

INSTRUMENT OF VARIATION OF CONDITIONS OF DISTRIBUTOR'S LICENCE
ELECTRICITY SUPPLY ACT 1995

1. Variation of conditions

I, Don Harwin, Minister for Energy and Utilities vary the Licence held by the Licence Holder. This Variation is made under clause 7 of Schedule 2 to the *Electricity Supply Act 1995*.

2. Commencement

This Instrument of Variation commences on the day this Instrument is signed.

3. Definition

In this Variation Instrument:

Licence means the distributor's licence granted under section 14 of the *Electricity Supply Act 1995* to the Licence Holder to operate a distribution system that is a transacted distribution system under the *Electricity Network Assets (Authorised Transactions) Act 2015* effective on 1 December 2016.

Licence Holder means:

Endeavour Energy Network Partnership, a partnership carried on under that name by Edwards O Pty Limited (ACN 618 643 486) as trustee for Edwards O Trust, ERIC Epsilon Operator Corporation 1 Pty Ltd (ACN 617 221 735) as trustee for ERIC Epsilon Operator Trust 1, ERIC Epsilon Operator Corporation 2 Pty Ltd (ACN 617 221 744) as trustee for ERIC Epsilon Operator Trust 2, ERIC Epsilon Operator Corporation 3 Pty Ltd (ACN 617 221 753) as trustee for ERIC Epsilon Operator Trust 3, ERIC Epsilon Operator Corporation 4 Pty Ltd (ACN 617 221 771) as trustee for ERIC Epsilon Operator Trust 4.

Previous Conditions of Licence means the conditions of the Licence as in force immediately before the commencement of this Instrument of Variation.

4. Variation of licence

1. The conditions of the Licence are varied as set out in Schedule 1.
2. The variation of the conditions of the Licence does not:
 - a. revive anything not in force or existing at the time the variation takes effect;
 - b. affect the previous operation of the Previous Licence Conditions or anything done, or begun under, or in accordance with the Previous Licence Conditions; or
 - c. affect a right, privilege or liability acquired, accrued or incurred under the Previous Licence Conditions

Signed:



The Hon Don Harwin MLC
Minister for Energy and Utilities

Date:

5.2.19

[1] Condition 5

In condition 5.2(f), omit the word 'network'.

[2] New condition 5A

Insert before Condition 6:

5A Reliability provided to individual customers

5A.1 This condition 5A does not apply to a *connection point* supplied by a *Licence Holder's feeder* to which Condition 5 applies.

5A.2 Where the *minutes interrupted* exceed the relevant *individual customer standards* in any 12 month period ending at the end of March, June, September or December when *excluded interruptions* are disregarded, the *Licence Holder* must comply with condition 5A.4

5A.3 Where the *number of interruptions* exceed the relevant *individual customer standards* in any 12 month period ending at the end of March, June, September or December, when *excluded interruptions* are disregarded, the *Licence Holder* must comply with condition 5A.4.

5A.4 A *Licence Holder* must:

- (a) investigate the causes for the *minutes interrupted* or *number of interruptions* (as the case may be) exceeding the *individual customer standards*;
- (b) by the end of the *quarter* following the *quarter* in which the *minutes interrupted* or *number of interruptions* (as the case may be) first exceeded the *individual customer standards*, complete an investigation report that must:
 - (i) identify the causes for exceeding the *individual customer standards*;
 - (ii) as appropriate, any action required to improve performance against the *individual customer standards*; and
 - (iii) consider the terms of the connection contract (including network security arrangements) agreed with the *customer* of the affected *connection point*, including when the *customer* was connected to the *distribution system*;
- (c) complete any operational actions identified in the investigation report to improve performance against the *individual customer standards* by the end of the third *quarter* following the *quarter* in which the *minutes interrupted* or *number of interruptions* (as the case may be) first exceeded the *individual customer standards*;
- (d) except as permitted by condition 5A.4(e), where the investigation report identifies actions, other than operational actions, required to improve performance against the *individual customer standards*, develop a project plan, including implementation timetable, and commence its implementation by the end of the fourth *quarter* following the *quarter* in which the *minutes interrupted* or *number of interruptions* (as the case may be) exceeded the *individual customer standards*;
- (e) consider non-network strategies which provide reliable outcomes for *customers*. Where found by the investigation report to be equal or more cost-effective than the lowest cost feasible network option such strategies shall be adopted rather than network augmentation options;
- (f) ensure that the implementation timetable for the project plan or alternative non network solutions is as short as is reasonably practicable;

- (g) where all reasonable steps to improve supply reliability have been taken, the costs of further actions to rectify the non-compliance must be subject to a cost benefit analysis. Where such analysis does not provide a positive benefit, no further action will be taken to improve the *minutes interrupted* or *number of interruptions* (as the case may be) and the ongoing non-conformance with the *individual customer standards* will be reported to the *Minister* by the *Licence Holder*.

