



Department of Seniors,
Disability Services and
Aboriginal and Torres Strait
Islander Partnerships

Date _____ 2022

The date the last party signs the Agreement.

AGREEMENT

BETWEEN

State of Queensland

AND

[Please enter Name of Retailer]

ABN [Please enter]

Home Energy Emergency Assistance Agreement

Department of Seniors, Disability
Services and Aboriginal and Torres
Strait Islander Partnerships
PO Box 15397
City East Qld 4002

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PARTIES:

The State of Queensland, represented by the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships (the “**State**”)

[INSERT NAME OF **Retailer**] (“**Retailer**”)

ABN []

BACKGROUND

The State has established the Home Energy Emergency Assistance Scheme to provide emergency assistance to those Queensland residents who meet the Eligibility Criteria.

The Retailer agrees to assist the State with the operation of the Scheme, including deducting the Assistance from Eligible Customer’s bill.

The State agrees to pay the Retailer the amount of Assistance to be deducted from the Eligible Customer’s bill.

IT IS AGREED by the parties as follows.

1 Interpretation

1.1 Definitions

The following definitions apply in this Agreement, unless the context otherwise requires.

Agreement	means this Home Energy Emergency Assistance Agreement.
Application	means an application by a Customer to the Department for Assistance.
Application Form	means the application form attached in Annexure A or as updated by the State from time to time and notified to the Retailer.
Application Information	means: <ol style="list-style-type: none">(1) the date by which the Application is to be lodged with the State;(2) the Customer’s prior energy consumption for the last 12 months; and(3) details of the Customer’s payment history.

Assistance	means the one-off emergency financial assistance that the State may provide under the Scheme.
Assistance Amount	means the amount approved by the State and as notified to the Customer and the Retailer under clause 6 .
Australian Standard	means the Australian Standard AS ISO 10002-2006 as amended and updated from time to time.
Business Day	means a day other than a Saturday, a Sunday or a Queensland wide public holiday (as appointed under the <i>Holidays Act 1983</i> (Qld)).
Cancelled Application	means an Application that has been cancelled because the Customer has withdrawn their Application or the Application was not lodged with the State within the Deadline.
Confidential Information	<p>means the kind of information that:</p> <ol style="list-style-type: none"> (1) is or relates to documents, submissions, consultations, policies, strategies, practices and procedures of a party which are by their nature confidential; (2) is notified (whether in writing or not) by one party to the other as being confidential; or (3) is Personal Information, <p>but does not include information that:</p> <ol style="list-style-type: none"> (4) is or becomes public knowledge other than by breach of this Agreement; (5) has been independently developed or acquired by the other party; or (6) has been notified in writing by a party to the other as not being confidential.
Contract Material	means all material created, written or otherwise brought into existence by or on behalf of a Retailer as part of, or for the purpose of, the performance of the Retailer's obligations under this Agreement including all reports (whether in draft or final form), documents, equipment, information (including information on a Customer to the extent that it is relevant to their eligibility) and data stored by any means, but to avoid doubt excludes State Material.
Contract Officer	means, in relation to a party, the person nominated by

that party (and notified to the other party) to be the party's primary contact point in respect of this Agreement and who, at the date of this Agreement is the person specified in **Item 1 Schedule 1**.

Customer	has the meaning given to that term in the Electricity Act or the Gas Supply Act.
Customer Retail Services	has the meaning given to that term in the Electricity Act or the Gas Supply Act.
Deadline	means: (1) 14 days from the date that the Application was given or posted to the Customer under clause 5.3 ; or (2) if the Customer has requested an extension of time or a Cancelled Application has been reopened under clause 7.3 , the date approved by the State.
Department	means the Queensland Government Department administering the Scheme from time to time.
Electricity Act	<i>Electricity Act 1994 (Qld)</i>
Electricity Industry Code	means the Electricity Industry Code made under the Electricity Act.
Eligible Customer	has the meaning given to that term in clause 2.1(5) .
Eligibility Criteria	means the criteria for obtaining Assistance set out in the Guidelines.
Guidelines	means the Queensland Government's Home Energy Emergency Assistance guidelines for Retailers as issued by the State from time to time.
Gas Industry Code	means the Gas Industry Code made under the Gas Supply Act.
Gas Supply Act	means the <i>Gas Supply Act 2003 (Qld)</i> .
GST	means goods and services tax imposed under the <i>A New Tax System (Goods and Services Tax) Act 1999 (Cwlth)</i> .
National Energy Retail Law (NERL) (Queensland)	means the provisions applying in Queensland because of section 4 of the <i>National Energy Retail Law (Queensland) Act 2014</i> .
Personal	has the meaning given to that term in the <i>Privacy Act</i>

