

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 with respect to a Site commences on the date Metering Dynamics has procured such installations and commissioning of the Sub-Metering Equipment as is necessary in order to provide the relevant Services ("**Effective Date**").
- 1.3 The Customer acknowledges that Metering Dynamics' obligation to provide the Services in respect of Sites in non-NEM locations is subject to Metering Dynamics obtaining and maintaining (at the Customer's cost) authorisation from third parties (such as utility providers) to access metering data or Metering Dynamics having the benefit of an agreement with a third party for it to provide the metering data to Metering Dynamics. The Customer shall take all necessary steps to assist Metering Dynamics in obtaining access to this metering data.
- 1.4 The Service Fee with respect to a Site shall only be payable by the Customer from the Effective Date.
- 1.5 If the Effective Date occurs with respect to a Site, then this Agreement will continue with respect to that Site for a period of time specified in Item 1 of the Schedule ("**Initial Period**").
- 1.6 The Customer has an option to extend the term of this Agreement for a further period of five (5) years after the end of the Initial Period ("**Further Period**") exercisable by giving written notice to Metering Dynamics prior to the expiry of the Initial Period, and in accordance with the following conditions:
- (a) the same terms and conditions as this Agreement will apply to the Further Period, except as to the Service Fee;
 - (b) an Upfront Capital Contribution will not apply to the Further Period;
 - (c) the Parties will use their best endeavours to agree on the Service Fee to apply for the Further Period; and
 - (d) if the Parties cannot agree on the Service Fee for the Further Period prior to the commencement of the Further Period or if the option to extend is not exercised by the Customer, then this Agreement will not be extended for the Further Period but will continue to operate on a monthly basis until terminated by either Party on one month's written notice to the other Party.
- 1.7 The Customer may, by prior notice (given either directly by the Customer or through its Approved Person) and payment of the Exit Fee to Metering Dynamics, request to cease the Services referable to a Site from this Agreement at any time prior to the end of the Initial Period.
- 1.8 Subject to clause 1.7, where Integrated Service is applicable, the Exit Fee is waived where the Customer requests the cessation of such services in circumstances where:
- (a) the Customer sells or permanently vacates or shuts down that Site on which Sub-Metering Equipment is located; or

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

If all Sites and Customer Equipment are excised then this Agreement will expire immediately.

2. Payment and Invoicing

- 2.1 Subject to clause 2.2, Metering Dynamics may arrange with the Retailer(s) of Choice to invoice the Customer for the Service Fee with charges for electricity, metering and related services under the Customer's electricity supply agreement with the Retailer of Choice for the Site(s).
- 2.2 Metering Dynamics may (at its option) directly invoice the Customer for the Service Fee instead of through a Retailer of Choice under clause 2.1. Any such invoices will be issued monthly in arrears from the first day of the month.
- 2.3 Metering Dynamics (if the Approved Person so requires) may arrange for any Data Analysis Service Fee to be passed to the Customer:
- (a) under 2.1 through the Retailer of Choice, together with the Service Fee; or
 - (b) through Metering Dynamics' invoice under clause 2.2, together with the Service Fee.
- 2.4 The Customer agrees that it will pay the Service Fee (and if applicable, the Data Analysis Service Fee) and any GST amount applicable to:
- (a) the Retailer of Choice, if clause 2.1 applies; and
 - (b) Metering Dynamics, if clause 2.2 applies, within 30 days of the date of the invoice.
- 2.5 If an Upfront Capital Contribution is specified in Item 7.1 of the Schedule:
- (a) following the installation of the Sub-Metering Equipment, Metering Dynamics will issue an invoice direct to the Customer for the Upfront Capital Contribution amount and any GST amount applicable; and
 - (b) the Customer will pay the amount invoiced within 30 days of the date of the invoice.
- 2.6 At the End of Initial Period, or at any time during the Further Period, the Customer shall be entitled, by notice to Metering Dynamics, to request the transfer of Sub-Metering Equipment to the Customer. Metering Dynamics will negotiate in good faith in relation to the transfer price for the Sub-Metering Equipment, but in no case will the Customer pay more than the written down value of that equipment.
- 3. Title and Property**
- 3.1 Where the Customer has paid the Upfront Capital Contribution or the transfer price under clause 2.6, referable to particular Sub-Metering Equipment, that Sub-Metering Equipment shall be the property of the Customer.
- 3.2 In all other cases, the Sub-Metering Equipment remains the sole title and property of Metering Dynamics and nothing done by Metering Dynamics or the Customer will cause title or property in that Sub-Metering Equipment to pass to the Customer or to any other person, except as expressly provided for in this Agreement.

