

HV METERING SERVICES AGREEMENT

TERMS AND CONDITIONS

1. Term and Delivery of Goods and Services

- 1.1 This Agreement commences on the Effective Date and continues for the Term.
- 1.2 Metering Dynamics agrees to sell and deliver the Goods to the Customer and perform the Services for the Customer from the Commencement Date. The Customer agrees to purchase and accept the Goods and Services and pay Metering Dynamics on the terms set out in this Agreement.
- 1.3 To the extent that Metering Dynamics has agreed to supply Goods under this Agreement, Metering Dynamics must deliver the Goods to the Site, unless an alternative delivery point is approved by the Customer. Metering Dynamics must ensure that the Goods are appropriately packed, handled and transported to the Site to prevent damage while in transit or storage.
- 1.4 Metering Dynamics must use reasonable endeavours to complete the Services with due expedition and without delay by the Target Services Completion Date but Metering Dynamics accepts no liability for any failure to comply with this clause.

2. Payment and Invoicing

- 2.1 The Customer must pay the Service Fee for all Goods and Services supplied under this Agreement.
- 2.2 Metering Dynamics will provide tax invoices to the Customer for the Service Fee at the times specified in item 20 of the Proposal Acceptance. Each invoice must show the GST exclusive price for the Goods and Services together with the amount of GST payable in relation to the Goods and Services.
- 2.3 The Customer agrees that it will pay the Service Fee and any GST amount applicable to Metering Dynamics within 30 days of the date of a correctly rendered tax invoice.
- 2.4 If item 19 of the Proposal Acceptance specifies that the Service Fee is an upfront payment:
- Metering Dynamics will, as soon as practicable after the Effective Date, issue an invoice to the Customer for the Service Fee and any GST amount applicable;
 - the Customer will pay the amount invoiced within 30 days of the date of the invoice; and
 - Metering Dynamics will not be obliged to deliver the Goods or provide the Services until payment of the Service Fee has been made in full by the Customer.

3. Title and Property

Title in the Goods will pass at the earlier of delivery of the Goods to the Site or the time when the Customer has made payment in full of the Service Fee. Risk in the Goods will pass to the Customer at the time of delivery to the Site.

4. Access

- 4.1 The Customer must:
- grant to Metering Dynamics safe, convenient and unhindered access to the Site(s) as reasonably required by

Metering Dynamics to allow Metering Dynamics to exercise its rights or to comply with its obligations under this Agreement;

- ensure the Site constitutes a safe working environment in compliance with all relevant laws for the performance of Services and delivery of Goods by Metering Dynamics; and
- comply with any safety directions issued by Metering Dynamics or any other authority at the Site.

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.

5. Quality

5.1 Metering Dynamics must:

- ensure that the Goods and Services conform in all respects with the specifications described in the HV Metering Services Proposal and the Proposal Acceptance and comply with all relevant laws and applicable codes and standards;
- perform its obligations under this Agreement with due care and skill, to the best of Metering Dynamics' knowledge and expertise and in compliance with relevant laws and applicable codes and standards;
- ensure that every item of plant, machinery or vehicle used by Metering Dynamics in performing this Agreement is licensed, registered, equipped, maintained and used so that it does not endanger the health and safety of any person, cause damage to any property, or cause environmental harm, damage or nuisance to the public; and
- provide competent personnel (holding any required licence or qualification) necessary for and incidental to the provision of the Services.

6. Insurance

6.1 Metering Dynamics must effect and maintain during the Term the insurance policies described below and provide evidence of any such insurance to the Customer if requested to do so:

- public liability insurance cover for \$20 million;
- workers' compensation insurance against liability for death or bodily injury to any person employed by Metering Dynamics in relation to the Services;
- third party motor vehicle liability insurance for liability against death or bodily injury to any person or damage to the Site for each vehicle that enters the Site and which is capable of registration during the Term; and

6.2	(d) any other insurance required by law. The Customer must effect and maintain during the Term the insurance policies described below and provide evidence of any such insurance to Metering Dynamics if requested to do so:			makes a Taxable Supply under or in connection with this Agreement on which GST is imposed:
	(a) public liability insurance cover for an amount not less \$20 million; and			(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
7.	Customer's Obligations To the extent that the Customer may be required to perform any works of its own at the Site while Metering Dynamics is performing the Services, or to facilitate Metering Dynamics undertaking the Services, the Customer warrants that it will only engage contractors who exercise the degree of skill, care and diligence and use of materials and equipment that would be reasonably exercised by a licensed, experienced and competent contractor performing similar work.			(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.	Confidential Information			
8.1	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:	10.2		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.
	(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);	10.3		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 10.1. 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.
	(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 any Related Body Corporate, , any shareholding Minister for the time being responsible for Metering Dynamics or a Related Body Corporate of Metering Dynamics under any Queensland Act and/or the Government of Queensland and any delegate of the shareholding Minister; or	10.4		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.
	(f) disclosed to its employees, directors, professional advisers or auditors who have a need to know such information.	10.5		Non-monetary Consideration If a supply made under this Agreement is a Taxable Supply made for non-monetary consideration then:
9.	Privacy			
9.1	The Customer acknowledges that the supply of Goods and provision of Services does not require collection of Personal Information.			(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
10.	Goods and Services Tax ("GST")			(b) for the avoidance of doubt any non-monetary consideration payable under or in connection with this Agreement is GST inclusive.
10.1	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')			

