

TERMS AND CONDITIONS FOR ACCESS TO AS/NZ STANDARDS

1 DEFINITIONS AND INTERPRETATION In these Terms and Conditions:

- 1.1 **Application** means an application for a Smart Energy Council Online Library Service Agreement
- 1.2 **Authorised user** means you or a contractor or employee of yours or of a company related to you (as defined in the Companies Act 1993 of New Zealand), where you have expressly authorised that contractor or employee to use the Online Library Service.
- 1.3 **Commencement date** means the date on which Smart Energy Council commences your ability to access the Online Library Service
- 1.4 **Online Library portfolio** means all of the Standards New Zealand documents that Smart Energy Council has agreed to provide you with access to under this Smart Energy Council Online Library Service Agreement
 - 1.5 **Online Library Service** means the provision by Smart Energy Council to you and your Authorised users of access to the Standards New Zealand documents through any means deemed suitable by the Smart Energy Council. The Council will deploy reasonable efforts to keep the accessible standards updated.
- 1.5 **Reference collection** means a group of hard copy or electronic (PDF) Standards New Zealand documents which comprise 10% or more of the number of documents within your Online Library portfolio
- 1.6 **Renewal period** means the 30 days prior to a subscription anniversary date
- 1.7 **Standards New Zealand document** means any individual, set, or grouping of standards, handbooks, specifications, manuals, or other items published by Standards New Zealand in electronic form
- 1.8 **Standards New Zealand** means the New Zealand Standards Executive, being a division of the Ministry of Business, Innovation and Employment
- 1.9 **Subscription** means a current right of access to the Online Library Service in accordance with a Smart Energy Council Library Service Agreement.
- 1.10 **Subscription anniversary date** is the first anniversary of the commencement date and, provided you continue to renew your right of access to the Online Library Service, is the anniversary of the commencement date in each subsequent year
 - 1.12 **Subscription fee** means the fee payable from time to time by you to Smart Energy Council to gain access to selected Standards New Zealand documents in the Online Library Service
 - 1.13 **Subscription period** means either the 12-month period between the commencement date and the first subscription anniversary date or the 12 month period between a subscription anniversary date and the next subscription anniversary date
 - 1.14 **You and your** throughout these Terms and Conditions means the party entering into this Standards New Zealand Online Library Service Agreement with Smart Energy Council for access to the Online Library Service.

RIGHT OF ACCESS

2.1 Smart Energy Council grants you and your authorised users a non-exclusive and non-assignable right of access to the Online Library Service.

2.2 This right of access is limited, at any one time, to the number of concurrent authorised users specified by this agreement.

2.3 The right of access to the Online Library Service runs until the 30/11/23 regardless of your commencement date into the agreement. The subscription is available for renewal upon request to the Smart Energy Council for an additional 12 month period commencing on the first day thereafter the completion of the first agreement term. Further 12 month subscriptions are contingent upon payment of a further 12 month subscription fee by the due date of the invoice issued to you by Smart Energy Council during the renewal period.

CONDITIONS OF USE

2.4 An authorised user may download a single copy of a Standards New Zealand document and retain that copy for temporary use on their personal computer for their internal purposes only. Standards New Zealand documents must not be downloaded on to a CD rom, data stick, floppy disk, or other portable device.

2.5 All downloaded Standards New Zealand documents must be deleted upon expiry of your subscription.

2.6 The retention of downloaded Standards New Zealand documents for the purposes of building up an electronic reference collection is expressly prohibited. At its sole discretion Smart Energy Council may require you to make a written declaration on behalf of all authorised users that destruction of all downloaded copies of Standards New Zealand documents has occurred.

2.7 Each authorised user may print one hard copy of any Standards New Zealand document in your Online Library portfolio for their own temporary internal use. These copies may not be used to build up a hard copy reference collection. All hard copies of Standards New Zealand documents must be destroyed on expiry of subscription to the Online Library Service. At its sole discretion Smart Energy Council may require you to make a written declaration on behalf of all authorised users that destruction of all hard copies of Standards New Zealand documents has occurred.

2.8 You do not own any of the Standards New Zealand documents, whether in electronic or hard copy form, obtained directly or indirectly through the Online Library Service. You acknowledge that copyright subsists in each of the Standards New Zealand documents and that full title to that copyright is at all times retained by Standards New Zealand.

2.9 Except as otherwise may be expressly permitted under the Copyright Act 1994 of New Zealand, you undertake not to modify, merge with other software or documents, or circulate including via electronic mail, even for your internal purposes, any part of any Standards New Zealand document in any form without securing the prior written permission of the Smart Energy Council and you undertake to ensure that no Authorised user will engage in such activity.

2.10 Under no circumstances may a Standards New Zealand document, whether in electronic or hard copy form, in full or in part, be sold, or transferred to a third party.

