

## Attachment 2 Conditions

# Select Solutions - Metering Services Terms & Conditions

*Metering Coordinator  
Meter Provider (Types 2-4),  
Meter Data Provider (Types 1-4)*

### 1. Definitions and Interpretation

#### 1.1 Definitions

In this Agreement, unless the contrary intention appears words have the following meanings:

**AEMO** means Australian Energy Market Operator (ACN 072 010 327).

**Additional Fee** means any additional fees specified in the signed Metering Services Agreement.

**Agreement** means:

- (a) these Conditions;
- (b) any Metering Services Quotations agreed by both parties in accordance with **clause 3.4**;
- (c) the signed Metering Services Agreement; and
- (d) any other documents incorporated by reference.

**Appointment** means the appointment of Select Solutions as the MC for a Supply Address for the relevant period stated in the Metering Services Agreement.

**Appointment End Date** means, in respect of a meter, the Relevant Appointment End Date set out in **Attachment 1 of the Metering Services Agreement**.

**Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday in the State in which the Services are being performed.

**Cap Amount** means the sum of the Fees paid by the Customer to Select Solutions under this Agreement.

**CCA** means the *Competition and Consumer Act 2010 (Cth)*.

**Commencement Date** means the commencement date of this Agreement as specified in **Attachment 1** of the **Metering Services Agreement**.

**Conditions** means these Metering Services Terms & Conditions and includes all schedules, annexures and attachments.

**Confidential Information** means any and all information of any nature and in any form (including electronic, magnetic and other intangible forms, whether capable of being read by human beings or not) concerning the operations, dealings, organisation, personnel, business strategies, customers, technology, intellectual property of a party or its Related Bodies Corporate which is received by, disclosed to or discovered by the other party (**Receiving Party**) before, on or after the date of this Agreement under, in connection with or as a result of this Agreement including this Agreement and its terms or any action taken under this Agreement.

**Consultant** means the consultant that refers the Customer to Select Solutions.

**Early Exit Fee** means the early exit fee that the Customer must pay Select Solutions if it chooses to end the provision of Services at a Supply Address early under **clause 7.2(a)(i)** instead of receiving the Services to the end of the Term.

The Early Exit Fee is calculated on a per meter basis and is equal to the value of the remainder of the Appointment for the relevant meter (or meters).

The remainder of the Appointment is calculated as the period between the day after the effective date of cessation of the Services for the relevant meter (or meters) until the contracted end date of the Appointment for the relevant meter (or meters).

By way of example only: if Services in respect of one meter are terminated by the Customer under **clause 7.2(a)(i)** after 6 months of a 3 year Appointment, the Customer must pay Select Solutions the remainder (6 months) of the Fees that would have been payable in year one for that meter, and, in addition, all of the Fees that would have been payable in years 2 and 3 of the Appointment for that meter).

Where Services at more than one Supply Address are ended early, or where there is more than one meter at a Supply Address, the Early Exit Fee is the sum of the remainder of the Appointment values for all of the terminated meters and/or Supply Addresses.

To avoid doubt, the Early Exit Fee is calculated in respect of the relevant Appointment term, not the Term of this Agreement.

By way of example only: if a new meter or Supply Address is added to this Agreement via a 3 year Appointment with only 6 months of the Term of this Agreement remaining, and the Customer wishes to end the Services under that new Appointment after 6 months (i.e. upon the expiry of this Agreement), the Early Exit Fee would be the remaining value of the Appointment, i.e. 2yrs and 6 months' worth of Fees.

**Event of Force Majeure** means any event beyond the reasonable control of a party, including without limitation:

- (a) an act of God or the public enemy, national emergency, insurrection, riot, hostile or warlike action in peace or war; or
- (b) a strike, lockout, stoppage or other industrial dispute;
- (c) an act or omission of any Regulator.

**Expiry Date** means the expiry date of this Agreement as specified in **Attachment 1** of the **Metering Services Agreement**.

**Fee** means the MP Fee, the MDP Fee, the MC Fee and the Additional Fees.

**GST** has the meaning given it in *A New Tax system (Goods and Services Tax) Act 1999 (Cth)*.

**Incumbent Provider** means where Select Solutions is not the MP and/or MDP for a Supply Address as at the Commencement Date or the Target Transfer Date, (as applicable) the company, entity or person who is the MP and/or MDP as at the Commencement Date or Target Transfer Date (as applicable).