4. Access

- 4.1 The Customer grants to Metering Dynamics safe, convenient and unhindered access to the Site(s), any Customer Equipment and the Sub-Metering Equipment as reasonably required by Metering Dynamics to allow Metering Dynamics to exercise its rights or to comply with its obligations under this Agreement. Such access shall continue following the cessation of Services and expiry or termination of this Agreement for a period of twenty-eight (28) days after such cessation, expiry or termination.
- 4.2 If performance by Metering Dynamics of this Agreement has an adverse impact on the Customer's commercial operations (including any Customer Equipment), 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.
- 4.3 The Customer must take reasonable measures to protect the Sub-Metering Equipment. If the Sub-Metering Equipment is damaged or destroyed (other than by wear and tear in the normal course of use) then the Customer must:
- (a) immediately report the damage or destruction to Metering Dynamics by notice in writing specifying the Sub-Metering Equipment which has been damaged or destroyed; and
 - (b) in the case where Metering Dynamics retains sole title and property in accordance with clause 3.1, pay to Metering Dynamics (if demanded) the reasonable cost to Metering Dynamics of repairing or replacing that part of the Sub-Metering Equipment which has been damaged or destroyed.

5. Sub-Metering Equipment Warranty

- 5.1 Metering Dynamics warrants that the Sub-Metering Equipment is fit for purpose and that Metering Dynamics is not aware of any defects or deficiencies in the Sub-Metering Equipment which Metering Dynamics has not disclosed to the Customer in writing.
- 5.2 In the case where Metering Dynamics does not retain sole title and property in accordance with clause 3.1, Metering Dynamics agrees to repair or replace (at its discretion) Sub-Metering Equipment where the Sub-Metering Equipment is faulty (other than by wear and tear in the normal course of use), within twelve (12) months ("**Warranty Period**") following installation of the Sub-Metering Equipment, unless such a fault is caused by any or all of the following:
- (a) the Customer's vandalism or wilful damage;
 - (b) an act of nature;
 - (c) by the Customer Equipment;
 - (d) any seals on the Sub-Metering Equipment have been tampered with or broken by any person;
 - (e) unauthorised access and/or modification of the Sub-Metering Equipment; or
 - (f) a power surge from an unprotected circuit at the Site.
- 5.3 Notwithstanding clause 5.2, the Customer acknowledges that any Sub-Metering Equipment

replaced or repaired under this Agreement shall be subject to the balance of the original Warranty Period.

6. Site Facilities and Customer Equipment

- 6.1 The Customer will, without cost to Metering Dynamics, maintain and provide such supplies of electricity to each Site as may be necessary for Metering Dynamics to perform its obligations in accordance with this Agreement.
- 6.2 The Customer warrants that the Customer Equipment is in good and serviceable condition and that the Customer is not aware of any defects or deficiencies in the Customer Equipment which the Customer has not disclosed to Metering Dynamics in writing.

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;
- (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; or
- (f) disclosed to its employees, directors, professional advisers or auditors who have a need to know such information.

8. Privacy

- 8.1 The Customer acknowledges that the provision of the Services does not require collection of Personal Information.

9. Goods and Services Tax ("GST")

- 9.1 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 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.

9.2 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.

9.3 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 9.1. 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.

9.4 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.

9.5 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.

9.6 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.

10. Intellectual Property Rights

10.1 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.

11. EMP Multi Plus

11.1 EMP Multi Plus is Metering Dynamics' proprietary Energy Monitoring Program software which is required to be used by the Customer to enable Metering Dynamic's provision of certain of the Services.

11.2 If EMP Multi Plus is nominated as a Service, Metering Dynamics grants to the Customer a licence on the terms set out in the Software Licence Agreement attached to this Agreement.

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 11 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 Regulatory Requirements 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 written 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. Limitation of Liability

15.1 The Customer is solely liable for the use the Customer makes of the Sub-Metering Equipment. 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.

15.3 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.

15.4 Subject to clause 15.3, 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, or otherwise is limited to the total amount of the Service Fee and (if applicable) the Upfront Capital Contribution payable by the Customer to Metering Dynamics under this Agreement from the Commencement Date to the end of the Initial Period.

15.5 Subject to clause 15.3 to the extent permitted by law, Metering Dynamics will not be liable to the Customer or any other person for any direct, indirect or consequential loss of any kind.

16. Customer Warranty

16.1 The Customer warrants:

- (a) that entering into or performing this Agreement will not be in breach of any contractual or other obligations owed to any third party; and
- (b) it has the rights to allow Metering Dynamics to install, access, maintain and remove all Sub-Metering Equipment.

16.2 The Customer indemnifies Metering Dynamics from any loss incurred from a breach of this clause.

17. Termination

17.1 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).