5A.5 The investigation report is to include a documented rectification plan where action is found to be justified in order to improve the *minutes interrupted* or *number of interruptions* (as the case may be) against the *individual customer standards*. The action that is required may involve work to other network elements or may involve only repair or maintenance work where capital works are not warranted and take into account any one-off events and previous performance trends.

[3] New condition 7A.3

Insert immediately before the heading titled 'Customer service standards report':

Individual customer standards report

7.3A A *Licence Holder* must submit, within one month of the end of each *quarter*, a *quarterly individual customer standards* report to the *Tribunal* on instances where conditions 5A.2 and/or 5A.3 applied, together with the following details:

- (a) the date at which the *minutes interrupted* or *number of interruptions* (as the case may be) exceeded the individual customer standard, together with the actual minutes interrupted or number of interruptions for the affected connection point for the 12 month period;
- (h) details of the remedial action that the *Licence Holder* intends taking, or has taken, to improve compliance with the *individual customer standards*;
- (i) if applicable, the date of completion, or the date of planned completion, of the remedial action plan;
- (j) if applicable, details of the investigation and action proposed or undertaken leading to the decision to advise the *Tribunal* that it is not economically justifiable to bring the minutes interrupted or number of interruptions (as the case may be) for the affected *connection point* into compliance with the *individual customer standards*; and
- (k) any other matter notified by the *Tribunal* in writing.

[4] Amend 7.6

Omit condition 7.6(c) and replace with:

- (c) *individual customer standards*; and
- (d) *customer service standards*.

[5] Critical Infrastructure Licence Conditions

Remove the paragraph headed 'CRITICAL INFRASTRUCTURE LICENCE CONDITIONS' and conditions 9 and 10 and substitute:

CRITICAL INFRASTRUCTURE LICENCE CONDITIONS

For the purposes of conditions 9, 10 and 11 of this Licence, it is acknowledged that the assets which the Licence Holder operates may constitute "critical infrastructure" being those

physical facilities, supply chains, information technologies and communication networks which, if destroyed, degraded or rendered unavailable for an extended period, would significantly impact on the security, social or economic wellbeing of the State of New South Wales and other States and Territories which are from time to time electrically interconnected with New South Wales and other States and Territories. These licence conditions will be reviewed by the Minister from time to time (and where necessary) in consultation with responsible Ministers of the Commonwealth and relevant States and Territories. According to its own legislation and policy, the Commonwealth may require a Licence Holder to agree to certain arrangements. The Licence Holder should also establish procedures for national security threat sharing with the Critical Infrastructure Centre and action received information on a good-faith basis.

9 Substantial presence in Australia

- 9.1 Except to the extent allowed for under the *Protocol* agreed with the *Commonwealth Representative*, the *Licence Holder* must take all practical and reasonable steps to ensure:
- (a) the maintenance of its *distribution system* is undertaken solely from within Australia, except where maintenance requires either physical servicing of components offshore or the acquisition of replacement components from outside Australia. In such an instance, it is the responsibility of the senior officer responsible for network operations to ensure this maintenance does not impact condition 9.2; and
 - (b) that any third party or non-*Licence Holder* employee, including individuals/entities from outside Australia, undertaking maintenance of the distribution system is subject to the approval of the senior officer responsible for network operations.
- 9.2 Except to the extent that the *Licence Holder* is undertaking steps in accordance with, and for the duration of, a *Protocol* agreed with the *Commonwealth Representative*, the *Licence Holder*:
- (a) must, by using best industry practice for electricity network control systems, ensure that operation and control of its *distribution system*, including all associated ICT infrastructure, can be accessed, operated and controlled only from within Australia, and that its *distribution system* is not connected to any other infrastructure or network which could enable it to be controlled or operated by persons outside Australia;
 - (b) must notify the *Commonwealth Representative* in advance of any engagement with the market to procure a contract under which it outsources the operation and control of its *distribution system*, including any ICT infrastructure associated with the operation and control of its *distribution system*;
- Note: For the purposes of Licence condition 9.2 (a):*
- Best industry practice includes access required by relevant Australian regulators and market and system operators to meet the Licence Holder's obligations under Australian law.*
- (c) will be taken to have satisfied condition 9.2(a) for the duration of the period set out in an *approved plan* if the *Licence Holder*:
 - (i) has a plan approved by the *Minister*, in the case of a plan approved as of the first issue of this *Licence*, or any other plan or amended plan approved by the *Tribunal* subsequent to the first issue of this *Licence* (each an **approved plan**); and
 - (ii) is at the relevant time undertaking the steps that are required to be undertaken in that *approved plan*.