Information	1988 (Cwlth).
Privacy Commissioner	has the meaning given to the term “Commissioner” in the <i>Privacy Act 1988</i> (Cwlth).
Processing Period	means the period from the date the Application is given or posted to a Customer under clause 5.3 to the date the State notifies the Retailer and the Customer of its Decision under clause 6 .
Records	means all records necessary to substantiate that the Retailer has complied with this Agreement.
Retail Authorisation	has the meaning given to that term in the National Energy Retail Law (Queensland)
Retailer	means the entity so described in the Parties that holds a Retail Authority to provide Customer Retail Services.
Review Date	has the meaning given in clause 3.3(4) .
Scheme	means the Queensland Government’s Home Energy Emergency Assistance scheme as detailed in the Guidelines.
State	means the State of Queensland, represented by the Department.
State Material	means any material provided by the State to the Retailer for the purposes of this Agreement including all reports (whether in draft or final form), documents, equipment, information and data stored by any means.
Week	means a period of 7 days commencing on a Sunday.

1.2 General

In this Agreement, unless a contrary intention is expressed:

- (1) references to legislation or to provisions in legislation include references to amendments or re-enactments of them and to all regulations and instruments issued under the legislation;
- (2) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement unless otherwise stated;
- (3) words importing a gender include the other;
- (4) words in the singular number include the plural and vice versa;

- (5) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (6) “include” is not to be construed as a word of limitation;
- (7) headings have no effect on the interpretation of the provisions; and
- (8) an obligation imposed by this Agreement on more than one person binds them jointly and severally.

2 Outline

2.1 Key concepts

This Agreement employs a number of key concepts.

- (1) In accordance with **clauses 4**, and **5** and **7**, the Retailer agrees to:
 - (a) provide information relating to the Scheme;
 - (b) distribute the Application Form and to assist Customers with the Application process;
 - (c) supply information to the State on the Customer’s energy consumption and payment history in accordance with **clause 5.3(6)**;
 - (d) suspend collection of monies due under the Customer’s bill during the Processing Period; and
 - (e) deduct the Assistance Amount from the Eligible Customer’s last outstanding bill .
- (2) The State agrees to assess Applications in accordance with **clause 6** and pay the Retailer, in accordance with **clause 8**, for any Assistance Amount deducted from the bill of an Eligible Customer.
- (3) Any Customer may make an Application.
- (4) A Customer will fall into one of two categories.
 - (a) In most cases, a Customer will apply for Assistance directly from the State.
 - (b) In some cases, a non-government organisation may assist a Customer by providing information on the Scheme or contact the Retailer on the Customer’s behalf.
- (5) If a Customer:
 - (a) has made an Application to the State and provided all necessary information;

- (b) holds an electricity account or a reticulated natural gas account with the Retailer;
- (c) has not received any Assistance in the two years preceding application; and
- (d) meets the Eligibility Criteria,

then the Customer is an Eligible Customer.

2.2 Priority

If **clause 2.1** conflicts with another clause of this Agreement, then the other clause prevails.

3 Term and Review of Agreement

3.1 Commencement

The terms of this Agreement commence on the date of this Agreement.

3.2 Term

The terms of this Agreement operate until the termination of this Agreement in accordance with **clause 16**.