17.2 On termination or expiry of this Agreement (either as a whole or as to particular Sites) the Customer must arrange for the return of the relevant Sub-Metering Equipment to Metering Dynamics if, pursuant to clause 3.1, title to such equipment is held by Metering Dynamics.

17.3 If the Customer does not promptly arrange for the return of the Sub-Metering Equipment under clause

17.2, Metering Dynamics and its authorised agents (both before and after the period contemplated by clause 4.1) are entitled to enter the Site(s) and recover the Sub-Metering Equipment. The Customer indemnifies Metering Dynamics and its agents for any loss (excluding any consequential loss), direct damage or reasonable expense incurred by Metering Dynamics as a result of reasonable actions taken by Metering Dynamics and its agents under this clause 17.3.

18. Force Majeure

18.1 If, but for this clause 18, 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 effected 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 by it and the extent of its effects on those obligations and the steps taken to remove, overcome or minimise those affects.

18.2 Either Party relying on this clause 18 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.

18.3 Nothing in this clause 18 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.

19. Subcontracting

19.1 Metering Dynamics may, at its sole discretion, subcontract any part of the Services to a third party ("Subcontracted Services").

19.2 Metering Dynamics remains obliged to comply with any obligation under this Agreement which it subcontracts but, despite any other provision of this Agreement, Metering Dynamics is not otherwise liable to the Customer for acts and omissions of third parties with respect to such Subcontracted Services.

20. Acknowledgements

20.1 The Customer acknowledges that Metering Dynamics is not responsible for the accuracy of the data that is transferred from the Customer Equipment to the Sub Metering Equipment under this Agreement.

21. General

21.1 This Agreement is governed in accordance with the laws in force 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.

21.2 This Agreement constitutes the entire agreement between Metering Dynamics and the Customer (with respect to the Services) 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.
- 21.3 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.
- 21.4 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 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.
- 21.5 No right under this Agreement will be deemed to be waived except by notice in writing signed by the Party granting the waiver.
- 21.6 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.
- 21.7 Notwithstanding anything in this Agreement which may convey contrary intention, this Agreement only applies to those Services which have been identified in the Schedule.
- 21.8 Each Party will bear its own legal costs of and incidental to the entering of this Agreement.
- 21.9 Clauses 4.1, 7, 9, 12, 15 and 17 of this Agreement survive the termination or expiration of this Agreement for any reason.
- 21.10 The Customer will pay any stamp duty incurred on this Agreement.

22. Definitions

"Agreement" means this Multi Utility Metering Services Agreement, including the Schedule, any attached Appendix and (if EMP Multi *Plus* is nominated as a Service) the Energy Monitoring Program Software Licence Agreement located at: <https://www.meteringdynamics.com.au/resources/terms-and-conditions/>.

"Approved Person" means the person nominated by the Customer and specified in Item 12 of the Schedule or as advised to Metering Dynamics by the Customer from time to time to receive the Customer's basic 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 Site(s) is located.

"Commencement Date" means the date on which the last of the parties signs this Agreement.

"Customer Equipment" means the equipment owned by the Customer which may connect to or impact on the **"Sub Metering Equipment"** and includes any third party equipment at the Site which is owned, installed, operated or maintained by third parties, including but not limited to gas and water utility equipment.

"Data Analysis Service" means a service provided (other than under this Agreement) by an 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.

"Effective Date" has the meaning given to it in clause 1.2.

"End of Initial Period" means the end date as determined from the Effective Date for the Initial Period 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.

"Exit Fee" means the fee specified in Item 7.3 of the Schedule.

"Force Majeure Event" means an event beyond the reasonable control of the Customer or Metering Dynamics.

"Further Period" has the meaning given to it in clause 1.6.

"Initial Period" has the meaning given to it in clause 1.5.

"Integrated Service" means the Services selected in Appendix A of this Agreement (if applicable).

"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;

"Managed Service" means the Services selected in Appendix B of the Agreement (if applicable).

"NEM" means the National Electricity Market as defined 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.

"Personal Information" has the meaning given to that term in the *Privacy Act* 1988 (Cth).

"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 to supply electricity to that Site.

"Rules" means the National Electricity Rules established under the enabling legislation enacted by the States or Territories in which the Site(s) are located.

"Services" means the Services specified in Item 4 of the Schedule.

"Service Fee" means the fee or fees specified in Item 7.2 of the Schedule.

"Site(s)" means the site(s) specified in Item 8 of the Schedule.

"Subcontracted Services" means those Services which Metering Dynamics subcontracts to a third party in accordance with clause 19.

"Sub-Metering Equipment" means the equipment specified in Item 6 of the Schedule.

"Upfront Capital Contribution" means the "Upfront Capital Contribution" amount (if any) specified in Item 7.1 of the Schedule.