2.11 You will not modify, adapt, translate, reverse engineer, decompile, disassemble, or create derivative works based on the Standards New Zealand documents, or any part of them and you undertake to ensure that no authorised user will engage in such activity without the prior written permission of Smart Energy Council.

2.12 You acknowledge that the right of access to the Online Library Service is personal to you and to each of the authorised users and cannot be transferred, sold, leased, licensed, rented, or loaned via a timesharing, service bureau or other arrangement, or otherwise transferred, with or without consideration, to a third party.

2.13 You undertake to keep all authorised user identification information, including logins and passwords, secret and secure and you further undertake to ensure that each authorised user does the same. Without limiting the foregoing, you agree:

2.13.1 not to permit any third party to use an authorised user's login

2.13.2 not to disclose, or provide to any third party, an authorised user's password or any information that may allow them to gain access to the Online Library Service using an authorised user's identification' and

2.13.3 at all times to use all reasonable efforts to ensure that no improper or unauthorised use of any authorised user's identification information is made.

2.14 You undertake to ensure that no authorised user attempts to damage, interfere with, or harm the Standards New Zealand website or any network or system underlying or connected to the Online Library Service, including by using a robot, spider, scraper, or other automated means to access the website, the Online Library Service, or any of the Standards New Zealand documents for any purpose.

PRICING

2.15 Smart Energy Council will publish a retail subscription price for the entire set of standards available in its Online Library Service. The Smart Energy Council reserves the right to modify these prices in the period leading up to the subsequent annual subscription period.

2.16 Any relevant price reductions including membership discounts will be calculated using the published retail subscription price as the base price.

2.17 All prices are exclusive of GST unless otherwise specified.

2.18 Smart Energy Council may, from time to time, alter the price it charges for any Standards New Zealand document. If the changes relate to any Standards New Zealand documents that you have subscribed to prior to the date of the price change, they will only apply to you from the date of your next subscription anniversary date.

RENEWAL AND TERMINATION

2.19 Except during the renewal period, you must provide at least 30 (thirty) days' notice in writing informing Smart Energy Council that you no longer require your subscription.

2.20 If you do not give such notice at least 30 days prior to your requested termination date, you will be deemed to be continuing to use the Online Library Service after your requested termination date for the full 30 day notice period. If you do not validly terminate your subscription prior to your subscription anniversary date, Smart Energy Council may issue you with an invoice for a further 12 month subscription fee which you will be liable to pay.

2.21 Smart Energy Council is not obligated in any way to provide a refund or credit for any portion of the subscription fee not utilised by you.

2.22 You remain obligated to pay your full subscription fee for the full term of the subscription period.

2.23 During your renewal period, you may cancel your Online Library Service by providing Smart Energy Council with written notice that you no longer require your subscription. Your request will take effect from your subscription anniversary date. If you wish to make changes to your Online Library subscription after it has renewed, an administration fee will be charged.

2.24 Smart Energy Council reserves the right to terminate access without notice to the Online Library Service if payment of the Subscription fee is not received by the invoice due date.

2.25 At any time, Smart Energy Council may give notice of a change:

2.26 to the Subscription fee which will apply to the period after your next Subscription

anniversary date

2.27 to any of these Terms and Conditions governing access to the Online Library Service which, unless otherwise specified, will be deemed to have effect 7 (seven) days from the date of the notice advising of the change.

2.28 Smart Energy Council shall be entitled to terminate you (and your authorised users') access to the Online Library Service automatically and without notice if you or any of your authorised users fail to comply with any of these Terms and Conditions.

2.29 Upon termination of your subscription, you and each authorised user must destroy all copies of the Standards New Zealand documents in your or their possession, power or under your or their control, including all partial copies, whether in electronic or hard copy form, directly or indirectly provided by the Smart Energy Council under the Online Library Service. At its sole discretion Smart Energy Council may require a written declaration from you that such destruction has occurred.

2.30 If, at any time during or after your subscription. Standards New Zealand believes based on reasonable grounds that you or an authorised user has breached any of these Terms and Conditions, you shall permit an independent information technology consultant to act as an auditor, within seven days of being provided notice thereof. You shall permit the auditor (or any other independent person appointed jointly by Standards New Zealand and you) at a reasonable time during normal business hours (at Standards New Zealand's expense) to inspect (and hereby permit such person to enter any building for such purpose) your and each of your authorised users' computers and records for the purpose of verifying compliance with these Terms and Conditions subject to the execution of an appropriate confidentiality agreement. It is also agreed that, for the avoidance of doubt, the auditor can disclose to Standards New Zealand such information as is appropriate to enable Standards New Zealand to have a full understanding of any report being provided by the auditor to Standards New Zealand.