3.3 Review of Agreement

- (1) The parties agree that on or around each Review Date the parties will:
 - (a) meet to review the terms of this Agreement and negotiate any proposed amendments in good faith; and
 - (b) to the extent any changes to this Agreement are agreed to by the parties, enter a deed of amendment to this Agreement to implement those changes.
- (2) If no agreement is reached on changes to this Agreement under paragraph (1) six months after a Review Date, then either party may give the other a notice of dispute (as referred to in **clause 17.1**) and the provisions of **clauses 17.1** and **17.2** will apply.
- (3) Subject to the terms of this Agreement, if, despite the mediation process, no agreement is reached between the parties, this Agreement will, subject to **clause 16**, continue on the same terms until at least the next Review Date.
- (4) A review as contemplated by **clause 3.3** will be conducted every three years after the immediately previous Review Date. The first Review Date is 1 January 2010.
- (5) Where there is an amendment to the Electricity Act or the Gas Supply Act or any other Act or policy that materially affects the operation of this

Agreement or the Home Energy Emergency Assistance Scheme, the parties agree to negotiate, in good faith, appropriate variations to this Agreement.

- (6) The parties must continue to carry out their obligations under this Agreement during the period of any review.

4 Provide information on the Scheme

4.1 Information on the scheme

The Retailer agrees to provide information on the Scheme to Customers in accordance with the Electricity Industry Code, Gas Industry Code and this Agreement.

4.2 How information is provided

All information provided to Customers under this **clause 4.1** by the Retailer must be:

- (1) provided free of charge;
- (2) in writing, or if requested by a Customer, orally;
- (3) conveyed in a clear and comprehensive manner; and
- (4) in the preferred language of the Customer.

5 Application Process

5.1 Application Forms

The State agrees that customers can only obtain an Application Form from a retailer.

5.2 Retailer's obligations before providing an Application Form

Before providing an Application Form to a Customer, the Retailer must:

- (1) comply with its obligations under the Electricity Industry Code and the Gas Industry Code with respect to offering alternative payment arrangements and other assistance available to customers having financial difficulty; and
- (2) address any Customer concerns about the current bill, including:
 - (a) the accuracy of the meter reading;
 - (b) an appliance fault; or
 - (c) the possibility of an extension of time to pay the bill.

5.3 Retailer's obligations when providing an Application Form

If:

- (1) after the Retailer has complied with **clause 5.2**, the Customer is still in financial difficulty;
- (2) the Customer or a non-government organisation requests an Application Form; and
- (3) the Retailer considers the Customer may meet the Eligibility Criteria,

then the Retailer must:

- (4) give or post an Application Form to the Customer;
- (5) indicate on the Application Form that the Application must be lodged with the State within the Deadline;
- (6) ask for consent (oral or written) from the Customer to provide the State with the Application Information, and promptly provide this Application Information to the State where consent is given;
- (7) encourage the Customer to start arranging payment for the bill in case the Application is unsuccessful; and
- (8) suspend all collection and disconnection action against the Customer during the Processing Period.

5.4 Assistance with Application

The Retailer must assist the Customer with enquiries relating to the Scheme and completion of the Application Form, including advising the Customer that the Application must:

- (1) be made using the Application Form provided by the Retailer;
- (2) be accompanied by:
 - (a) a copy of the Customer's current concession card; or
 - (b) records necessary to substantiate that the Customer's base income is no more than the equivalent Commonwealth maximum income rate for part age pensioners;
- (3) demonstrate an inability to pay the current electricity or gas bill, or part of that bill;
- (4) include sufficient information to determine whether a Customer who has made an Application meets the Eligibility Criteria; and
- (5) include the means by which future bills will be paid.

5.5 Disconnection

- (1) If a Retailer disconnects a Customer who it has identified as suffering hardship without:
 - (a) first providing that Customer with information about the Scheme in accordance with **clause 4.1**; and
 - (b) then the Customer makes an Application;

the Retailer must at its own cost reconnect the Customer's gas and/or electricity supply until the State has advised the Retailer of the determination of the Application.

- (2) If a Retailer disconnects a Customer and then issues the Customer with an Application Form, the Retailer must contact the State to discuss the likely determination of the Customer's Application and reconnection of the Customer's gas and/or electricity supply.
- (3) The Retailer must keep accurate records of all disconnections of Customers to reflect compliance or non-compliance with this Scheme.

