



# Electricity Retail Licence

Enwave WA Pty Ltd

ERL28, Version 1, 5 March 2020

**Economic Regulation Authority**

WESTERN AUSTRALIA

***ELECTRICITY INDUSTRY ACT 2004 (WA)***

Licensee Name:	Enwave WA Pty Ltd
	ABN 24 634 578 206
Licence Area:	The area set out in the plan referred to in clause 2.5.
Licence Number:	ERL28
Commencement Date:	5 March 2020
Version Number:	1
Version Date:	5 March 2020
Expiry Date:	4 March 2035

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Signed by a delegate; member; or  
the Chair of the Economic Regulation Authority

5 March 2020

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## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

1.1.1 In this *licence*, the following definitions apply unless the context otherwise requires:

**Act** means the *Electricity Industry Act 2004* (WA).

**applicable legislation** means:

- (a) the *Act*; and
- (b) the *Regulations* and the *Codes*.

**approved scheme** means a scheme approved under section 92 of the *Act*.

**business day** means a day which is not a Saturday, Sunday or a Public Holiday in Western Australia.

**Code** means:

- (a) the *Code of Conduct for the Supply of Electricity to Small Use Customers 2018*;
- (b) the *Electricity Industry (Customer Transfer) Code 2016*;
- (c) the *Electricity Industry (Metering) Code 2012*;
- (d) Not Used

**commencement date** means the date the *licence* was first granted by the *ERA* being the date specified in clause 2.2.

**connection point** has the meaning given to that term in regulation 35 of the *Electricity Industry (Customer Contracts) Regulations 2005*.

**customer** has the meaning given to that term in section 3 of the *Act*.

**default supplier** has the meaning given to that term in regulation 35 of the *Electricity Industry (Customer Contracts) Regulations 2005*.

**distribution system** has the meaning given to that term in section 3 of the *Act*.

**electricity** has the meaning given to that term in section 3 of the *Act*.

**electricity marketing agent** has the meaning given to that term in section 78 of the *Act*.

**electronic means** means:

- (a) the internet;
- (b) email, being:
  - (i) in relation to the *ERA*, the *ERA*'s email address as notified to the *licensee*; and

- (ii) in relation to the *licensee*, the email address specified in the *licence* application or other such email address as notified in writing to the *ERA*; or
  - (iii) any other similar means,
- but does not include facsimile or telephone.

**ERA** means the Economic Regulation Authority.

**expiry date** means the date specified in clause 2.3.

**individual performance standards** mean any standards prescribed by the *ERA* for an individual *licensee* pursuant to clause 5.2 of the *licence*.

**licence** means:

- (a) this document (excluding the title page and the second page of this document);
- (b) any Schedules to this document; and
- (c) any individual *performance standards* approved by the *ERA* pursuant to clause 5.2.

**licence area** is the area stated in clause 2.5 of this *licence*.

**licensee** means Enwave WA Pty Ltd, ABN 24 634 578 206.

**non-standard contract** has the meaning given to that term in section 47 of the *Act*.

**notice** means a written notice, agreement, consent, direction, representation, advice, statement or other communication required or given pursuant to, or in connection with, this *licence*.

**performance audit** means an audit of the effectiveness of measures taken by the *licensee* to meet the *performance criteria* in this *licence*.

**performance criteria** means:

- (a) the terms and conditions of the *licence*; and
- (b) any other relevant matter in connection with the *applicable legislation* that the *ERA* determines should form part of the *performance audit*.

**publish** in relation to a report or information means either:

- (a) posting the report or information on the *licensee's* website; or
- (b) sending the report or information to the *ERA* to be published on the *ERA's* website.

**Regulations** means:

- (a) *Economic Regulation Authority (Licensing Funding) Regulations 2014*;
- (b) *Electricity Industry (Code of Conduct) Regulations 2005*;

- (c) *Electricity Industry (Customer Contracts) Regulations 2005*;
- (d) *Electricity Industry (Licence Conditions) Regulations 2005*;
- (e) Not Used
- (f) *Electricity Industry (Ombudsman Scheme) Regulations 2005*.

**related body corporate** has the meaning given to that term in section 50 of the *Corporations Act 2001 (Cwth)*.

**reviewable decision** means a decision by the *ERA* pursuant to:

- (a) clause 3.8.3;
- (b) Not Used
- (c) Not Used
- (d) clause 5.2.2;
- (e) clause 5.3.2; or
- (f) clause 5.3.4,

of this *licence*.

