

CONTESTABLE CUSTOMER METERING AGREEMENT

TERMS AND CONDITIONS

1. Acceptance and Term

1.1 This Agreement commences on the Commencement Date.

1.2 Notwithstanding clause 1.1, the obligation to provide the Services under this Agreement with respect to a Metering Point commences on the date Metering Dynamics has accepted such appointments and has procured such installations and commissioning as is necessary in order to provide the relevant Services (“**Effective Date**”).

The Effective Date shall be a date as soon as practicable following:

- (a) (in the case where the Services nominated by the Customer do not comprise MC) the Commencement Date; and
- (b) (in the case of Metering Coordinator Services) on the date of Metering Dynamics’ acceptance of an appointment by the FRMP or (if the Customer is a Large Customer) the Customer, for each of the Customer’s Sites(s) with respect to the relevant Metering Point provided that the terms of the appointment (including price) are acceptable to Metering Dynamics.

The Service Fee in respect of each Metering Point shall only be payable by the Customer from the Effective Date.

1.3 If Metering Dynamics is not offered an appointment by the FRMP or the Customer pursuant to clause 1.2(b) in respect to a Metering Point then, if MC is the only Service for that Metering Point, that Metering Point shall be excised from this Agreement by notice by Metering Dynamics to the Customer.

1.4 If the obligation to provide the Services under this Agreement commences in respect of any Metering Point then it will continue in respect to that Metering Point for the Initial Term as specified in item 1 of the Schedule (“**Initial Term**”), and thereafter on a monthly basis until terminated by either Party on one month’s written notice to the other Party.

1.5 The Customer may, by prior notice (given either directly by the Customer or through its Metering Coordinator) and payment of the relevant Exit Fee to Metering Dynamics, excise a Metering Point from this Agreement at any time prior to the End of the Initial Term. The Exit Fee is waived where the Customer excises a Metering Point in circumstances where:

- (a) the Customer sells, or permanently vacates or shuts down a Site on which that Metering Point is located; or

- (b) the business of the Customer carried on at that Site and which utilised that Metering Point has ceased.

If all Metering Points under this Agreement are excised then this Agreement shall expire immediately.

2. Contract Negotiations

If, after the Commencement Date, the Customer enters into negotiations for a retail contract in respect of one or more Metering Points with a Retailer of Choice who is not the FRMP for the relevant Metering Point(s), the Customer must notify that Retailer of Choice of this Agreement and, if that Retailer of Choice becomes the FRMP for the relevant Metering Point(s), the Customer will use reasonable endeavours to procure that the Retailer of Choice appoints Metering Dynamics as the MC of those Metering Point(s).

3. Payment Terms

3.1 Subject to clause 3.2 and 3.3, Metering Dynamics will use reasonable endeavours to arrange with the Retailer(s) of Choice to invoice the Customer for the Service Fee for Services under this Agreement (and where applicable the Data Analysis Service Fee and the Exit Fee) with charges for electricity, metering and related services under the Customer’s electricity supply agreement with the Retailer(s) of Choice for the Site(s).

3.2 Where the Customer nominates DWS, DTS and/or Integrated Services (or any combination of the foregoing) or Metering Dynamics does not invoice through the Retailer of Choice under clause 3.1 then Metering Dynamics may (at its option) directly invoice the Customer for the Service Fee for these Services. Any such invoices will be issued monthly in arrears from the first day of the month.

3.3 Metering Dynamics (if the Approved Person so requires) may arrange for any Data Analysis Service Fee to be passed to the Customer:

- (a) under clause 3.1 through the Retailer of Choice, together with the Service Fee; or
- (b) through Metering Dynamics’ invoice under clause 3.2, together with the Service Fee.

3.4 The Customer agrees to pay the Service Fee (and if applicable, the Data Analysis Service Fee and the Exit Fee) and any GST amount applicable to:

- (a) the Retailer(s) of Choice if clause 3.3(a) applies; and
- (b) Metering Dynamics if clause 3.3(b) applies, within 21 days of the date of invoice.

3.5 The Customer consents to a payment by Metering Dynamics to the Approved Person in the event that, as a result of the introduction of the Customer to

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Metering Dynamics, the Services have been provided by Metering Dynamics to the Customer.

4. EMP Multi Plus

- 4.1 EMP Multi Plus is Metering Dynamics' proprietary Energy Monitoring Program software which is required to be used by the Customer to enable Metering Dynamics' provision of the DWS or DTS Services and by the Approved Person to provide the Data Analysis Service.
- 4.2 If EMP Multi Plus is nominated as an Integrated Service, Metering Dynamics grants to the Customer a licence to use EMP Multi Plus on the terms and conditions set out in the Software Licence Agreement attached to this Agreement.