6 Assessing the Application

6.1 State's decision

The State will:

- (1) assess each Application in accordance with the Guidelines and make a decision on whether the Customer is eligible within 14 days from receipt of the Application;
- (2) notify the Customer of the decision in writing, including:
 - (a) if the application is successful, the Assistance Amount; and
 - (b) if the Application is unsuccessful, the reasons and the Customer's right for the decision to be reviewed

6.2 Report to the Retailer

By the end of each Week, the State will provide the Retailer with a report on:

- (1) the details of each successful Application and the Assistance Amount;
- (2) the aggregate of the Assistance Amounts for all successful Applications,
- (3) the details of any unsuccessful Applications; and
- (4) the details of any Cancelled Applications,

during the previous Week.

7 Retailer's obligations after the Application is decided

7.1 Successful Applications

- (1) For a successful Application, the Retailer must:
 - (a) deduct the Assistance Amount from the amount payable by an Eligible Customer on account of Customer Retail Services provided to that Customer. To avoid doubt, the Assistance Amount cannot be used to reduce the amount payable by the Eligible Customer for any other goods or services; and
 - (b) include a separate and identifiable item on the Eligible Customer's next bill that identifies the Assistance Amount as a Queensland Government assistance.
- (2) If after the deduction of the Assistance Amount there are outstanding monies owed on the Customer's bill, the Retailer may recommence standard collection procedures for the remainder subject to discussing with the Customer alternative payment arrangements.

7.2 Unsuccessful Applications

- (1) Subject to **clause 7.2(2)**, for unsuccessful Applications, the Retailer may contact the Customer and recommence standard collection procedures.
- (2) If the Customer or the State notifies the Retailer that the Customer has requested a review of the decision to reject the Application, then the Retailer must suspend all collection and disconnection action against the Customer until the review has been completed.

7.3 Cancelled Applications

If requested by a Customer to reactivate a Cancelled Application, the Retailer must:

- (a) reassess whether a Customer could be an Eligible Customer; and
- (b) if a Customer could be an Eligible Customer, request that the State reopen the Application and set a new Deadline.

8 Payment to the Retailer

8.1 Assistance Amounts are GST inclusive

The parties agree that the Assistance Amounts are a part payment of the customers' GST inclusive bill from the Retailer. Notwithstanding this agreement, if the Australian Taxation Office or a court or a tribunal determines that the Assistance Amounts do constitute consideration for a taxable supply from the Retailer to the State, the parties agree that the Assistance Amounts are GST inclusive.

8.2 Payment

- (1) In consideration of the Retailer deducting the Assistance Amount as set out in **clause 7**, the State will pay the Retailer for any Assistance Amounts deducted from the bill of an Eligible Customer.
- (2) By the end of each Week, the State will pay the Retailer by electronic transfer the aggregate of the Assistance Amounts for the previous Week as set out in the report provided by the State under **clause 6.2**.

8.3 Incorrect payments

- (1) Any underpayment or overpayment of an Assistance Amount may only be claimed within 2 years from the date of the relevant Report.
- (2) If the Retailer claims that there has been an underpayment, the Retailer must provide all reasonable information as to why the underpayment occurred. If the State claims that there has been an overpayment, the State must provide all reasonable information as to why the overpayment occurred.
- (3) An amount due to a party as a result of an underpayment or overpayment may be offset against any amount subsequently due by the Retailer to the State (or vice versa) under this Agreement.

8.4 Bank account

The Retailer must advise the State the details of the bank account to which the Assistance Amounts are to be paid.

9 Records and Auditing

9.1 Retention of records

The Records must be retained by or on behalf of the Retailer for two years.

9.2 Audit

The State may on reasonable notice and at its own cost and expense audit the Retailer's compliance with this Agreement.

9.3 Assistance

The Retailer must give the State reasonable access to the Records and such assistance as may reasonably be necessary to enable the State to conduct that audit.

9.4 Copies

In conducting an audit, the State may, at its own cost and expense, take copies of any Records which it reasonably considers relevant to this Agreement.

9.5 Auditors

Any of the State's rights under this **clause 9** may be exercised by auditors nominated by the State to conduct financial and compliance audits.

9.6 Subcontractors

The Retailer must ensure that any sub-contract entered into for the purpose of performing the Retailer's obligations under this Agreement contains an equivalent clause granting the rights specified in this **clause 9** with respect to the subcontractor.