**small use customer** has the same meaning as the meaning given to “customer” in section 47 of the *Act*.

**standard form contract** has the meaning given to that term in section 47 of the *Act*.

**supplier of last resort** has the meaning given to that term in section 69(1) of the *Act*.

**supply** has the meaning given to that term in section 3 of the *Act*.

**transmission system** has the meaning given to that term in section 3 of the *Act*.

**version date** means the date on which the *licence* was last amended pursuant to clause 3.1 or clause 3.2.

## 1.2 Interpretation

- 1.2.1 A reference in this *licence* to any *applicable legislation* includes, unless the context otherwise requires, any statutory modification, amendment, replacement or re-enactment of that *applicable legislation*.

## 2. LICENCE AUTHORISATION

### 2.1 Activities authorised under this licence

- 2.1.1 The *licensee* is granted a *licence* for the *licence area* to sell *electricity* to *customers* in accordance with the terms and conditions of this *licence*.

## **2.2 Commencement date**

2.2.1 5 March 2020

## **2.3 Expiry date**

2.3.1 4 March 2035

## **2.4 Term** **[Section 15 of the Act]**

2.4.1 This *licence* commences on the *commencement date* and continues until the earlier of:

- (a) the cancellation of the *licence* pursuant to clause 3.5 of this *licence*;
- (b) the surrender of the *licence* pursuant to clause 3.6 of this *licence*; or
- (c) the *expiry date*.

## **2.5 Licence area**

2.5.1 The *licence area* is set out in plan(s):

ERA-EL-156

2.5.2 The *licence area* plan(s) is provided in Schedule 2.

## **3. LICENCE ADMINISTRATION**

### **3.1 Amendment of licence by the licensee** **[Section 21 of the Act]**

3.1.1 The *licensee* may apply to the *ERA* to amend the *licence* in accordance with the *Act*.

### **3.2 Amendment of licence by the ERA** **[Section 22 of the Act]**

3.2.1 Subject to any *applicable legislation*, the *ERA* may amend the *licence* at any time in accordance with this clause.

3.2.2 Before amending the *licence* under clause 3.2.1, the *ERA* must:

- (a) provide the *licensee* with written *notice* of the proposed amendments under consideration by the *ERA*;
- (b) allow 15 *business days* for the *licensee* to make submissions on the proposed amendments; and
- (c) take into consideration those submissions.

3.2.3 This clause also applies to the substitution of the existing *licence*.

3.2.4 For avoidance of doubt, the *licensee* will not have to pay a fee for amendments under clause 3.2.1.

**3.3 Transfer of licence**  
**[Section 18 of the Act]**

3.3.1 This *licence* may be transferred only in accordance with the *Act*.

**3.4 Renewal of licence**  
**[Section 16 of the Act]**

3.4.1 This *licence* may be renewed only in accordance with the *Act*.

**3.5 Cancellation of licence**  
**[Section 35 of the Act]**

3.5.1 This *licence* may be cancelled only in accordance with the *Act*.

**3.6 Surrender of licence**  
**[Schedule 1 of the Act]**

3.6.1 The *licensee* may only surrender the *licence* pursuant to this clause 3.6.

3.6.2 If the *licensee* intends to surrender the *licence* the *licensee* must, by *notice* in writing to the *ERA*:

- (a) set out the date that the *licensee* wishes the surrender of the *licence* to be effective; and
- (b) set out the reasons why the *licensee* wishes to surrender the *licence*, including the reasons why it would not be contrary to the public interest for the surrender of the *licence* to be effective on the date set out in the *notice*.

3.6.3 Upon receipt of the *notice* from the *licensee* pursuant to clause 3.6.2, the *ERA* will publish the *notice*.

3.6.4 Notwithstanding clause 3.6.2, the surrender of the *licence* will only take effect on the later of the day that:

- (a) the *ERA* publishes a *notice* of the surrender in the Western Australian Government Gazette, such date to be at the discretion of the *ERA*; and
- (b) the *licensee* hands back the *licence* to the *ERA*.

3.6.5 The *licensee* will not be entitled to a refund of any fees by the *ERA*.

**3.7 Notices**

3.7.1 Unless otherwise specified, all *notices* must be in writing.

3.7.2 A *notice* will be regarded as having been sent and received:

- (a) when delivered in person to the addressee; or
- (b) three *business days* after the date of posting if the *notice* is posted in Western Australia; or



- (c) five *business days* after the date of posting if the *notice* is posted outside Western Australia; or
- (d) if sent by facsimile when, according to the sender's transmission report, the *notice* has been successfully received by the addressee; or
- (e) if sent by *electronic means* when, according to the sender's electronic record, the *notice* has been successfully sent to the addressee.