5. Title and Property

- 5.1 The Metering Equipment is and is deemed to always remain the sole title and property of Metering Dynamics and, as between them, nothing done by Metering Dynamics or the Customer will cause title or property in the Metering Equipment to pass to the Customer or to any other person.
- 5.2 The Customer must not interfere with, and must use its reasonable endeavours to prevent any third party from interfering with, the Metering Equipment.

6. Access

- 6.1 The Customer grants to Metering Dynamics safe, convenient and unhindered access to the Site(s) and the Metering Equipment as reasonably required by Metering Dynamics to allow Metering Dynamics to exercise its rights or to comply with its obligations as the MC for the Site. Such access shall continue following excise of a Metering Point, expiry or termination of this Agreement for a period of twenty-eight (28) days after such excision, expiry or termination.
- 6.2 If performance by Metering Dynamics of this Agreement or its obligations as the MC for the Site has an adverse impact on the Customer's commercial operations, Metering Dynamics and the Customer will use all reasonable endeavours to coordinate their actions so that the adverse impacts are eliminated, or minimised if they cannot be eliminated. In no circumstances (other than wilful default or fraud) is Metering Dynamics liable to the Customer for any costs or expenses arising from such adverse impact.
- 6.3 The Customer must take reasonable measures to protect the Metering Equipment. If the Metering Equipment is damaged or destroyed (other than by wear and tear in the normal course of use), the Customer must:
- (a) immediately report the damage or destruction to Metering Dynamics by notice in writing specifying the Metering Equipment which has been damaged or destroyed; and
 - (b) pay to Metering Dynamics (if demanded) the reasonable cost to Metering Dynamics of

repairing or replacing (at Metering Dynamics' option) that part of the Metering Equipment which has been damaged or destroyed.

7. Confidential Information

- 7.1 Each Party agrees that the terms of this Agreement and any information disclosed to it by the other Party under this Agreement is confidential and each Party agrees not to disclose any of that confidential information to any person without the prior written consent of the other, except to the extent:
- (a) permitted under this Agreement;
 - (b) the information enters the public domain, otherwise than by reason of the receiving Party's own default;
 - (c) required by applicable laws or by regulations of any government or governmental agency having jurisdiction over that Party (including the Australian Stock Exchange or any other relevant stock exchange authority);
 - (d) required by an order of a court of competent jurisdiction for the purposes of any litigation or arbitration arising from this Agreement;
 - (e) (in the case of Metering Dynamics) disclosed to its related bodies corporate or any shareholding Minister for the time being responsible for Metering Dynamics under any Queensland Act and/or the Government of Queensland and their advisers and delegates; or
 - (f) disclosed to its employees, directors, professional advisers or auditors who have a need to know such information.
- 7.2 Where the Customer nominates the Data Analysis Service, Metering Dynamics will transfer electricity utilisation data to the Approved Person and the Customer consents to the disclosure of its personal information by Metering Dynamics to the Approved Person.
- 7.3 Where the Customer nominates the Data Warehousing Service, the Customer consents to the use by Metering Dynamics (in providing the Services) of its personal information provided to Metering Dynamics by a MDP or MC (other than Metering Dynamics).
- 7.4 The Customer acknowledges that the personal information referred to in clauses 6.2 and 6.3 includes the Customer's electricity utilisation data.
- #### 8. Goods and Services Tax ("GST")
- 8.1 Any Consideration to be paid or provided for any supply made under or in connection with this Agreement, unless expressly described in this Agreement as including GST, does not include an amount on account of GST. Despite any other provision in this Agreement, if a party ("Supplier") makes a Taxable Supply under or in connection with this Agreement on which GST is imposed:
- (a) the GST exclusive Consideration otherwise payable or to be provided for that Taxable

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Supply under this Agreement but for the application of this clause is increased by, and the recipient of the supply ("**Recipient**") must also pay to the Supplier, an amount equal to the GST payable by the Supplier on that Taxable Supply; and

- (b) the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided. However, the Recipient need not pay any amount referable to GST unless they have received a valid Tax Invoice (or a valid Adjustment Note) for that Taxable Supply.

8.2 **Reimbursements:** If a payment to a party under or in connection with this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment must be reduced by the amount of any Input Tax Credit to which that party is entitled for that loss, cost or expense. That party is assumed to be entitled to a full Input Tax Credit unless it proves, before the date on which the payment must be made, that its entitlement is otherwise.

