

AGENCY DEED FOR ELECTRICITY <160MWh – SMALL TARIFF SITES: PARTICIPANT TERMS & CONDITIONS

1. Background

This agency deed inclusive of the attached Schedules (**Deed**) sets out the terms and conditions on which the party listed in Part A (Council Details) of Schedule A (**You/Your**) appoints the Municipal Association of Victoria ABN 24 326 561 315 (the **MAV**) as Your agent, with respect to the supply of procurement services for Electricity – Small Sites, the scope and duration for which is set out in Schedule A.

2. Appointment of Agent

With effect from the Date of Appointment listed in Part B (Term of Appointment) of Schedule A (**Date of Appointment**), You appoint the MAV to act as Your agent on the terms and conditions set out in this Deed.

3. Acceptance of Appointment

As from the Date of Appointment, the MAV agrees to act as Your agent on the terms and conditions set out in this Deed.

4. Term of Appointment

This Deed will commence on the Date of Appointment and will continue until the later of:

- (a) the date on which the Agency Scope (as defined below) under this Deed has been completed; or
- (b) the relevant time period set out in Part B (Term of Appointment) to Schedule A has expired, unless terminated earlier in accordance with clause 12 (**Term**). The Deed will automatically renew to extend the Term by the renewal period specified in Part B (Term of Appointment) to Schedule A unless a party notifies the other in writing to prevent such renewal at least 60 days prior to the end of the Term.

5. Scope of Agency

- (a) You authorise the MAV to act as Your exclusive agent for the Term for the purpose set out at Part C (Description of Appointment) of Schedule A (**Agency Scope**). For clarity, such exclusive appointment does not prevent the MAV being appointed by any third party (including any Council) with respect to the same or similar Agency Scope, and subsequently undertaking that agency appointment.
- (b) You agree that:
 - (i) the MAV may (without the requirement to obtain Your further consent) appoint any third delegate(s) to perform all or part of the Agency Scope (each an **Authorised Delegate**); and
 - (ii) where necessary or appropriate to give effect to the intention of the parties under this Deed, this Deed is to be interpreted to reflect the fact that the Authorised Delegate is authorised by the MAV to perform on the MAV's behalf (including receiving and/or providing instructions or materials) such delegated Agency Scope.

6. Agency - Third Party Dealings

6.1 You acknowledge and agree that the MAV:

- (a) may on Your behalf, to the extent permitted by the Agency Scope, submit (or receive) proposals, respond to (or invite) tenders or requests for information (**RFI**), negotiate terms and enter into binding contract(s), to (or with) one or more third party suppliers (each a **Supplier**),

for the supply of goods and / or services by the Supplier to You (each a **Third Party Dealing**); and

- (b) is the sole contact point with any Supplier(s) in relation to the Third Party Dealing (and You must not contact any Supplier(s) in relation to the Third Party Dealing), unless otherwise agreed in writing with the MAV.

6.2 You must:

- (a) at the MAV's reasonable request, provide to the MAV any assistance, information and data relating to each Third Party Dealing, including:
 - (i) any commitment (including with respect to volumes, usage, price and contract term) that You agree to commit to as part of the Third Party Dealing, including as set out at Schedule C to this Deed (**Third Party Commitment**);
 - (ii) a description of any information (including with respect to volumes, usage, price and contract term) the subject of any Third Party Commitment and supporting documentation that may be incorporated into any proposal, tender or RFI the subject of any Third Party Dealing (the **Response**); and
 - (iii) assist the MAV in responding to any queries, requests for information or other communications from the Supplier relating to the Third Party Dealing and, where relevant and requested by the MAV, communicate directly with the relevant Supplier, in a timely manner to ensure that the MAV is able to prepare and / or submit the relevant proposal, tender or RFI the subject of any Third Party Dealing;
- (b) ensure that appropriate employees attend meetings with authorised representatives of the MAV (and where relevant, the Supplier) at such times as the MAV reasonably requests; and
- (c) provide sufficient personnel and resources that are skilled, have the appropriate levels of expertise, experience and qualifications to assist the MAV in each Third Party Dealing.