9.3 The Licence Holder must:

- (a) have at least two directors who are Australian citizens; and
- (b) have senior officers responsible for (notwithstanding their title):
 - (i) operational technology;
 - (ii) network operations; and
 - (iii) security operations

in relation to its *distribution system*,

who are persons residing in Australia and hold an appropriate national security clearance, being a clearance of not less than Negative Vetting Level 1 (or equivalent) issued by the NSW Government on advice from the Australian Government Security Vetting Agency (AGSVA).

Note: For the purposes of Licence condition 9.3(b): The senior officer responsible for operational technology is the officer whose responsibilities include:

- Delivering the Supervisory Control and Data Acquisition (SCADA) capability required to safely and reliably operate the NSW distribution system;
- Developing and implementing strategies to manage cyber security and other threats affecting the network operational technology environment; and
- Developing systems for effectively managing assets remotely, including but not limited to network switches, condition monitoring and remote interrogation or operation of protection systems and relays; and

The senior officer responsible for network operations, is the officer whose responsibilities include:

- The day to day operation, monitoring and maintenance of the distribution system; and
- Directing the operational planning, management, control and security of the distribution system.

The senior officer responsible for security operations, is the officer whose responsibilities include:

- Approval for the Licence Holder's personnel or other nominated personnel to access the Licence Holder's information systems or physical access to the Licence Holder's premises and associated infrastructure;
- Personnel security; and
- Managing relationships with Commonwealth and state government agencies.

Note: The above responsibilities may be held by a single officer or shared between more than one officer. Where the responsibilities are shared between more than one officer, the relevant senior officer responsibility contemplated in condition 9.1(a) is the joint responsibility of the multiple officers and the approval contemplated in condition 9.1(b) must be obtained from each of those officers.

9.4 The Licence Holder is not in breach of its obligations under:

- (a) condition 9.3(a) if, in the case of a casual vacancy on the board of directors, the vacancy is filled within two months of the casual vacancy first occurring;
- (b) condition 9.3 if:
 - (i) following the first issue of these conditions to the Licence Holder; or

- (ii) any position identified in condition 9.3 being vacated or the relevant person ceasing to satisfy the qualifications set out there for any reason, the *Licence Holder*.
- (iii) procures the appointment of a person to the relevant position that the *Licence Holder* bona fide believes will be able to obtain the required security clearance; and
- (iv) has procured that the person applies for the required security clearance.

9.5 The exception in condition 9.4(b) ceases to apply to the *Licence Holder* if:

- (a) an appointment and application for national security clearance for the person is not made within 4 months of (as relevant) the first issue of these conditions or the relevant vacancy or disqualification occurring; or
- (b) if the application referred to in condition 9.5(a) is made and is rejected or withdrawn, the *Licence Holder* does not procure a replacement application being made within 4 months of that rejection or withdrawal; or
- (c) the *Licence Holder* does not procure compliance with condition 9.3(b) in any event with respect to any position within 8 months (or such longer period as approved in writing by the *Minister*) of (as relevant) the first issue of these conditions or the relevant vacancy occurring.

10 Data security

10.1 The *Licence Holder* must ensure that:

- (a) all of its information (being design specifications, operating manuals and the like) as to the operational technology (such as the SCADA system) and associated ICT infrastructure of the operational network is held solely within Australia, and that such information is accessible only by a *Relevant Person* who has been authorised by the *Licence Holder* and only from within Australia;
- (b) all:
 - (i) *Load Data*; and
 - (ii) *Bulk Personal Data Records*,

relating to or obtained in connection with the operation of the *distribution system* by a *Relevant Person* is held solely within Australia, and is accessible only by a *Relevant Person* or a person who has been authorised by the *Licence Holder*; and

- (c) it does not export and has appropriate security controls in place to prevent the export, of *Bulk Personal Data Records* relating to or obtained in connection with the operation of the *distribution system* by a *Relevant Person*, outside of Australia.