8.3 **Adjustment Events:** If, at any time, an Adjustment Event arises in respect of any Taxable Supply made by a Supplier under the Agreement, a corresponding adjustment must be made between the parties in respect of any amount paid pursuant to clause 8.1. Payments to give effect to the adjustment must be made between the parties and the Supplier must issue a valid Adjustment Note in relation to the Adjustment Event.

8.4 **GST Group:** If a party is a member of a GST Group, references to GST which the party must pay and to Input Tax Credits to which the party is entitled, include GST which the representative member of the GST Group must pay and Input Tax Credits to which the representative member of the group is entitled.

8.5 **Non-monetary Consideration:** If a supply made under this Agreement is a Taxable Supply made for non-monetary consideration then:

- (a) the Supplier must provide the Recipient with a valid Tax Invoice which states the GST inclusive market value of the non-monetary consideration; and
- (b) for the avoidance of doubt any non-monetary consideration payable under or in connection with this Agreement is GST inclusive.

8.6 **Definitions:** Words or expressions used in this clause which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and related imposition and amending Acts have the same meaning in this clause.

9. Intellectual Property Rights

9.1 The Customer warrants that the Customer Equipment and any designs, materials or documents relating to the Customer Equipment do not infringe any Intellectual Property Rights of a third party and that the Customer has full right and authority to agree to the terms of this Agreement.

10. Limitation of liability

10.1 Except as expressly provided to the contrary in this Agreement and to the full extent permitted by law, all terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise relating in any way to the provision of the Services or otherwise relating to this Agreement are excluded.

10.2 Where any Act of Parliament implies into this Agreement any term and that Act voids or prohibits provisions under a contract which exclude or modify the operation of such term, such term is deemed to be included in this Agreement. However, Metering Dynamics liability for breach of such term will be, to the extent permitted by law, limited to one of the following remedies (at Metering Dynamics' option):

(a) if the breach relates to services:

- (i) the resupply of the services; or
- (ii) the payment of the cost of resupplying the services; and

(b) if the breach relates to goods:

- (i) the replacement of the goods or the supply of equivalent goods;
- (ii) the repair of such goods;
- (iii) the payment of the cost of replacing the goods or acquiring equivalent goods; or
- (iv) the payment of the cost of having the goods repaired.

10.3 Subject to clause 10.2, to the extent permitted by law, Metering Dynamics' total liability to the Customer for any loss or damage suffered by the Customer due to Metering Dynamics' negligence, breach of contract, breach of any agreement or otherwise is limited to the total amount of the Service Fees payable by the Customer to Metering Dynamics under this Agreement from the Commencement Date to the End of Initial Term.

10.4 Subject to clause 10.2, to the extent permitted by law, Metering Dynamics will not be liable to the Customer or any other person for any indirect or consequential loss of any kind.

10.5 The Data Analysis Service is provided by the Approved Person pursuant to a contract between the Approved Person and the Customer. Metering Dynamics does not provide the Data Analysis Service. Therefore, to the full extent permitted by law, Metering Dynamics excludes all terms, conditions, warranties, representations, liability,

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cost, damage, loss, expense in relation to the Data Analysis Service.

11. Termination

11.1 A Party ("**First Party**") may terminate this Agreement at any time and (except as otherwise stated) immediately upon giving written notice to the other Party if the other Party:

(a) breaches any substantive term of this Agreement and:

(i) (if the breach is capable of remedy) fails to remedy the breach within ten (10) Business Days after receiving notice from the First Party in writing specifying the breach and requiring it to remedy same; or

(ii) (if the breach cannot be remedied) fails to take steps to prevent the recurrence of the breach to the reasonable satisfaction of the First Party; or

(b) becomes insolvent as defined in section 95A(2) of the *Corporations Act 2001* (Cth).

11.2 Metering Dynamics may immediately terminate this Agreement insofar as it applies to any Metering Points by notice in writing to the Customer if Metering Dynamics' appointment by the FRMP or Customer (as the case may be) as to those Metering Points (or the related Sites) is terminated or revoked for any reason. Metering Dynamics will have no liability to the Customer, whether in contract, tort, statute or otherwise, if Metering Dynamics' appointment is terminated or revoked for reasons other than the fault of Metering Dynamics under the terms of the relevant appointment.

11.3 On termination or expiry of this Agreement, (either as a whole or as to particular Metering Points) Metering Dynamics will procure the removal and return of all relevant Metering Equipment to Metering Dynamics.

12. Dispute resolution

12.1 Any disputes arising under this Agreement which have not been resolved between the Parties must be referred to a mediator appointed by the Parties before any legal proceedings (other than proceedings of an interlocutory nature) are instituted in respect of such disputes. A mediator shall be chosen by agreement between the Parties. The Parties will be bound to perform their respective obligations under this Agreement notwithstanding the dispute.