6.3 You must ensure that, to the best of Your knowledge, all information and data provided by You to the MAV in each Third Party Dealing (including as part of the Response) is:

- (a) true and accurate in all respects and is not misleading in any respect;
- (b) in the form required by the MAV; and
- (c) provided to the MAV within sufficient time to enable compliance with any time limits imposed by the Supplier.

6.4 You agree that:

- (a) You will promptly inform the MAV of any inaccuracies, commercial or technical problems or any other potential issues arising from or related to the Third Party Commitment (including as part of the Response); and
- (b) unless otherwise agreed by the parties in writing:
 - (i) the Third Party Commitment must remain valid for duration of the Term; and
 - (ii) You must participate in the Third Party Dealing process and accept the outcomes (including any contract with the Supplier) of the resulting Third Party Dealing process that binds You (or the MAV) to the Third Party Commitment.

7. Fees and Payment

There will be no up-front cost to You in performance by the MAV of the Agency Scope.

8. Confidentiality

- 8.1 **(Confidential Information)** If a party (“**recipient**”) receives Confidential Information from the other party (“**discloser**”), recipient must hold it in confidence and not (unless with discloser’s prior written consent) disclose or use it except as allowed by this Deed or as required by law. Confidential Information may be disclosed to recipient’s (and in the case of the MAV, to any Authorised Delegate(s) and any of its affiliates) employees, agents, professional advisors, contractors and suppliers (and then on a need-to know basis only), and recipient must ensure that those persons maintain such Confidential Information in accordance with this clause. Recipient will, on request of discloser, return to discloser all Confidential Information in its possession or certify the destruction of it, except to the extent such Confidential Information is embedded in any work to which a party has any on-going licensed right of use.

For the purpose of this Deed, “**Confidential Information**” means any information of the discloser that a reasonable person would assume - by its form, nature, content or mode of transmission – to be confidential, whether written or oral; but it excludes information which: (i) was rightfully in the recipient’s possession or known to it prior to its receipt from discloser; (ii) was rightfully disclosed to recipient by a third party; (iii) is publicly available (and didn’t become public because of a breach of confidentiality by recipient); and/or (iv) is independently developed by recipient without use or reference to discloser’s Confidential Information.

- 8.2 **(Announcements)** You will not make any public press or other announcement relating to this Deed and the transactions the subject of it (including any Third Party Dealing) without the MAV’s prior written consent, unless the announcement is required to be made by law.

9. Intellectual Property

- 9.1 Any intellectual property rights developed solely by one party, including by its employees, contractors or suppliers, in the course of work performed for a Third Party Dealing, or in performance of this Deed, belongs exclusively to that party.
- 9.2 If any intellectual property rights in a work belong to one party, then the intellectual property rights in any modifications or adaptations to that work belong to the party that owns the intellectual property rights in the work.
- 9.3 Subject to clauses 9.1, 9.2 and 9.4, any copyright subsisting in or as part of, any proposal, tender or RFI the subject of any Third Party Dealing will belong to the MAV.
- 9.4 You grant to the MAV a royalty-free, perpetual and irrevocable licence (including the right to grant sub-licences to the MAV’s affiliates, contractors and/or suppliers (including any Authorised Delegate(s)) to use, copy and edit the Response for the purposes of any Third Party Dealing, and, where relevant, to perform the MAV’s obligations under this Deed. The MAV agrees that any such edits will not amend the intent or outcome of the Response.

10. Warranties

Each party warrants and represents that:

- (a) it has the legal power to enter into this Deed and perform its obligations under this Deed; and
- (b) it will comply with all applicable laws in exercising its rights and performing its obligations under this Deed.

