

TECHNICAL KNOWLEDGE BASE USER AGREEMENT



BETWEEN

NATIONAL ELECTRICAL AND COMMUNICATIONS
ASSOCIATION OF NSW and ACT
ABN 27 056 174 413) (**'NECA NSW'**)
ABN 86 870 297 399) (**'NECA ACT'**)

AND



(**'MEMBER'**)

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NATIONAL ELECTRICAL AND COMMUNICATIONS ASSOCIATION



THIS AGREEMENT is made on

BETWEEN The National Electrical and Communications Association NSW
(ABN 27 056 174 413) Level 3, 28 Burwood Road, Burwood NSW 2134
("NECA NSW")

The National Electrical and Communications Association ACT
(ABN 86 870 297 399) 1/2 Yallourn Street, Fyshwick ACT 2609
("NECA ACT")

AND

("MEMBER")

RECITALS

NECA NSW is engaged in the business of providing advice and services to its members in the electrical and communications contracting industry.

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

NECA NSW 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 Agreement between NECA NSW and the Member.

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

“**Commencement Date**” means the date this Agreement is signed by both parties.

“**Confidential Information**” means all information and knowledge (however sourced) concerning any of the procedures, services or customers, existing or future, of NECA NSW; ideas and concepts and all business confidences of NECA NSW 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 NSW 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 NSW or a third party.

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

“**Operational Date**” means the date on which NECA NSW 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 NSW to questions submitted by Members seeking clarification of technical legislation, standards, codes and guidelines, as well as network provider documents, NECA WHS document, and licensing issues.

“**Term**” means the period of time that NECA NSW agrees to provide the Member with access to the TKB; and

“**TKB**” means the Technical Knowledge Base service to be provided by NECA NSW to Members pursuant to this Agreement.

2. AGREEMENT FOR PROVISION OF ACCESS TO THE TKB

2.1. Agreement

The Member agrees to subscribe to access the TKB. NECA NSW shall provide the Member with access to the TKB upon the terms and conditions contained in this Agreement.

2.2. NECA NSW will provide access to the TKB for up to ten (10) employees of the Member's Business at any **time during the Term**.

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 NSW 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 NSW reserves the right to extend the Term by agreement with the Member.

3. BREACH OF AGREEMENT BY MEMBER

NECANSW 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 NSW membership, then NECA NSW may in its sole discretion, and without notice, cancel or suspend the Member's access to the TKB.

4. CONSIDERATION

4.1.1. NECA NSW shall be responsible for providing the Technical Information on the TKB and maintaining the TKB for the Term.

In consideration of NECA NSW providing access to the TKB to the Member, the Member shall ensure that the Membership Fee has been paid to NECA NSW and the Member agrees to comply with the Conditions contained in Clause 5 below. NECA NSW 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 NSW 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. take all reasonable steps to ensure that each of its employees uses their own access information to access the TKB;

5.1.4. notify NECA NSW within ten (10) days of an employee with current access to the TKB ceasing employment with the Member, so that NECA NSW can cancel that former employee's access to the TKB;

5.1.5. 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;

5.1.6. not use any Confidential Information;

5.1.7. not sell, reproduce or distribute any of the Copyrighted Information available on the TKB;

5.1.8. 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 NSW 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 NSW pursuant to or in the course of providing access to the TKB, shall remain the sole and complete property of NECA NSW. The Member does not acquire any interest, property, rights, title or licence in respect of Technical Information provided by NECA NSW 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 matters 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 NSW 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 NSW and the Member.

11. NON WAIVER & SEVERABILITY

The failure by NECA NSW to insist upon strict performance of any of the covenants in this Agreement or any delay by NECA NSW in exercising any of its remedies or rights shall not constitute or be deemed a waiver by NECA NSW. 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 NSW 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.



national
electrical and
communications
association

AGREEMENT

EXECUTED as an agreement

Executed by _____ If the

Member is a company, in accordance with s.127 of the Corporations Act 2001:

Name of Director/Company Representative

Signature of Director/Company Representative

Date

Name of Witness

Signature of Witness

Date

Signed on behalf of NECA NSW

Name of Authorised Representative

Signature of Authorised Representative

Name of Witness

Signature of Witness

Date