12.2 If the Parties cannot agree on the appointment of a suitable mediator under clause 12.1 then either Party may request the president of the Law Society of the State of Queensland to appoint a mediator for the purpose of resolving the dispute.

12.3 The Parties shall pay their own costs of any mediation and equally share the costs of the mediator.

13. Notices

13.1 All notices or other communication to be given under this Agreement must be in writing and may be delivered by hand, sent by post, transmitted by email or transmitted by facsimile to the postal address, email address or facsimile number of the Party specified in Item 9 of the Schedule (but as varied in any subsequent notice).

14. Change in Regulatory Requirements

14.1 If there is a change to any Regulatory Requirements which results in Metering Dynamics being unable to perform all or any of its obligations under this Agreement or being in breach of those Regulatory Requirements, Metering Dynamics may serve a written notice on the Customer varying the terms of this Agreement to the extent necessary to address such changes.

14.2 If the nature of the change in the Rules or other applicable law prevents Metering Dynamics from providing any Service or a substantial part of a Service which in the Customer's sole opinion was (and is) fundamental to the Customer entering and continuing this Agreement then the Customer may excise that Service from this Agreement by giving 30 days' notice to Metering Dynamics.

14.3 Neither Party will have any liability to the other Party where the Customer excises any Service from this Agreement under clause 14.2.

15. Force Majeure

15.1 If, but for this clause 15, either Party would breach this Agreement due to the occurrence of a Force Majeure Event:

(a) the obligations of a Party under this Agreement, other than an obligation to pay money, are suspended to the extent to which they are affected by the Force Majeure Event for so long as those obligations are affected by the Force Majeure Event; and

(b) the affected Party must use its reasonable endeavours to give the other prompt notice of that fact, including full particulars of the Force Majeure Event, an estimate of its likely duration, the obligations affected and the extent of its effects on those obligations and the steps taken to remove, overcome or minimise those effects.

15.2 A Party relying on this clause 15 by claiming a Force Majeure Event must use its reasonable endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as practicable.

15.3 Nothing in this clause 15 will require a Party to settle an industrial dispute which constitutes a Force Majeure Event in any manner other than the manner preferred by that Party.

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16. General

- 16.1 This Agreement is governed in accordance with the laws in the State of Queensland. Each Party unconditionally and irrevocably submits to the exclusive jurisdiction of courts with jurisdiction in that State and all appellate courts from such courts.
- 16.2 This Agreement constitutes the entire agreement between Metering Dynamics and the Customer and supersedes all previous understandings or contractual arrangements between Metering Dynamics and the Customer and any prior conditions, warranties, indemnities or representations imposed given or made by or on behalf of Metering Dynamics.
- 16.3 Subject to clause 14.1, the provisions of this Agreement will not be varied, except by agreement in writing signed by Metering Dynamics and the Customer.
- 16.4 The Customer may not assign any of its rights or obligations under this Agreement without the prior written consent of Metering Dynamics, such consent not to be unreasonably withheld where the assignment is to a reputable and financially responsible party or person. The Customer agrees that Metering Dynamics may by notice to the Customer, novate or assign all of its rights, remedies, powers, duties and obligations under this Agreement in its absolute discretion in favour of any person nominated by Metering Dynamics without the consent of the Customer.
- 16.5 Metering Dynamics may sub-contract with any number of third parties to undertake the whole or any part of the Services. Such contracts must require the third party to comply with Metering Dynamics' obligations under this Agreement. Metering Dynamics will be responsible and liable to the Customer for all acts and omissions of such third parties as if they were its own acts and omissions.
- 16.6 No right under this Agreement will be deemed to be waived except by notice in writing signed by the Party granting the waiver.
- 16.7 If any term of this Agreement is or becomes invalid or unenforceable, the other terms will continue to be valid and enforceable and that term will be severed or modified without affecting the other terms of this Agreement.
- 16.8 Notwithstanding any thing in this Agreement which may convey a contrary intention, this Agreement only applies to those services which have been identified with a check in the applicable box(es) in Item 3 or Item 4 of the Schedule and with respect to the Metering Points identified in the Attachment(s).
- 16.9 Each Party will bear its own legal costs of and incidental to the entering of this Agreement
- 16.10 Clauses 6.1, 7, 8, 10, 11, and 12 of this Agreement survive the termination or expiration of this Agreement for any reason.

