;
 - (e) Ensure the Primary Network Path and Secondary Network Path are electrically interlocked such that they cannot be paralleled or otherwise used concurrently to pass through electricity. The interlock must be able to be suppressed for the purposes of manual restoration to the Primary Network Path from the Secondary Network Path after an automatic transfer to the Secondary Network Path; and
 - (f) Advise, and coordinate with the UE Principal Contact any planned changeover from the Primary Network Path to the Secondary Network Path or manual changeover to Primary Network Path after any changeover to the Secondary Network Path.
- 6.2 The Customer must indemnify UE and keep UE indemnified against all damages, actions, claims, demands, suits, liabilities, losses, costs, expenses (including legal fees), debts, penalties or fines suffered or incurred by UE arising out of or related to:
- (a) the injury or death of any person, or damage to real or personal property caused or contributed to by an act or omission of the Customer or its Personnel;
 - (b) any claim, action or proceeding by a third party negligently or wrongfully caused or contributed to by the Customer under or relating to this agreement;
 - (c) a breach by the Customer or its Personnel of any of the terms of this agreement;
 - (d) any negligent act or omission, fraud or wilful misconduct of the Customer or its Personnel under or relating to this,

except to the extent that such damage, action, claim, demand, liability, loss, cost, expense, debt, loss of profit or revenue, penalty or fine is caused or contributed to by UE, its officers or employees.

7. Payment

- 7.1 UE will issue an invoice to the Customer for the Reserve Capacity Payment at the end of each month during the Term of this Agreement.
- 7.2 The Customer must pay invoices issued by UE in accordance with this Agreement, including within the Payment Terms.
- 7.3 The Reserve Capacity Payment is to be reviewed and adjusted on 1 January each year for any increase in the Consumer Price Index All Groups weighted average for the Melbourne published by the Australian Bureau of Statistics for the June to quarter immediately before 1 January of that year. For the avoidance of doubt, the Reserve Capacity Payment will not be adjusted under this clause 7.3 where the calculation would result in the amount of the

Reserve Capacity Payment for a year being less than the amount of the Reserve Capacity Payment the previous year.

8. Limitation of Liability

The aggregate liability of UE, whether in contract, tort (including negligence), or otherwise, under or in connection with this Agreement is limited to monies recovered by UE (if any) in the Reserve Capacity Payment amount for the relevant year.

9. Default and Termination

9.1 Either party may terminate this Agreement:

- (a) on giving 3 months written notice to the other; or
- (b) immediately without prior notice of termination and without any payment in lieu of notice if:
 - (i) the other party becomes an externally-administered body corporate under the Corporations Act;
 - (ii) steps are taken by any person towards making the other party an externally-administered body corporate;
 - (iii) a controller (as defined in section 9 of the Corporations Act) is appointed of any of the property of the other party or any steps are taken for the appointment of such a person;
 - (iv) the other party is in breach of any of the terms of this Agreement and fails to rectify that breach after having been given written notice of the nature of the breach within 7 days after the giving of that notice; or
 - (v) at any time after the date of this Agreement UE fails to hold a generation licence under the *Electricity Industry Act (Vic) 2000* and is not otherwise exempt from the requirement to hold a generation licence.

9.2 If the Customer elects to terminate this Agreement in accordance with clause 9.1(a), or UE terminates this Agreement under clause 9.1(b), the Customer must pay UE a proportion of the Reserve Capacity Payment for the Term of the Agreement equal to the remaining portion of the Term of this Agreement, which amount must be payable within 14 days of termination of this Agreement. This amount will be calculated based on the Reserve Capacity Payment as at the date of termination of the Agreement. The parties agree that this amount is a

genuine pre-estimate of the loss likely to be suffered by UE in the event that this Agreement is terminated early by the Customer in accordance with this clause.

10. Testing

- 10.1 Where the Customer requires testing of the Services, the Customer may request UE to assist. UE's assistance with testing at a nominated time will be entirely at the discretion of UE's Principal Contact or delegated representative.
- 10.2 The Customer will hold UE harmless against any cost incurred by UE under clause 10.1.