10.2 The *Licence Holder* is not in breach of its obligations under conditions 10.1(a), 10.1(b)(i) or 10.1(c) if the *Licence Holder* discloses, holds, uses or accesses any information or data referred to in those conditions, or the *Licence Holder* allows a *Relevant Person* approved by the senior officer referred to in condition 9.3(b)(i) to disclose, hold, use or access any information or data referred to in those conditions for the purposes of:

- (a) disclosure to a recognised stock exchange so that such information is made available publicly in compliance with a binding obligation on the part of the *Licence Holder* or an *Associate* to do so;

- (b) complying with any law of the Commonwealth of Australia, or of any of its States and Territories;
- (c) disclosure to the financial, accounting, insurance, legal, regulatory and other advisers, auditors, insurers, security trustees and financiers (and each of their advisers) of the *Licence Holder*, any *Associate*, and any bona fide prospective purchaser of any interest in, or of any interest in the main undertaking of, the *Licence Holder* or any *Associate*, but in each case only to the extent necessary in order for those persons to provide the advisory or other services bona fide required of them;
- (d) disclosure to participants, regulators and service providers in the electricity sector, provided it is in the ordinary course of business and in accordance with good electricity industry practice, and such information is required by those persons to provide the services or to perform the functions bona fide required of them;
- (e) providing aggregated data which does not permit identification of any particular customer or customer's connection points or their demand characteristics;
- (f) allowing a service provider or contractor to hold, use or access information where that arrangement is approved by the *Tribunal*, in the case of arrangements approved as of the first issue of this *Licence*, and otherwise where the *Licence Holder* has provided the *Commonwealth Representative* with a submission demonstrating that:
 - (i) the service provider or contractor is reputable; and
 - (ii) the service provider or contractor has data security systems in place to ensure information security is maintained;

and has obtained the written agreement of the *Commonwealth Representative* for the arrangement.
- (g) allowing a service provider or contractor who is a provider to the *Licence Holder* at the date of this *Licence* to hold, use or access information provided the *Licence Holder* is at the relevant time undertaking the steps that are required to be undertaken as set out in a plan (and for the duration of the period set out in that plan) related to that service provider or contractor approved by the Minister, in the case of a plan approved as of the first issue of this *Licence*, or any plan or amended plan approved by the *Tribunal* subsequent to the first issue of this *Licence* (each an *approved plan*);
- (h) such other circumstances as approved by the *Tribunal* in writing. Prior to seeking approval from the *Tribunal*, the *Licence Holder* must provide the *Commonwealth Representative* with a reasonable opportunity within a period not ending less than 60 calendar days, to confirm in writing to the *Tribunal* that the Commonwealth does not intend to make any further requests or submissions in relation to the matter.

10.3 The *Licence Holder* is not in breach of its obligations under condition 10.1(b)(ii) if a *Relevant Person* or a person authorised to access the information by the *Licence Holder* discloses, holds, uses or accesses personal information in accordance with the *Privacy Act 1988* (Cth).

10.4 The *Licence Holder* must ensure that third party data or information (including without limitation communications within the meaning of the *Telecommunications (Interception and Access) Act 1979* (Cth), personal information within the meaning of the *Privacy Act 1988* (Cth), and closed-circuit television footage) which is indirectly accessed or obtained by the *Licence Holder* because that third party data or information is transferred by a carrier or other party using the *Licence Holder's* infrastructure, are held by the *Licence Holder*

solely within Australia, and are accessible only by a *Relevant Person* or a person who has been authorised by the *Licence Holder* and, in each case, only from within Australia.

[6] Condition 11

Omit condition 11 and substitute:

11 Compliance

- 11.1 By 30 September each year the *Licence Holder* must furnish a report to the *Tribunal* and the *Commonwealth Representative* detailing whether the *Licence Holder* has complied with conditions 9 and 10 over the preceding *financial year* to 30 June.
- 11.2 The report required under condition 11.1 must be audited by an *Approved Auditor* by a date specified by the *Tribunal*. The audit required by this condition 11.2 must be a comprehensive audit and must meet any requirements specified by the *Tribunal*. The *Licence Holder* must provide the audited report to the *Commonwealth Representative* at the same time that the report is provided to the *Tribunal*.
- 11.3 The *Tribunal* may provide guidance to the *Approved Auditor* as to the *Licence Holder's* practices that have satisfied or will satisfy conditions 9 and 10.
- 11.4 The report required under condition 11.1 must be accompanied by a certification in writing supported by a resolution of the Board of the *Licence Holder* that, with respect to the relevant period:
- (a) the *Licence Holder* has complied with conditions 9 and 10; or
 - (b) the *Licence Holder* has not complied with conditions 9 and 10 and certifying the nature and extent of each non-compliance and the steps taken by the *Licence Holder* to ensure compliance (and to preclude further non-compliance) and the timeframe within which it expects to achieve compliance.