**Insolvency Event** means:

- (a) a receiver, manager, receiver and manager, trustee, administrator, controller (within the meaning of section 419(1) of the Corporations Act) or similar officer is appointed in respect of a party or any asset of a party;
- (b) a liquidator or provisional liquidator is appointed in respect of a party;
- (c) any application (not being an application withdrawn or dismissed within 5 Business Days) is made to a court for an order, or an order is made or a resolution is passed, for the purpose of:

- (i) appointing a person referred to in paragraph (a) or (b);
  - (ii) winding up a party; or
  - (iii) proposing or implementing a scheme of arrangement in respect of a party;
- (d) a moratorium of any debts of a party or an official assignment or a composition or an arrangement (formal or informal) with that party's creditors or any similar proceeding or arrangement by which the assets of that party are subjected conditionally or unconditionally to the Control of that party's creditors is ordered, declared or agreed to, or is applied for and the application is not withdrawn or dismissed within 5 Business Days; or
- (e) a party becomes, or admits in writing that it is, or is declared to be, or is deemed under any Applicable Law to be, insolvent or unable to pay its debts.

**Intellectual Property** means all registered and unregistered trademarks, designs, inventions which are or may become the subject of letters patent, circuit layouts and works and other subject matter subject to copyright, whether Australian or foreign, and all other intellectual property rights subsisting in any New Technology or any other product or process used by Select Solutions, or created, devised, used in or otherwise arising from the provision of the Services.

**MDP Fee** means the fee(s) to be paid by the Customer to Select Solutions for providing the MDP Services, as specified in **Attachment 1** of the **Metering Services Agreement**.

**MC Fees** means the fee(s) to be paid by the Customer to Select Solutions for being the Metering Coordinator, as specified in **Attachment 1** of the **Metering Services Agreement**.

**Metering Coordinator** or **MC** has the same meaning as in the Rules.

**Metering Data** has the same meaning as in the Rules.

**Metering Data Provider** or **MDP** has the same meaning as in the Rules.

**Metering Data Provider Services** or **MDP Services** means, in relation to Metering Equipment:

- (a) registration and commissioning of Metering Equipment;
- (b) collection, processing and validation of Metering Data;
- (c) storing of Metering Data on-line and off-line;
- (d) aggregation of Metering Data and electronic provision of that data to AEMO in standard formats; and
- (e) provision of Metering Data access to Rules participants;

in accordance with Chapter 7 of the Rules.

**Metering Equipment** means any metering equipment installed pursuant to this Agreement or installed pursuant to a prior agreement between the Customer (or another customer) and Select Solutions but used under this Agreement;

**Metrology Procedure** has the same meaning as in the Rules.

**Metering Provider** or **MP** has the same meaning as in the Rules.

**Metering Provision Services** or **MP Services** means the provision, installation and maintenance of Metering Equipment in accordance with the Rules and as more particularly specified in this Agreement.

**Metering Services Agreement** means the Metering Services Agreement to which these Conditions form **Attachment 2**.

**Metering Services Quotation** means a metering services quotation in writing for Services as may be provided to the Customer by Select Solutions from time to time.

**MP Fee** means the fee(s) to be paid by the Customer to Select Solutions for providing the MP Services, as specified in **Attachment 1** of the **Metering Services Agreement**.

**NEM** means the National Electricity Market as defined in the Rules.

**New Technology** means any and all technology however embodied, including without limitation processes, formulae, reports, documents, notes, drafts, drawings, specifications, software, blue-prints, know-how, research data, discoveries, inventions, secrets, designs or improvements in procedures and where the context so requires, apparatus and equipment utilising same.

**NMI** means National Metering Identifier as defined in the Rules.

**Nominated Electricity Retailer** means the electricity retailer contracted to supply electricity to the Customer's supply address.

**Normal Business Hours** means 0730 to 1630 on a Business Day.

**Personnel** means employees, agents and subcontractors of a party.

**Registered Participant** has the same meaning as in the Rules.

**Regulatory Requirements** means the requirements under any statute, regulation, subordinate legislation, licence, authorisation, the Rules, Service Level Procedures, Metrology Procedure together with any accreditation or registration administered by AEMO which must be observed by Select Solutions in order to properly carry on the business of providing the Services (including any agreement entered into between Select Solutions and AEMO in relation to related services).

**Related Bodies Corporate** has the meaning given to it in the *Corporations Act 2001* (Cth).

**Rules** means the National Electricity Rules as adopted pursuant to the National Electricity (Victoria) Law.

**Services** means:

- (a) the performance of the MC's role under the Rules;
- (b) MP Services;
- (c) MDP Services; and
- (d) Web Services (if these are required by the Customer).

**Service Level Procedures** has the same meaning as in the Rules.

**Supply Address(es)** means the address(es) at which Select Solutions will provide the Services as set out in **Attachment 1** of the **Metering Services Agreement** or as otherwise as agreed by the parties pursuant to **clause 3.4** from time to time.

**Target Transfer Date** means, in respect of a meter, the applicable target transfer date set out in **Attachment 1** of the **Metering Services Agreement** or otherwise agreed by the Customer and Select Solutions from time to time.

**Tax** means any stamp, duty, sales tax and other tax, GST, levy, impost, deduction, charge and withholding tax (plus interest thereon and penalties, if any, unless due to a Select Solutions default) and charges, fees or other amounts made on or in respect thereof including any carbon tax or any such amount that relates to or is imposed because of environmental matters but does not include any income tax.