11. Liability

- 11.1 To the maximum extent permitted by law, the MAV will not be liable (whether in contract (including under an indemnity), tort (including negligence), under statute or otherwise) for any indirect, special, consequential, incidental, or punitive damages of any nature, including any loss of profit (or revenue), reputation, business, opportunity and/or anticipated savings, regardless of whether a party knew of the potential for such damages. For any liability (whether in contract (including under an indemnity), tort (including negligence), under statute or otherwise) for which the foregoing exclusion does not apply, then to the extent permitted by law, the MAV limits such liability to supplying the relevant services again (the subject of the claim giving rise to the liability) or payment of the cost of having those services supplied again.

12. Termination

- 12.1 The MAV may terminate this Deed:
- (a) in whole or part on 30 days' prior written notice to You (without having to show cause); and
 - (b) where relevant, the Third Party Dealing is terminated or ceases to continue.
- 12.2 Either party may also terminate this Deed immediately on notice, if the other:
- (a) breaches this Deed in a material way and fails to remedy that breach (if it can be remedied) within 15 days after receiving notice of the breach; or
 - (b) becomes insolvent.

13. General

- 13.1 **(Notices)** Any notice from one of us to the other must be in writing, and sent to the recipient's registered business address (or any different address notified previously by the recipient).
- 13.2 **(Waiver)** If a party does not exercise a right at any time in connection with a default under this Deed, this does not mean that party has waived the right or cannot exercise the right later.
- 13.3 **(Severance)** If a clause of this Deed is held illegal, void or unenforceable, it will be severed so that the remainder of this Deed continues to be legal and enforceable.
- 13.4 **(Force Majeure)** No party is liable for any failure or delay in performing its obligations under this Deed to the extent due to anything beyond that party's reasonable control.
- 13.5 **(Governing Law & Jurisdiction)** This Deed is governed by the laws of Victoria, Australia, and each party submits to the exclusive jurisdiction of the courts of that State and appeal courts from them.
- 13.6 **(Entire Agreement)** This Deed is the entire agreement between the parties as to its subject matter and supersedes any prior understanding or agreement between them. It may be altered only in writing executed by the parties.
- 13.7 **(Counterparts)** This Deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.
- 13.8 **(Survival)** Clauses 8, 9, 11 and 13 (together with any other provision of this Deed which the parties intend to survive termination or expiry) will survive termination or expiry of this Deed.
- 13.9 **(Interpretation)** In this Deed, unless the context otherwise requires: (i) headings are for ease of reference only and do not affect the meaning of this Deed; (ii) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Deed or any part of it; (iii) a reference to the word 'including' or 'includes' is to be construed without limitation to the preceding words; and (iv) a reference to "\$" or "dollar" is to the Australian dollar.

EXECUTED as a deed.

**Signed, sealed and delivered for
Municipal Association of Victoria (ABN
24 326 561 315)** by its authorised
representative in the presence of:

Date:

Signature of witness

Signature of attorney

Name of witness (print)

Name of attorney (print)

Signature of attorney

Name of attorney (print)

**Signed, sealed and delivered by You by
Your authorised representative in the
presence of:**

Date: 08/03/2023

Tammy Smith

Signature of witness

Kylie Zanker

Signature of authorised representative

Mayor Kylie Zanker

Tammy Smith

Name of witness (print)

Chief Executive Officer

Chris Lehmann

Name of authorised representative (print)