17. Definitions

- "AEMO"** means the Australian Energy Market Operator Limited;
- "Agreement"** means this Contestable Customer Metering Agreement including the Schedule, Attachment(s) and any attached Appendix and/or Energy Monitoring Program (EMP) Software Licence Agreement;
- "Approved Person"** means the person nominated by the Customer and specified in Item 11 of the Schedule or as advised to Metering Dynamics by the Customer from time to time to receive the Customer's basic electricity utilisation data via the Data Transfer Service;
- "Business Days"** means a day (other than a Saturday or a Sunday) on which banks are open for business in the State or Territory in which the Customer's Site(s) is/are located;
- "Commencement Date"** means the date on which the last of the Parties signs this Agreement;
- "Customer Equipment"** means the equipment specified in Item 10 of the Schedule;
- "Data Analysis Service"** means a service provided (other than under this Agreement) by the Approved Person to the Customer by which the Approved Person conducts analysis and provides reports to the Customer using electricity utilisation data transferred to the Approved Person by Metering Dynamics.
- "Data Analysis Service Fee"** means the fee for the Data Analysis Service charged by the Approved Person under a contract between the Customer and the Approved Person, and as may be varied from time to time under the terms of that contract;
- "Data Transfer Service ("DTS")"** means the electronic transfer of basic electricity utilisation data by Metering Dynamics to an Approved Person to process such data on behalf of the Customer;
- "Data Warehousing Service ("DWS")"** means the warehousing of basic electricity utilisation data sourced from a Metering Data Provider (other than Metering Dynamics) by Metering Dynamics for subsequent transmission to the Approved Person under the DTS, for the purpose of the Approved Person providing the Data Analysis Service to the Customer;
- "Effective Date"** has the meaning given in clause 1.2;
- "End of Initial Term"** means the end date as determined from the Effective Date for the Initial Term of the Agreement;
- "Energy Monitoring Program Plus ("EMP Multi Plus")"** means Metering Dynamics' energy monitoring software named EMP Multi Plus which provides the Customer with a medium to view its electricity utilisation data or carry out a range of functions, such as load profile and bill estimation;

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“Exit Fee” means the fee specified in Item 6 of the Schedule;

“Financially Responsible Market Participant” or “FRMP” for a Site means the Market Participant who is Financially Responsible, as those terms are defined in the Rules;

“Force Majeure Event” means an event beyond the reasonable control of the Customer or Metering Dynamics;

“Initial Term” means the period in months specified in Item 1 of the Schedule which commences on the Effective Date for the relevant Metering Point.

“Integrated Services” means the services as set out in Appendix A of the Agreement;

“Intellectual Property Rights” includes all present and future rights (from the time that right was or may be granted) in relation to copyright, trade marks, designs, patents, trade, business or company names, trade secrets, confidential or other proprietary rights or any rights to registration of such rights whether created before or after the date of this Agreement and whether existing in Australia or otherwise;

“Item” means an item number specified in the Schedule;

“Large Customer” has the meaning given to the term *“large customer”* in the Rules;

“Metering Coordinator” has the meaning given to that term in the Rules.

“Metering Coordinator Services” or “MC” means acting as a Metering Coordinator including the appointment of one or more Metering Providers and Metering Data Providers (which may be Metering Dynamics), and when referring to a person, the person that so acts.

“Metering Data Provider” has the meaning given to that term in the Rules.

“Metering Equipment” means all meters, components, software and technology supplied or licensed by Metering Dynamics in respect of the Customer’s Site(s) as part of, or so that Metering Dynamics may supply, the Services;

“Metering Point” means a metering point determined in accordance with the Rules for the Customer’s Site(s);

“Metering Provider” has the meaning given to that term in the Rules.

“NMI” means the National Metering Identifier assigned to the electricity meter of a Site pursuant to the Rules;

“Party” and **“Parties”** means each or both of Metering Dynamics and/or the Customer as appropriate;

“Regulatory Requirements” means all relevant Commonwealth, State or local government laws,

regulations, codes, procedures, other statutory instruments, Orders in Council, licence conditions, proclamations, guidelines and standards applicable from time to time to the provision of the Services in the State in which the Site is located, including the Rules and any procedures established under the Rules;

“Retailer of Choice” means, with respect to a Site, the retailer of electricity with whom the Customer contracts or may contract to supply electricity to that Site;

“Rules” means the National Electricity Rules established under the enabling legislation enacted by the States in which the Site(s) are located;

“Service Fee” means the fee or fees specified in Item 5 of the Schedule;

“Services” means the Services to be provided by Metering Dynamics in respect of the Customer’s Site(s), as designated in Item 3 of the Schedule;

“Site” means the Customer’s premises specified in item 8 of the Schedule;