9.7 Privacy obligations

The State will comply with its obligations under the *Privacy Act 1988* (Cwlth) with respect to any information obtained under this **clause 9** and will treat the information as Confidential Information.

10 Systems, equipment and material

10.1 Systems, equipment and material

- (1) The Retailer must provide all systems, equipment, material and other resources to perform its obligations under this Agreement.
- (2) The State is under no obligation to provide funding for these systems, equipment, material and other resources.

10.2 Changes to systems, equipment and material

- (1) In circumstances where a material change is made to the Guidelines or the operation of the Scheme, the State will liaise with the Retailer prior to the initiation of the change and provide the Retailer with a reasonable period of notice of the proposed changes to enable the Retailer to undertake required system and process changes including staff training.
- (2) Upon amendment to the Guidelines that would result in a change to the Assistance Amount cap, Eligibility Criteria or material operation of the Scheme the State must, as soon as reasonably practicable, give the Retailer written notice of these changes.

11 No assignment

11.1 No assignment

The Retailer must not assign the whole or part of this Agreement without the prior written consent of the State. The State must not unreasonably withhold or delay its consent to the assignment by the Retailer of the whole or part of this Agreement.

11.2 Obligations

If the Retailer subcontracts the performance of any obligation under this Agreement, the Retailer is not relieved of any of its obligations under this Agreement.

12 Ownership and Use of Material

12.1 Ownership of Contract Material

Ownership of all Contract Material, including any intellectual property rights, vests on its creation in the Retailer.

12.2 Use of Contract Material

- (1) The Retailer grants to the State a royalty-free licence to use the Contract Material solely for the purpose of complying with and enforcing this Agreement.
- (2) The Retailer warrants that the use of any Contract Material by the State:
 - (a) will not infringe the intellectual property rights of any third party; and
 - (b) no fees, royalties or other payments are payable in respect of any third party rights as a result of the State's (or its agent's) use of any Contract Material.

12.3 State Material

- (1) State Material will remain the property of the State and the Retailer must only use that material for the purpose of complying with and enforcing this Agreement, in accordance with any conditions notified to it by the State and in accordance with any *Privacy Act 1988* (Cwlth) and confidentiality requirements.
- (2) The State warrants that the use of any State Material by the Retailer:
 - (a) will not infringe the intellectual property rights of any third party; and
 - (b) no fees, royalties or other payments are payable in respect of any third party rights as a result of the Retailer's (or its agent's) use of any State Material.

For the purpose of **clause 12**, "use" includes supply, reproduce, publish, perform, communicate, broadcast, adapt and copy.

13 Privacy of Personal Information

13.1 Employee awareness

- (1) The Retailer must use its best endeavours to ensure its employees, agents and contractors or any subcontractor do not access, use, disclose or retain Personal Information except as required in performing their duties of employment or contractual arrangements and that they otherwise treat that information as though they were bound by the *Privacy Act 1988* (Cwlth).
- (2) The Retailer must ensure that any employee, agent or contractor of the Retailer or any subcontractor, requiring access to any Personal Information held in connection with this Agreement:
 - (a) is aware that they must not access, use, disclose or retain Personal Information except in performing their duties of employment or contractual obligations; and
 - (b) is informed that failure to comply with this undertaking may be a criminal offence and may also lead the Retailer to take disciplinary action against the employee or subcontractor.

13.2 Reasonable requests, directions and guidelines

The Retailer must, in respect of any Personal Information held in connection with this Agreement, co-operate with any reasonable requests or directions of the State arising directly from, or in connection with the exercise of the functions of the Privacy Commissioner under the *Privacy Act 1988* (Cwlth) or otherwise, including the issuing of any guidelines concerning the handling of Personal Information.

13.3 Indemnity and compensation

The Retailer indemnifies the State in respect of any liability, loss or expense incurred arising out of or in connection with, a breach of the obligations of the Retailer under this **clause 13** or the *Privacy Act 1988* (Cwlth), except to the extent that the State caused or contributed to the relevant liability, loss or expense.

14 Handling of complaints

- (1) If a Customer (“**Complainant**”) alleges that the Retailer (or any of its employees, agents, contractors or subcontractors):
 - (a) has breached the privacy obligations owed to the Complainant in respect of or in connection with this Agreement; or
 - (b) has otherwise failed to comply with this Agreement with respect to the Complainant,

the Retailer must handle the complaint in accordance with the Australian Standard.