### **3.8 Publishing information**

- 3.8.1 The *ERA* may direct the *licensee* to *publish*, within a specified timeframe, any information it considers relevant in connection with the *licensee* or the performance by the *licensee* of its obligations under this *licence*.
- 3.8.2 Subject to clause 3.8.3, the *licensee* must *publish* the information referred to in clause 3.8.1.
- 3.8.3 If the *licensee* considers that the information is confidential it must:
  - (a) immediately notify the *ERA*; and
  - (b) seek a review of the *ERA*'s decision in accordance with clause 3.9.
- 3.8.4 Once it has reviewed the decision, the *ERA* will direct the *licensee* in accordance with the review to:
  - (a) *publish* the information;
  - (b) *publish* the information with the confidential information removed or modified; or
  - (c) not *publish* the information.

### **3.9 Review of the ERA's decisions**

- 3.9.1 The *licensee* may seek a review of a *reviewable decision* by the *ERA* pursuant to this *licence* in accordance with the following procedure:
  - (a) the *licensee* shall make a submission on the subject of the *reviewable decision* within 10 *business days* (or other period as approved by the *ERA*) of the decision; and
  - (b) the *ERA* will consider the submission and provide the *licensee* with a written response within 20 *business days*.
- 3.9.2 For avoidance of doubt, this clause does not apply to a decision of the *ERA* pursuant to the *Act*, nor does it restrict the *licensee*'s right to have a decision of the *ERA* reviewed in accordance with the *Act*.

## **4. GENERAL LICENCE OBLIGATIONS**

### **4.1 Compliance with applicable legislation**

- 4.1.1 Subject to any modifications or exemptions granted pursuant to the *Act*, the *licensee* must comply with any *applicable legislation*.

## **4.2 Fees**

- 4.2.1 The *licensee* must pay the applicable fees and charges in accordance with the *Regulations*.

## **4.3 Accounting records [Schedule 1 of the Act]**

- 4.3.1 The *licensee* and any *related body corporate* must maintain accounting records that comply with standards issued by the Australian Accounting Standards Board or equivalent International Accounting Standards.

## **4.4 Reporting a change in circumstances**

- 4.4.1 The *licensee* must report to the *ERA*:
- (a) if the *licensee* is under external administration as defined by the *Corporations Act 2001 (Cwth)* within 2 *business days* of such external administration occurring; or
  - (b) if the *licensee*:
    - (i) experiences a change in the *licensee's* corporate, financial or technical circumstances upon which this *licence* was granted; and
    - (ii) the change may materially affect the *licensee's* ability to perform its obligations under this *licence*,within 10 *business days* of the change occurring; or
  - (c) if the:
    - (i) *licensee's* name;
    - (ii) *licensee's* ABN; or
    - (iii) *licensee's* address,changes, within 10 *business days* of the change occurring.

## **4.5 Provision of information [Schedule 1 of the Act]**

- 4.5.1 The *licensee* must provide to the *ERA*, in the manner and form described by the *ERA*, *specified* information on any matter relevant to the operation or enforcement of the *licence*, the operation of the licensing scheme provided for in Part 2 of the *Act*, or the performance of the *ERA's* functions under that Part.

## **5. AUDITS AND PERFORMANCE REPORTING OBLIGATIONS**

### **5.1 Asset management system [Section 14 of the Act]**

Not Used

## **5.2 Individual performance standards**

- 5.2.1 Performance standards are contained in *applicable legislation*.
- 5.2.2 The *ERA* may prescribe *individual performance standards* applying to the *licensee* in respect of the *licensee's* obligations under this *licence* or the *applicable legislation*.
- 5.2.3 Before approving any *individual performance standards* under this clause, the *ERA* will:
  - (a) provide the *licensee* with a copy of the proposed *individual performance standards*;
  - (b) allow 15 *business days* for the *licensee* to make submissions on the proposed *individual performance standards*; and
  - (c) take into consideration those submissions.
- 5.2.4 Once approved by the *ERA*, the *individual performance standards* are included as additional terms and conditions to this *licence*.

