national electrical and communications association

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TKB User Agreement

A. NECA SA/NT is engaged in the business of providing advice and services to its members in the electrical and communications contracting industry.

B. The Member runs a business in the electrical and communications contracting industry ("Business"), pays an annual membership fee to NECA SA/NT ("Membership Fee") to be a NECA Member, and seeks access to Technical Information for general use in the Business.

C. NECA SA/NT has agreed to provide access to Technical Information in the electrical and communications contracting industry by way of a password protected online Technical Knowledge Base ("TKB"), which access is subject to the terms and conditions set out in this Agreement.

1. DEFINITIONS & INTERPRETATION

1.1. Definitions

In these terms and conditions unless the contrary intention appears the following expressions shall have the following meanings:

"**Agreement**" means this User Agreement between NECA SA/NT and the Member.

"**Business**" means the business run by the Member in the electrical and communications contracting industry.

"Commencement Date" means the date on which the Member accepts these terms and conditions (either by accessing the TKB or be electronic notification they have read and understood the Agreement).

"Confidential Information" means all information and know ledge (however sourced) concerning any of the procedures, services or customers, existing or future, of NECA SA/NT; Ideas and concepts and all business confidences of NECA SA/NT but excluding any such information, knowledge, ideas and concepts or confidences to the extent that the same are or become public knowledge through no act or failure on behalf of the Member, or which the Member can show was already in the possession of the Member at the time of disclosure to the Member and was not acquired directly or indirectly from NECA SA/NT or from any third party under an obligation of confidence;

"Copyrighted Material" means information available on the TKB which is subject to copyright owned by either NECA SA/NT or a third party.

"**Force Majeure**" means any act, omission or circumstance over which either party could not reasonably have exercised control;

"Member" means the member nominee (as provided to NECA SA/NT) for the Business, and any person who subsequently accepts these terms and conditions in order to access the TKB.

"Operational Date" means the date on which NECA SA/NT provides the Member with access to the TKB.

"Technical Information" may include but is not limited to articles, links to legislation and bulletins, Network Operator information, information about Australian Standards, and responses by NECA SA/NT to questions submitted by Members seeking clarification of technical legislation, standards, codes and guidelines, as well as SA Power Networks, Office of the Technical Regulator and other licensing issues, as varied from time to time.

"Term" means the period of time that NECA SA/NT agrees to provide the Member with access to the TKB; and

"**TKB**" means the Technical Knowledge Base service to be provided by NECA SA/NT to Members pursuant to this Agreement.

2. AGREEMENT FOR PROVISION OF ACCESS TO THE TKB

2.1. Access

NECA SA/NT shall provide the Member with access for one initial user from the Operational Date.

2.2. NECA SA/NT will provide access to the TKB for up to four (4) additional employees of the Member's Business at any time during the Term upon request.

2.3. Term

This Agreement shall commence on the Commencement Date and remain in force for as long as the Member is a financial NECA SA/NT member, unless the Member's access to the TKB is cancelled or suspended in accordance with this Agreement, or if written notice of termination of the Agreement on 14 days' notice is served by one party on the other party in the interim period. NECA SA/NT reserves the right to extend the Term by agreement with the Member.

3. BREACH OF AGREEMENT BY MEMBER

NECA SA/NT reserves the right to monitor the use of the TKB to ensure compliance with this Agreement. If the Member breaches one or more of their obligations pursuant to this Agreement or breaches the terms of their NECA SA/NT membership, then NECA SA/NT may in its sole discretion, and without notice, cancel or suspend the Member's access to the TKB.

4. CONSIDERATION

4.1. NECA SA/NT shall be responsible for providing the Technical Information on the TKB and maintaining the TKB for the Term.

4.2. In consideration of NECA SA/NT providing access to the TKB to the Member, the Member shall ensure that the Membership Fee has been paid to NECA SA/NT and the Member agrees to comply with the Conditions contained in Clause 4 below.

4.3. NECA SA/NT reserves the right to charge a fee for access to the TKB and agrees to give the Member fourteen (14) days' notice of any fee to be charged.