[6] New condition 19A

Insert before condition 20:

19A Compliance with Public Lighting Code

- 19A.1 From 1 July 2019, the *Licence Holder* must ensure that it and all other network operators of its *distribution system* comply with the NSW Public Lighting Code published by the Department of Planning and Environment, as amended from time to time.
- 19A.2 The *Licence Holder* must comply at its own expense and within a reasonable timeframe nominated by the *Tribunal*, with any request from the *Tribunal* to have the *Licence Holder's* compliance with condition 19A.1 audited by an *Approved Auditor*.

[7] New definitions

Insert the following definitions in alphabetical order in B2:

| | |
|------------------|---|
| Connection point | in relation to the premises of a <i>customer</i> or a class of <i>customers</i> , means the point of connection to an electrical installation supplying electricity to the premises as determined in accordance with the Service and Installation Rules of New South Wales, as in force from time to time, published by the |
|------------------|---|

| | |
|-------------------------------|---|
| | Department of Planning and Environment. |
| Individual customer standards | means the individual customer standards in Schedule 8 to these conditions. |
| Load Data | <p>means data as to the quantum of electricity delivered (both historical and current load demand from or to any one of more sites (or their connection points) which satisfies each of the following criteria:</p> <p>means data as to the quantum of electricity delivered (both historical and current load demand from one or to any one or more sites (or their <i>connection points</i>) which satisfies each of the following criteria:</p> <ol style="list-style-type: none"> i. it is not historical load data older than 30 days; ii. it is not fault data; iii. it describes a location that allows a customer(s) or <i>connection point(s)</i> to be identified; iv. it describes a date and time of the data record; and v. it describes a duration – a length of time that allows for a quantum to exist. |
| Minutes interrupted | means the total number of minutes from any <i>interruption</i> to a <i>customer</i> over the relevant 12 month period. |
| Number of interruptions | means the total number of times there is an <i>interruption</i> to a <i>customer</i> over the relevant 12 month period. |
| Protocol | <p>means a document of the type referred to in conditions 9.1 and 9.2, that is required by the Commonwealth and which must be agreed to between the <i>Commonwealth Representative</i> and the <i>Licence Holder</i>, the document may set out (among other things) the:</p> <ol style="list-style-type: none"> i. specified purpose for which maintenance of <i>distribution system</i> equipment may be conducted offshore and the circumstances in which it may be conducted off shore; ii. methodology and activities to be undertaken to allow for maintenance and repairs of <i>distribution system</i> equipment to be carried out involving remote access from offshore; iii. the exceptional circumstances in which the <i>Protocol</i> applies; and iv. activities and processes which achieve requisite level of cyber-security. |

[8] Definition of connection point

Omit the words 'connection point' wherever occurring and substitute '*connection point*'.

[9] Substituted Definition

In the definitions, substitute the following definitions:

| | |
|------------------|--|
| Approved Auditor | means an auditor who has been approved by the <i>Tribunal</i> in accordance with any <i>Audit Guidelines</i> issued by the <i>Tribunal</i> . |
|------------------|--|

Commonwealth
Representative

means the First Assistant Secretary, with responsibility for Critical Infrastructure Security within the Commonwealth or equivalent level in a subsequent agency with responsibility for Critical Infrastructure Security.

[10] Deleted Definition

Omit the term '*Approved Critical Infrastructure Auditor*' and its corresponding meaning.

Schedule 4 – Excluded Interruptions

In paragraph (a) of Schedule 4, omit the words 'one minute' and substitute 'three minutes'.

[11] Schedule 6 – Major Event Day

In Schedule 6, omit "Ausgrid" and substitute "the *Licence Holder*".

[12] Schedule 6 – Major Event Day

In the first paragraph of the section titled 'Explanation and Purpose' of Schedule 6, omit the words '*network overall reliability standards and individual feeder standards*' and substitute '*network overall reliability standards, individual feeder standards and individual customer standards.*'

[13] Schedule 6 – Major Event Day

In the section titled 'Determining a major event day', omit the words '*electricity distributor*' and substitute '*Licence Holder*'.

[14] New Schedule 8

Insert new Schedule 8 after Schedule 7:

SCHEDULE 8 - INDIVIDUAL CUSTOMER STANDARDS

The *minutes interrupted* and *number of interruptions* will be measured at the *connection point* for each *customer*.

| Type of area in which the affected connection point is located | Minutes interrupted | Number of interruptions |
|--|---------------------|-------------------------|
| <i>Metropolitan</i> | 350 | 4 |
| <i>Non-Metropolitan</i> | 1000 | 8 |