## **5.3 Performance audit [Section 13 of the Act]**

- 5.3.1 The *licensee* must, unless otherwise notified in writing by the *ERA*, provide the *ERA* with a *performance audit* within 24 months after the *commencement date*, and every 24 months thereafter.
- 5.3.2 The *licensee* must comply, and must require the *licensee's* auditor to comply, with the *ERA's* standard audit guidelines.
- 5.3.3 The *licensee* may seek a review of any of the requirements of the *ERA's* standard audit guidelines in accordance with clause 3.9.
- 5.3.4 The *performance audit* must be conducted by an independent auditor approved by the *ERA*. If the *licensee* fails to nominate an auditor within one month of the date that the *performance audit* was due, or the auditor nominated by the *licensee* is rejected on two successive occasions by the *ERA*, the *ERA* may choose an independent auditor to conduct the *performance audit*.

## **6. CUSTOMERS**

### **6.1 Approved Scheme [Section 101 of the Act]**

- 6.1.1 The *licensee* must not *supply electricity* to *small use customers* unless the *licensee* is:
  - (a) a member of an *approved scheme*; and
  - (b) bound by, and compliant with, any decision or direction of the electricity ombudsman under the *approved scheme*.

### **6.2 Determination of Default Supplier**

Not Used

### **6.3 Marketers**

- 6.3.1 The *licensee* must ensure that an *electricity marketing agent* of the *licensee* complies with the *Code of Conduct for the Supply of Electricity to Small Use Customers*.

### **6.4 Customer Contracts [Section 54 of the Act]**

- 6.4.1 Subject to the *Regulations*, the *licensee* must not *supply electricity* to a *small use customer* otherwise than under:
- (a) a *standard form contract*, or
  - (b) a *non-standard contract* that complies with the *Act*.
- 6.4.2 The *licensee* must, if directed by the *ERA*, review the *standard form contract* and submit to the *ERA* the results of that review within the time specified by the *ERA*.
- 6.4.3 The *licensee* must comply with any direction given by the *ERA* in relation to the scope, process or methodology of the review referred to in clause 6.4.2.

### **6.5 Amending the Standard Form Contract [Section 52 of the Act]**

- 6.5.1 The *licensee* may only amend the *standard form contract* with the *ERA*'s approval.
- 6.5.2 The *licensee* may amend the *standard form contract* at any time by submitting to the *ERA*:
- (a) a proposed amendment to the *standard form contract*, or
  - (b) a proposed substituted *standard form contract*.
- 6.5.3 The *ERA* may:
- (a) approve the amendment to the *standard form contract* or substituted *standard form contract*, or
  - (b) specify the amendments the *licensee* must make to the amended or substituted *standard form contract* before the *ERA* will amend the *standard form contract*,  
  
and notify the *licensee* of its decision within a reasonable time.
- 6.5.4 The *ERA* may, at any time, by *notice* in writing, direct the *licensee* to amend the *standard form contract* by specifying:
- (a) the amendments to be made to the *standard form contract*, and
  - (b) the latest date at which the amendments will come into force.

### **6.6 Directions by the ERA to amend Standard Form Contract [Section 53 of the Act]**

- 6.6.1 The *licensee* must comply with any direction given by the *ERA* pursuant to section 53 of the *Act*.

## **6.7 Supplier of Last Resort [Section 76 of the Act]**

- 6.7.1 If the *licensee* is designated a *supplier of last resort* under the *Act*, the *licensee* must perform the functions of the *supplier of last resort*.

## **6.8 Notification of Default Supply**

- 6.8.1 Where the *licensee* becomes aware of a *small use customer* taking a *supply of electricity* that is deemed to be supplied under the *licensee's standard form contract* in accordance with the *Electricity Industry (Customer Contracts) Regulations 2005*, the *licensee* must, within five days after becoming aware, notify the *small use customer* in writing:
- (a) that the *licensee* is the *default supplier* for that *connection point*; and
  - (b) the effect of regulation 37 of the *Electricity Industry (Customer Contracts) Regulations 2005*.

## **6.9 Priority Restoration Register**

Not Used

## Schedule 1 – Additional Licence Clauses

1. **Compliance with the Electricity Industry (Customer Transfer) Code 2016**
  - 1.1 Despite clause 4.1 of the *licence*, the *licensee* is not required to comply with the *Electricity Industry (Customer Transfer) Code 2016* as long as the licensee is the only retailer selling *electricity* transported through the *distribution system* or *transmission system* (as the case may be).
  - 1.2 The *licensee* must notify the *ERA* within 10 *business days* of the *licensee* becoming aware that there is more than one retailer selling *electricity* transported through the *distribution system* or *transmission system* that is also being used by the *licensee*.

## **Schedule 2 – Licence Area Plans**

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## Amendment Record Sheet

Version Date	Description of Amendment
5 March 2020	Grant of ERL28