11. Notices

- 11.1 All notices, requests, consents and other documents required to be given under this Agreement must be given in writing and either delivered by hand or sent by mail or fax to:
 - (a) where the correspondence relates to Reserve Capacity availability or switching, UE's Principal Contact or the Customer's Principal Contact (as relevant) as set out in section 1 of Schedule 2; and
 - (b) In all other circumstances, the UE or Customer details as set out in section 2 of Schedule 2.
- 11.2 Any such notice will be deemed to be received:
 - (a) if delivered by hand, before 5.00 p.m. (local time) on a business day, it is taken to be received on that day, otherwise it is taken to be received on the next business day;
 - (b) if sent by mail, then two business days after the notice was sent; and
 - (c) If sent by fax, then when the sender's fax machine produces a successful transmission report. If the notice is sent by fax on a day that is not a business day or is sent after 4.00 pm (local time) on a business day, it will be taken to be received on the next business day.
- 11.3 Each party must notify the other party in writing of any change to its address for the service of notices.

12. Complete Agreement

- 12.1 This Agreement and Schedules and attachments to it constitute the full and complete agreement of the parties in relation to the subject matter.
- 12.2 Each party has entered into this Agreement without relying on any representation by any other party or any person purporting to represent that party, other than is expressed in this Agreement.

13. Amendments

All amendments to this Agreement must be made in writing and signed by both parties.

14. No Assignment

Neither party to this Agreement may assign or otherwise deal with the whole or any part of it except with the prior written consent of the other party.

15. Dispute Resolution

- 15.1 Unless a party has complied with clauses 15.2, 15.3 and 15.4 , that party may not commence court proceedings relating to any dispute under this Agreement, except where that party seeks urgent interlocutory relief.
- 15.2 If there is a dispute under this Agreement the parties must negotiate in good faith to resolve the dispute within 14 days of notification of the dispute by one party to the other.
- 15.3 If there is dispute under this Agreement that is not resolved in accordance with clause 15.2,, either party may give written notice to the other party stating that it is a notice under this clause and specifying the dispute.
- 15.4 If the dispute is not settled by agreement within 14 days after the date of the notice referred to in clause 15.3 is given, the parties must appoint a mediator and must seek in good faith to settle the dispute through mediation. If the parties are unable to agree upon a mediator within 14 days after the 14 days referred to in this clause 15.4, either party may request that a mediator be appointed by the President for the time being of the Law Institute of Victoria.

16. Further Assurance

Each party must promptly at its own cost do all things (including executing all documents) necessary or desirable to give full effect to this Agreement.

17. Severability

If anything in this Agreement is unenforceable, illegal or void then it is severed to the extent necessary and the rest of this Agreement remains in force.

18. Waiver

- 18.1 A failure to exercise, or delay in exercising, a power or right does not operate as a waiver of that power or right.
- 18.2 The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.
- 18.3 A waiver is not effective unless it is in writing and is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

19. Costs

Each party must pay its own costs and disbursements connected with the negotiation, preparation and execution of this Agreement.

20. Governing Law and Jurisdiction

- 20.1 The law of Victoria governs this Agreement.
- 20.2 The parties submit to the non-exclusive jurisdiction of the courts of Victoria and any courts which may hear appeals from those courts in respect of any proceedings in connection with this Agreement.

21. GST

- 21.1 Unless expressly stated otherwise in this agreement, all amounts payable or consideration to be provided under this agreement are exclusive of GST.
- 21.2 If GST is payable on any supply made under this agreement, for which the consideration is not expressly stated to include GST, the recipient agrees to pay to the supplier an additional amount equal to the GST payable at the same time that the consideration for the supply, or the first part of the consideration for the supply (as the case may be), is to be provided. However:
 - (a) the recipient need not pay the additional amount until the supplier gives the recipient a tax invoice or an adjustment note;
 - (b) if an adjustment event arises in respect of the supply, the additional amount must be adjusted to reflect the adjustment event and the recipient or the supplier (as the case may be) must make any payments necessary to reflect the adjustment; and
 - (c) This clause 21.2 does not apply to the extent that the GST on the supply is payable by the recipient under Division 84 of the GST Act.
- 21.3 If a party is required under this agreement to indemnify another party, or pay or reimburse costs of another party, that party agrees to pay the relevant amount less any input tax credits to which the other party (or to which the representative member for a GST group of which the other party is a member) is entitled.
- 21.4 If an amount payable under this agreement is to be calculated by reference to:
 - (a) The price to be received for a taxable supply then, for the purposes of that calculation, the price is reduced to the extent that it includes any amount on account of GST; and
 - (b) The price to be paid or provided for an acquisition then, for the purposes of that calculation, the price is reduced to the extent that an input tax credit is available for the acquisition.
- 21.5 For the purposes of this clause 21:
 - (a) a term which has a defined meaning in the GST Act has the same meaning when used in this clause 21;
 - (b) “GST Act” means the A New Tax System (Goods and Services Tax) Act 1999 (Cwlth); and
 - (c) Each periodic or progressive component of a supply to which section 156-5(1) of the GST Act applies will be treated as though it is a separate supply.