10.6	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.		(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.
10.7	Survival This clause will continue to apply after expiration or termination of this Agreement.	13.4	Subject to clause 13.3, 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 payable by the Customer to Metering Dynamics under this Agreement.
11.	Dispute Resolution		
11.1	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.	13.5	Subject to clause 13.3 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.
11.2	If the Parties cannot agree on the appointment of a suitable mediator under clause 11.1 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.	13.6	If performance by Metering Dynamics of this Agreement 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.
11.3	The Parties shall pay their own costs of any mediation and equally share the costs of the mediator.		
12.	Notices	14.	Customer Warranty
12.1	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 either item 9 or 14 of the Proposal Acceptance (as applicable).	14.1	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 provide the Services at the Site.
13.	Limitation of Liability	14.2	The Customer indemnifies Metering Dynamics from any loss incurred from a breach of this clause.
13.1	The Customer is solely liable for the use the Customer makes of the Goods.	15.	Termination
13.2	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 supply of Goods and provision of the Services or otherwise relating to this Agreement are excluded.	15.1	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).
13.3	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 the 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 the Goods: (i) the replacement of the Goods or the supply of equivalent Goods;		

16. Force Majeure		
16.1	If, but for this clause 16, either Party (Affected Party) would breach this Agreement due to the occurrence of a Force Majeure Event:	where the assignment is to a respectable and financially responsible person. Metering Dynamics may by notice to the Customer, novate or assign all of its rights and obligations under this Agreement in its absolute discretion in favour of a person nominated by Metering Dynamics.
	(a) the obligations of the Affected 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	18.5 No right under this Agreement will be deemed to be waived except by notice in writing signed by the Party granting the waiver.
	(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.	18.6 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.
16.2	The Affected Party must use its reasonable endeavours to remove, overcome or minimize the effects of that Force Majeure Event as quickly as practicable.	18.7 Notwithstanding anything in this Agreement which may convey contrary intention, this Agreement only applies to those Services which have been identified in this Agreement.
16.3	If the Force Majeure Event continues for more than 3 months, the other party may terminate this Agreement immediately by giving notice to the Affected Party.	18.8 Each Party will bear its own legal costs of and incidental to the entering of this Agreement.
16.4	Nothing in this clause 16 will require the Affected Party to settle an industrial dispute which constitutes a Force Majeure Event in any manner other than the manner preferred by the Affected Party.	18.9 If there is any discrepancy, inconsistency or ambiguity between the Proposal Acceptance and these Terms and Conditions, the Proposal Acceptance shall prevail. The Proposal Acceptance and these Terms and Conditions shall have precedence over any other documents forming part of this Agreement.
17. Subcontracting		18.10 Clauses 4.1, 8, 13, 14, 16 and 18 of this Agreement survive the termination or expiration of this Agreement for any reason.
17.1	Metering Dynamics may, at its sole discretion, subcontract any part of the Services to a third party (" Subcontracted Services ").	18.11 The Customer will pay any stamp duty incurred on this Agreement.
17.2	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.	19. Definitions
18. General		" Agreement " means this HV Metering Services Agreement, including the Proposal Acceptance and HV Metering Services Proposal.
18.1	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.	" 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.
18.2	This Agreement constitutes the entire agreement between Metering Dynamics and the Customer (with respect to the Goods and 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.	" Commencement Date " means the date specified in item 1 of the Proposal Acceptance.
18.3	The provisions of this Agreement will not be varied, except by agreement in writing signed by Metering Dynamics and the Customer.	" Effective Date " means the date on which the Customer signs the Proposal Acceptance.
18.4	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	" Force Majeure Event " means an event beyond the reasonable control of the Customer or Metering Dynamics.
		" Goods " means the Goods specified in item 18 of the Proposal Acceptance.
		" HV Metering Services Proposal " means the proposal for the supply of the Goods and provision of the Services issued by Metering Dynamics and more particularly described in the Proposal Acceptance.
		" 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.

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"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).

"Proposal Acceptance" means the form entitled "HV Metering Services Proposal Acceptance" issued by Metering Dynamics and accepted by the Customer in writing.

"Related Body Corporate" has the meaning given in the *Corporations Act 2001* (Cth)

"Site(s)" means the place for delivery of the Goods and performance of the Services specified in item 4 of the Proposal Acceptance.

"Services" means the Services specified in item 21 of the Proposal Acceptance.

"Service Fee" means the fee or fees specified in item 19 of the Proposal Acceptance.

"Subcontracted Services" means those Services which Metering Dynamics subcontracts to a third party in accordance with clause 17.

"Target Services Completion Date" means the date specified in item 2 of the Proposal Acceptance.

"Term" means the period from the Commencement Date until the later of delivery of the Goods or completion of the Services as required under this Agreement. |