- (2) When the Retailer responds to a complaint referred to in **clause 14(1)**, the Retailer must inform the Complainant:
 - (a) that the Complainant has a right to raise the complaint to a higher level within the Retailer’s management structure;
 - (b) that, if after raising the complaint to a higher level the Complainant is still not satisfied with the Retailer’s response, the Complainant can refer the complaint to:
 - (i) if the complaint is with respect to a breach of the privacy obligations owed to the Complainant, the Privacy Commissioner; or
 - (ii) in all other circumstances, the State.
- (3) If requested by the Complainant, the information in **clause 14(2)** must be provided in writing.
- (4) Subject to complying with any obligation under the *Privacy Act 1988* (Cwlth), if a Complainant approaches the State with a complaint related to a matter provided for in **clause 14(1)** and the Complainant has not participated in Retailer’s internal complaint handling process, the State will refer the complaint to the Retailer.
- (5) If the complaint relates to the eligibility of a Customer to receive the Assistance Amount, the State will make a decision and, if that decision is that the Customer is not eligible or is not entitled to receive the Assistance Amount they claim is payable, inform the person that they can refer the complaint to the Ombudsman.
- (6) The Retailer must implement a decision of the State made under this clause 14.

15 Non-disclosure of Confidential Information

15.1 Must not disclose Confidential Information

Except as provided in this Agreement, a party (“**Information Holder**”) must not disclose Confidential Information of the other party (“**Information Owner**”) to any person without the prior written consent of the Information Owner except to the extent that the Confidential Information is:

- (1) required or authorised to be disclosed by law, including with respect to the State, under the *Financial Accountability Act 2009* (Qld);
- (2) required to be disclosed by a recognised stock exchange on which the Information Holder is listed; and
- (3) disclosed to the Information Holder’s employees, solicitors, auditors, insurers or advisers.

15.2 Protection of Confidential Information

The Information Holder must take all reasonable measures to ensure that:

- (1) Confidential Information of the Information Owner accessed or held by the Information Holder, its employees, solicitors, auditors, insurers or advisers, in connection with this Agreement is protected against loss, unauthorised access, use, modification, disclosure or other misuse in accordance with reasonable procedures for that purpose; and
- (2) only authorised personnel of the Information Holder, being those personnel who require access to the information for the purposes of or in connection with this Agreement have access to the Confidential Information of the Information Owner.

15.3 Information Holder's Use of Confidential Information

The Information Holder must:

- (1) use Confidential Information of the Information Owner held in connection with this Agreement only for the purposes of fulfilling the Information Holder's obligations under this Agreement; and
- (2) comply with the "National Privacy Principles" set out in the *Privacy Act 1988* (Cwlth) in respect of Personal Information provided under this Agreement, as if they were provisions of this Agreement.

15.4 Notification of disclosure

The Information Holder must immediately notify the Information Owner if the Information Holder becomes aware that:

- (1) a disclosure of the Information Owner's Confidential Information may be required by law; or
- (2) an unauthorised disclosure of the Information Owner's Confidential Information has occurred.

16 Termination

16.1 Termination by State

- (1) The State may terminate this Agreement at any time by notice to the Retailer, if:
 - (a) the Retailer is or becomes bankrupt or insolvent, enters into voluntary administration or makes any arrangement with its creditors or takes advantage of any statute for the relief of insolvent debtors;
 - (b) the Retailer's Retail Authority under the National Energy Retail Law (Queensland) is suspended, revoked or terminated; or

- (c) the Retailer is in material breach of a provision of this Agreement, where, subject to **clause 16.1(2)**, that breach:
 - (i) if capable of being remedied, is not remedied within the period (being a reasonable period, but in any event not less than 5 Business Days of notice of the breach or, if the dispute resolution process in **clause 17.1 and 17.2** has been implemented, 5 Business Days of the conclusion of the mediation) specified in a notice by the State, or
 - (ii) is not capable of being remedied.
- (2) If the Retailer believes it will not be able to remedy the breach within the time specified in the notice, the Retailer must provide the State, within 5 Business Days of the notice or conclusion of the mediation, a proposed action plan for remedying the breach within 20 Business Days or other period agreed with the State. The parties will discuss the proposed action plan in good faith and, if the parties agree an action plan within 10 Business Days of the Retailer submitting the proposed action plan to the State, the State must not terminate this agreement for that breach unless:
 - (a) the Retailer fails to remedy the breach within the time agreed in the action plan; or
 - (b) the Retailer fails to take reasonable steps to ensure that the Retailer will remedy the breach within the time agreed in the action plan.