Councillor Chris Lehmann



Schedule A – Agency Appointment

PART A – COUNCIL DETAILS	
Party	Yarriambiack Shire Council
Address	34 Lyle Street, Warracknabeal Victoria 3393
PART B - TERM OF APPOINTMENT	
Date of Appointment	08/03/2023
Length of Appointment	36 months
Renewal Options	
PART C - DESCRIPTION OF APPOINTMENT	
<p>The parties acknowledge and agree that the scope of the MAV's agency will be to:</p> <ul style="list-style-type: none"> (a) Conduct a public tender for the procurement of providers for Electricity - small sites as nominated in, and as per the procurement process set out in, Schedule B (Process & Tender Parameters); (b) Act as agent in conducting the procurement and tendering process to select suppliers of Electricity - small sites on behalf of Councils; (c) Assess, negotiate, make recommendations to Council with the input and advice of Council; (d) Enter into an Agreement with the selected supplier (or more than one Agreement where multiple suppliers are selected) for a standing offer to supply Electricity - small sites (and related goods and services) to Councils; (e) Manage the ongoing relationship between Council and the selected supplier(s); and (f) Do all other things and act as necessary on behalf of Council to give effect to the collaborative procurement of Electricity - small sites. <p>The parties acknowledge and agree that this is a committed volume arrangement and as such understand:</p> <ul style="list-style-type: none"> (a) The historical annual usage volumes provided by Council or obtained via their current retailers will form part of the committed aggregated volumes forming the basis of this collaborative request for tender (i.e. they will form part of the Third Party Commitment (as defined)); and (b) That this Agency Agreement commits Council to participate in the tender process and accept the outcomes of the resulting request for tender. 	

Schedule B – Tender Procedure & Timeline

Small Electricity Sites Supply Contract (EC8310-2023-Small)

Objective

Best value Small Tariff Electricity supply and service to Councils

Compliance and Expertise

The process to be conducted in accordance with the Local Government Act 2020. MAV has engaged Trans Tasman Energy Group (TTEG) www.tteg.com.au to assist with the technical aspects of this project. TTEG is experienced in the process of conducting multisite tender for councils in NSW, SA and Victoria.

Participation

Contracts expiring prior to 31 December 2023 can be included in the process.

Timing and Stages

TTEG will be going to market as per the below timeline, to ensure contracts to be in place for commencement 1 July 2023, or at the date of your current contract expiry.

The Indicative Timeline:

Timeline:	Indicative dates
Agency Agreements (council participation) completed	24 March 2023
Confirm Site Lists and Compile Council Data Profiles	28 April 2023
Request documentation development	12 May 2023
Tender notice issued	13 April 2023
Tender Open	15 May 2023
Tender Close	29 May 2023
Tender Evaluation Completed	1 June 2023
Tender Evaluation Report provided to Councils for endorsement	5 June 2023
MAV confirms acceptance of Retailer(s) Offer	5 June 2023
Retailer Contracts to Councils	6 June 2023
Retailer Contracts Signed by Councils	6 June 2023

Evaluation and Recommendation

The evaluation process will be conducted by TTEG. The process will result in a summary report being forwarded to all participating councils prior to announcing an outcome. MAV will oversee the probity of the process.

Cost

There will be no up front cost to Council. TTEG will be paid by MAV via a Management Fee paid by the retailer. Fees will not exceed 1.9% of billed volume.

SCHEDULE C

Agency Agreement

Small Tariff Electricity Sites Supply Contract (EC8310-2023-Small)

By signing a copy of this correspondence, **Yarriambiack Shire** Council hereby accepts the terms and conditions outlined in this letter and acknowledges and agrees that it is appointing MAV to act as its agent for the procurement of Small Tariff Sites.

I also confirm that I have the authority within my Council to appoint the MAV to act as the agent for the purpose of the collaborative procurement of Small Tariff Electricity Sites Supply Contract.

This letter also authorises the MAV to seek data and information (via TTEG) from our current retailer(s) regarding our Small Tariff Electricity Sites usage.

Electricity

Contract Expiry Date (if known)

Small Tariff Sites (< 160MWh p.a.)

/ 30 / 06 / 2023

X



Signed for and on behalf of **Yarriambiack Shire** Council by its authorised representative

Name: **Tammy Smith** Position: **Chief Executive Officer**

Dated: **08/03/2023**
(dd/mm/yy)

Council Contacts for Tender:

Primary Contact

Secondary Contact

Name: **Helen Pollard** **Anita McFarlane**

Phone: **0477 293 333** **0409 640 902**

Position: **Procurement Officer** **Manager Corporate Services**

Email: **hpollard@yarriambiack.vic.gov.au** **amcfarlane@yarriambiack.vic.gov.au**

Please return this form via email to procurement@mav.asn.au by **24 March 2023**.