5. CONDITIONS

5.1. The Member agrees with NECA SA/NT that it shall:

5.1.1. allow access to the TKB only to employees of the Member's Business permitted to access the TKB by this Agreement;
5.1.2. take all reasonable steps to protect access codes and/or passwords for access to the TKB;
5.1.3. accept the use of the member's TKB passwords for the Chat TKB platform.
5.1.4. take all reasonable steps to ensure that each of its employees uses their own access information to access the TKB;
5.1.5. notify NECA SA/NT within ten (10) days of an employee with current access to the TKB ceasing employment with the Member, so that NECA SA/NT can cancel that former employee's access to the TKB;
5.1.6. Take all reasonable steps to ensure that each employee with access to the TKB does not use the TKB for the purpose of sharing obscene, abusive, threatening, intimidating, fraudulent or defamatory language, ideas or images;
5.1.7. Not sell, sub-license or assign your rights under this Agreement;
5.1.8. not use any Confidential Information;
5.1.9. not sell, reproduce, copy, store, transmit or distribute any of the Copyrighted Information available on the TKB;
5.1.10. not infringe the intellectual property rights of third parties in relation to the Technical Information.

5.2. The obligations set out in clause 5.1.6, clause 5.1.7 and clause 5.1.8 shall be continuing obligations and shall survive the expiration or termination of this Agreement.

5.3. The Member acknowledges that the Technical Information is provided as general information and as a guide only and does not constitute legal advice.

6. INDEMNITY

The Member shall be responsible for and shall indemnify and keep indemnified NECA SA/NT and its directors, officers and employees from and against liability for all loss, including but not limited to direct loss, indirect loss, consequential loss, loss of profit, reputation or otherwise, damage or injury to persons or property caused wholly or in part by the Member or its servants, employees, agents (including any loss, damage or injury which may be suffered by the Member or any of its employees, agents) arising directly or indirectly out of the Member's use of the TKB.

7. INTELLECTUAL PROPERTY

The Member agrees that any Technical Information or information of whatever nature produced or developed by NECA SA/NT pursuant to or in the course of providing access to the TKB, shall remain the sole and complete property of NECA SA/NT. The Member does not acquire any interest, property, rights, title or licence in respect of Technical Information provided by NECA SA/NT on the TKB.

8. DISPUTES

In the event of any dispute arising between the parties relating to the provision of services under this Agreement or the interpretation or application of this Agreement, then such matter shall:-

8.1. In the first instance be referred by one party to the other and the party shall use all reasonable endeavours to resolve the difference or dispute without resort to future process; and

8.2. If the difference or dispute cannot be resolved in such a manner within seven (7) days of the difference or dispute arising then it shall be referred to mediation and if the parties cannot agree as to the appointment of a mediator then the Law Society of South Australia shall appoint a mediator and the parties shall share the costs of same. The mediator shall act as a mediator and not as an arbitrator. If, after the mediation conference, the parties fail to reach a negotiated outcome, only then the parties are free to utilise all other legal courses of action to resolve the dispute.

9. NOTICES

Any notice required to be given by one party to the other party must be in writing and delivered by hand, ordinary post, email or fax to the address of the addressee set out in this Agreement or the other address (if any) notified by the other party to be the address for service of notices.

10. VARIATION OF AGREEMENT

This Agreement shall not be modified or changed subsequent to its execution except in writing signed by NECA SA/NT and the Member.

11. NON WAIVER & SEVERABILITY

The failure by NECA SA/NT to insist upon strict performance of any of the covenants in this Agreement or any delay by NECA SA/NT in exercising any of its remedies or rights shall not constitute or be deemed a waiver by NECA SA/NT. If a court determines that a provision of this Agreement is unenforceable, illegal or void then the remaining provisions shall nevertheless be unaffected and shall continue in full force and effect.

12. ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties and both parties agree that there are no other terms, representations or understandings except those set out in this Agreement.

13. GOVERNING LAW

This Agreement is governed by the law of the State of South Australia and the parties agree to submit to the jurisdiction of the courts of that State for any proceedings arising out of this Agreement.

14. COSTS

Each of the parties shall bear their own costs and expenses of and incidental to the preparation and execution of this Agreement.

15. FORCE MAJEURE

The parties shall not be liable for any delay or failure to perform its obligations under this Agreement (other than the obligation to pay money) if such failure or delay is due to Force Majeure.