16.2 Termination by Retailer

The Retailer may terminate this Agreement at any time by notice to the State, if the State fails to remedy a material breach of this Agreement by the State within the period (being a reasonable period, but in any event not less than 5 Business Days of notice of the breach or, if the dispute resolution process in **clause 17.1 and 17.2** has been implemented, 5 Business Days of the conclusion of the mediation) specified in a notice by the Retailer.

16.3 Termination for any reason

- (1) Either party may at any time, by giving 20 Business Days written notice to the other, terminate this Agreement for any reason.
- (2) In the event that this Agreement is terminated in accordance with paragraph (1):
 - (a) the State will be liable only for payments under this Agreement for Assistance Amounts approved and advised to the Eligible Customer and paid by the Retailer to an Eligible Customer before the date of termination; and
 - (b) each party must take all available steps to minimise its own loss resulting from that termination.

16.4 No prejudice

Nothing in this **clause 16** prejudices:

- (1) any rights, remedies or liabilities of a party that accrued prior to termination; or
- (2) any party's other rights or remedies in respect of any breach of this Agreement.

17 Dispute Resolution

17.1 Negotiation of Dispute

If a difference or dispute ("Dispute") arises in relation to this Agreement, then either party may give notice to the other that states a Dispute exists and specifies details of the Dispute. The parties agree that, following the issue of that notice, they will endeavour to resolve the Dispute by negotiations, including by referring the Dispute to persons within the State and Retailer who have authority to intervene and direct some form of resolution.

17.2 Mediation of Dispute

- (1) If the Dispute has not been resolved pursuant to **clause 17.1** within 40 Business Days of the notice of the Dispute, then the parties agree that they will undertake a mediation process. The mediator will be an independent mediator agreed by the parties or, failing agreement, nominated by the chairperson of The Institute of Arbitrators and Mediators Australia, Qld Chapter.
- (2) Unless otherwise agreed between the State and Retailer:
 - (a) the mediator will not make a decision in relation to the dispute but will merely attempt to facilitate the parties to reach an agreement; and
 - (b) the parties will share the costs of the engagement of the mediator equally.

17.3 No prejudice

Nothing in this **clause 17** will prejudice the rights of either party to institute proceedings to enforce the Agreement or to seek injunctive or urgent declaratory relief in respect of any Dispute.

18 General

18.1 No employment, partnership or agency relationship

- (1) Nothing in this Agreement constitutes the Retailer, or its employees, agents or subcontractors as employees, partners or agents of the State or creates any employment, partnership or agency for any purpose.

- (2) The Retailer must not represent itself, and must ensure its employees, agents and subcontractors do not represent themselves, as being employees, partners or agents of the State.

18.2 GST

- (1) If a party ("**GST Supplier**") makes a supply to another party ("**GST Recipient**") in connection with this Agreement, the GST Recipient must pay the GST Supplier an amount equal to any GST payable by the GST Supplier in relation to that supply ("**GST Amount**"), unless the amount payable by the GST Recipient for that supply is already expressed to be inclusive of GST.
- (2) The GST Amount must be paid at the same time and in the same manner as making payment of any monetary consideration on which the GST is calculated. If the GST Amount is not calculated on monetary consideration, the GST Recipient must pay the GST Amount within 7 Business Days of receipt of a written demand from the GST Supplier.
- (3) The GST Recipient's obligation to pay the GST Amount is conditional on the GST Supplier providing the GST Recipient with a tax invoice that complies with the relevant law, an invoice that would comply with the relevant law if the State was the actual recipient of supplies to which the GST Amount relates. The GST Supplier must do all other things reasonably requested by the GST Recipient to enable the GST Recipient to obtain any input tax credit or other statutory set-off to which it is entitled.
- (4) The amount recoverable on account of GST under this **clause 18.2** will include any fines, penalties, interest and other charges incurred as a result of late payment or other default by the GST Recipient under this Agreement.
- (5) If a party is required to pay, reimburse or indemnify another party for any cost, expense or other amount that the other party has incurred or will incur in connection with this Agreement, that amount will be reduced by any part thereof for which the other party (or representative member if this is not the other party) can claim an input tax credit, partial input tax credit or other like offset.
- (6) Unless the contrary intention appears, terms used in this **clause 18.2** have the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth).