2.31 If as a result of the auditor's inspection any irregularities are found in the manner of compliance with these Terms and Conditions by any authorised user, or at any other time Standards New Zealand has factual evidence giving it reason to believe that there are irregularities in the manner of compliance of any authorised user, and without prejudice to any other rights Standards New Zealand may have, Standards New Zealand shall be entitled, at its discretion

2.31.1 to undertake a review relating to such irregularities and to impose such further conditions relating to such irregularities as it deems reasonably necessary to ensure the proper performance under these terms and conditions, and / or

2.32 to undertake a full review of you and your Authorised users' performance under these terms and conditions and to impose such further conditions as it deems reasonably necessary to ensure the proper performance of all obligations under these terms and conditions.

WARRANTIES

2.33 Standards New Zealand on behalf of the Smart Energy Council is not aware of any inherent risk of viruses in any Standards New Zealand document at the time that it is downloaded. Standards New Zealand has exercised due diligence to ensure, so far as practicable, that such documents do not contain viruses.

2.34 Standards New Zealand on behalf of the Smart Energy Council warrants that it will use reasonable endeavours to maintain the availability of access by authorised users to the Standards New Zealand documents in the Online Library during the continuation of your subscription to the Online Library Service, such access being to a standard which accords with accepted industry practice applicable to services of the nature and of the type or kind of the Online Library Service. From time to time, Standards New Zealand may alter the details of the online service and support it offers. Further details about the online service and support that Standards New Zealand is able to provide are available from the Standards New Zealand website at www.standards.govt.nz.

2.35 To the maximum extent permitted by law, any and all liability and responsibility of the Smart Energy Council to you or any other person under these terms and conditions is excluded regardless of whether such liability arises in contract, tort (including negligence), equity, breach of statutory duty, or otherwise. Smart Energy Council liability and responsibility is excluded in respect of any and all loss or damage, whether direct or indirect, including, without limitation, loss of profits, loss of data, loss of business or anticipated savings, general and special damages, and consequential and incidental loss.

2.36 Under no circumstances shall Smart Energy Council be held liable for any delay or failure in performance resulting directly or indirectly from acts of nature, forces, or



causes beyond its reasonable control, including, without limitation, internet failures, computer equipment failures, telecommunication equipment failures, other equipment failures, electrical power failures, strikes, labour disputes, riots, insurrections, civil disturbances, shortages of labour or materials, fires, floods, storms, explosions, acts of God, war, governmental actions, orders of domestic or foreign courts or tribunals, non-performance of third parties, or loss of or fluctuations in heat, light, or air conditioning.

2.37 To the full extent permitted by law Smart Energy Council excludes all implied and express terms, conditions and warranties, including warranties as to the fitness of any of the Standards New Zealand documents or of the Online Library Service for a particular purpose.

LAW

2.38 New Zealand law applies exclusively to the interpretation of these Terms and Conditions including interpretation of whether there has been compliance or non-compliance with any term or condition by you, an authorised user or Smart Energy Council, all of whom submit to the exclusive jurisdiction of the New Zealand Courts.

2.39 Regardless of from where in the world the Online Library Service is accessed, the use of the Online Library Service to download any Standards New Zealand document is deemed to be reconfirmation of your agreement to these Terms and Conditions.

TERMS OF BUSINESS

2.40 All invoices must be paid by within one calendar month following the invoice issue date.

2.41 Any disputes, returns, or claims on charges or stock supplied must be made within 7 business days of the invoice date.

2.42 Provision of credit is subject to the outcome of credit or other checks which Smart Energy Council may carry out at its sole discretion.

2.43 Smart Energy Council is authorised to obtain credit information from a credit provider, and to make reasonable use of such information, in accordance with the Credit Reporting Privacy Code 2004.

2.44 Smart Energy Council is authorised to obtain information about my or my organisation's Credit worthiness from any independent referees, which I may nominate at Smart Energy Council's request.

2.45 Smart Energy Council reserves the right to stop credit if invoices are not paid by the due date, or if the outcome of a credit or other check is unsatisfactory to Smart Energy Council.

2.46 Smart Energy Council reserves the right to temporarily suspend subscription services and/or credit facilities and to refuse to supply further goods or services until amounts owing are paid.

THE INDEPENDENT BODY FOR THE SMART ENERGY INDUSTRY IN AUSTRALIA

PO BOX 231, MAWSON ACT 2607
INFO@SMARTENERGY.ORG.AU
SMARTENERGY.ORG.AU
ABN 32 006 824 148



**PUTTING ENERGY
INTO ACTION**

2.47 Smart Energy Council reserves the right to charge 2% interest per month on any overdue amounts owing.

2.48 Debt collection, administration, and legal fees will be charged in the event Smart Energy Council terms of trade are not met and debt recovery action is taken.



John Grimes

Chief Executive
Smart Energy Council