22. Force Majeure Event

- 22.1 If a party is unable wholly or in part to perform on time as required any obligation under this Agreement (other than an obligation to pay money) by reason of the occurrence of a Force Majeure Event, that obligation must be suspended, without liability, so far as and for so long as the party's ability to perform is affected by the Force Majeure Event.
- 22.2 A party affected by a Force Majeure Event must use all reasonable endeavours to limit or remove the effect of each Force Majeure Event affecting its performance of this Agreement, but nothing in this clause 22 requires it to settle any industrial dispute otherwise than in its absolute discretion.
- 22.3 Subject to clause 22.2, if a party reasonably considers that a circumstance has arisen which constitutes or is likely to constitute or result in a Force Majeure Event, it must as soon as reasonably practicable give to the other party notice containing full particulars of that event including its nature and likely duration, the obligations affected by it, the nature and extent of its effect on those obligations and the steps taken to remove, overcome or minimise its effects.

23. Confidentiality

The contents of this Agreement and all negotiations leading up to it must always be kept confidential by you and UE, and may only be disclosed to a party's installation contractor, legal or financial adviser, electricity retailer or intended electricity retailer or with the other party's permission, and in all such cases the disclosing party must indicate to the recipient of the information that the information is confidential. This obligation to keep information confidential continues after this Agreement ends.

24. Entire agreement

This agreement is the entire Agreement between the parties on the subject matter of this Agreement.

25. Survival

In addition to the clauses which are expressly stated to survive of this Agreement, all other clause which by their nature survive termination, will also survive termination of this Agreement.

EXECUTED BY the parties as an agreement

Signed for and on behalf of **United Energy Distribution Pty Ltd** by:

in the presence of:

Signature of Authorised Person

Witness Signature

Print Name and Position

Print Name

Date

Signed for and on behalf of **[insert]** by:

in the presence of:

Signature of Authorised Person

Witness Signature

Print Name and Position

Print Name

Date

SCHEDULE 1 – CUSTOMER DETAILS

Item 1 Customer Name:

Customer ABN:

Address:

Item 2 Location at which Reserve Capacity Services are to be supplied:

.

Item 3 Primary Feeder:

Item 4 Reserve Feeder:

Item 5 Reserved Capacity:

Item 6 Term of this Agreement: years from

Item 7 Payment Terms: Within 30 days of issue of UE's invoice.

Item 8 Reserve Capacity Payment

per kVA of agreed Reserved Capacity per annum (paid monthly)

Annual charge = (excl GST)

Monthly invoice = (excl GST)

Details of UE's Principal Contact

Organisation:	United Energy Distribution Pty Ltd
Position:	System Controller
Address:	43-45 Centreway, Mt Waverley, 3149
Mail to:	PO Box 449, Mt Waverley, 3149
Telephone:	8846 1209
AH Telephone:	8846 1209

Details of Customer's Principal Contact

Organisation:	
Position:	
Address:	
Mail to:	
Telephone:	
Facsimile	
AH Telephone	
E-mail:	
Mobile No.	

Details of Customer's Alternative Contact

Organisation:	
Position:	
Address:	
Mail to:	
Telephone:	
Facsimile	
AH Telephone	
E-mail:	
Mobile No.	

1. Other notices under the Agreement

UE's details

Organisation:	United Energy Distribution Pty Ltd
Position:	Commercial Manager
Address:	43-45 Centreway Place, Mount Waverley VIC 3149
Telephone:	03 8846 9706

Customer's details

Organisation:	
Position:	
Address:	
Telephone:	