18.3 Entire agreement

This Agreement comprises the entire agreement between the parties in relation to the subject matter of this Agreement and supersedes any prior representations, negotiations, writings, memoranda and agreements.

18.4 Severability

Any provision of this Agreement that is illegal, void or unenforceable will not form part of this Agreement to the extent of that illegality, voidness or

unenforceability. The remaining provisions of this Agreement will not be invalidated by an illegal, void or unenforceable provision.

18.5 Variation

Except as otherwise provided for in this Agreement, no variation to this Agreement will be of any force or effect unless it is in writing and signed by the parties to this Agreement.

18.6 No waiver

Failure or omission by either party at any time to enforce or require strict or timely compliance with any provision of this Agreement will not affect or impair that provision in any way or the rights and remedies that the party may have in respect of that provision.

18.7 Governing law

This Agreement is governed by and construed in accordance with the law for the time being in force in the State of Queensland and the parties submit to the non-exclusive jurisdiction of the courts of the State of Queensland.

18.8 Compliance with laws

Each party must comply with the laws from time to time in force in the State of Queensland in performing its obligations under this Agreement.

18.9 Notices

Any notice, including any other communication, required to be given or sent to either party under this Agreement must be in writing and given to the relevant Contract Officer. A notice will be deemed to have been given:

- (1) if delivered by hand, on delivery;
- (2) if sent by prepaid mail, on the expiration of two Business Days after the date on which it was sent;
- (3) if sent by facsimile, when it is successfully faxed to (which occurs when the sender receives a transmission report to that effect); or
- (4) if sent by electronic mail, on the date of transmission unless the sender receives notice that delivery did not occur or has been delayed.

18.10 Survival of clauses

Clauses 9, 12, 13, 15 and 18.2 will survive the expiration or earlier termination of this Agreement.

EXECUTED AS AN AGREEMENT

SCHEDULE 1 - CONTRACT DETAILS

Item 1. Contract Officers

See clauses 1.1 and 18.9

For the State:

Manager
Concession Services
Smart Service Queensland
c/- Department of Seniors, Disability Services and
Aboriginal and Torres Strait Islander Partnerships

For the Retailer:

**Designated
electronic
mail
addresses
of the
parties**

For the State:

concessions@smartservice.qld.gov.au

For the Retailer:

[INSERT EMAIL ADDRESS]

DATE OF THIS AGREEMENT

2022

SIGNED for and on behalf of the
State of Queensland

)
)
)
) Signature of State Delegate
)
)
)
) Print Name

in the presence of:

)
)
)
) Signature of witness
)
)
)
) Print name and position

SIGNED for and on behalf of
[INSERT NAME OF RETAILER] by its duly
authorised representative

)
)
)
) Signature of authorised representative
)
)
)
) Print name and position

in the presence of:

)
)
)
) Signature of witness
)
)
)
) Print name and position

Note:

Date: Must be dated on the date the last party signs the Agreement or, if signed counterparts of the Agreement are exchanged, the date of exchange. Also date the cover page.

Individual: Must be signed by the individual Retailer and witnessed.

Incorporated Association: Must be signed in accordance with the Retailer’s constitution, which may or may not require the common seal to be affixed. As a minimum, 2 authorised officers must sign.

Company: Must be signed in accordance with section 127 of the *Corporations Act 2001* (Cwlth), for example, by 2 directors or a director and a secretary. Common seal may be affixed if required under the Retailer’s constitution.

Attachment A

Application Form for Home Energy Emergency Assistance



20210630_V1_PRINT
HEEAS Application F