**Transition Agreement** means the agreement between Select Solutions and the Incumbent Provider that sets out the terms and conditions on which the Incumbent Provider will provide Transition Services during the Transition Period.

**Transition Period** means, in respect of a Supply Address, the period during which Select Solutions is the MC, but the metering equipment at the Supply Address is not Metering Equipment.

For example, Where Select Solutions (1) is appointed as the MC; and (2) intends to appoint itself [or a third party (other than the Incumbent Provider)] as the MP and/or MDP, the transition period would be the period during which Select Solutions is the MC, but the existing metering equipment has not yet been removed and replaced with Metering Equipment installed in accordance with this Agreement.

**Transition Services** means in respect of a Supply Address, the performance of the role of MP and MDP under and in accordance with the Rules.

**Web Services** means the provision by Select Solutions of an online web portal, the options and features of which will be agreed by Select Solutions and the Customer in writing if the Customer requires this Service.

## 1.2 Interpretation

- (a) In this Agreement, except where the context otherwise requires:
- (i) the singular includes the plural and vice versa, and a gender includes other genders;
  - (ii) another grammatical form of a defined word or expression has a corresponding meaning;
  - (iii) a reference to a clause, paragraph, schedule, attachment or annexure is to a clause or paragraph of, or schedule, attachment or annexure to, this Agreement, and a reference to this Agreement includes any schedule, attachment or annexure;
  - (iv) a reference to currency is a reference to Australian currency unless otherwise specified;
  - (v) a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
  - (vi) a reference to Select Solutions, its Related Bodies Corporate or the Supplier includes the officers, employees, agents and sub-contractors of that entity;
  - (vii) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
  - (viii) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
  - (ix) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
  - (x) headings are for ease of reference only and do not affect interpretation;
  - (xi) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it; and
  - (xii) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

## 1.3 Precedence

- (a) Subject to **clause 1.3(b)** in the event of any inconsistency between the various documents

comprising this Agreement, the following order of precedence will apply:

- (i) these Conditions; and
  - (ii) the attachments to these terms and conditions;
  - (iii) a Metering Services Quotation;
  - (iv) the Metering Services Agreement.
- (b) In the event of an inconsistency, the inconsistent provisions will be deemed deleted to the extent of any inconsistency, unless that provision states expressly that it is intended to take precedence.

## 2. Term and Appointment

### 2.1 Term

This Agreement commences on the Commencement Date and expires on the Expiry Date unless terminated earlier by either party in accordance with **clause 7 (Termination)**.

## 3. Provision of Services

### 3.1 Appointment

Subject to **clause 3.2**, with effect from the Target Transfer Date:

- (a) the Customer appoints Select Solutions as the Metering Coordinator; and
- (b) Select Solutions will nominate the Metering Provider and Meter Data Provider, in respect of the Supply Address(es).

### 3.2 Transition Services

- (a) This **clause 3.2** applies if, as at the Commencement Date or the Target Transfer Date (as applicable), there is an Incumbent Provider in respect of the applicable Supply Address.
- (b) Notwithstanding any other provision of this Agreement, during the Transition Period:
  - (i) Select Solutions will not nominate the Metering Provider and Meter Data Provider or otherwise provide MP Services and MDP Services to the Customer;
  - (ii) the Incumbent Provider will continue provide Transition Services to the Customer:
    - (1) without warranty or indemnity or obligation, other than any warranty or indemnity or obligation required by the Rules;
    - (2) otherwise in accordance with the service levels set out in the Transition Agreement; and
    - (3) for the Transition Fees which will be reimbursed by the Customer to Select Solutions or otherwise directly paid to the Incumbent Provider plus any management fee agreed between Select Solutions and the Customer from time to time.
- (c) For the avoidance of doubt, Select Solutions will nominate the Metering Provider and Meter Data Provider or otherwise provide MP Services and MDP Services to the Customer upon expiry of the Transition Period.

### 3.3 Select Solutions' Obligations

- (a) Select Solutions will, during the Term, provide the Services to the Customer at each Supply Address in accordance with:

- (i) the terms of this Agreement; and
- (ii) all applicable Regulatory Requirements.
- (b) Select Solutions will test all Metering Equipment provided under this Agreement in accordance with the Rules or, at its sole discretion any other method approved by AEMO.
- (c) The Customer may request (by notice in writing) that Select Solutions perform additional tests over and above those to be performed under **clause 3.2(b)**. The cost of any additional tests performed pursuant to this **clause 3.2(c)** will be borne by the Customer.

**3.4 Additional Supply Addresses**

- (a) During the Term, the Customer may request Services to be provided in respect of Additional Supply Address(es). Any request must be in writing and sent to the Consultant.
- (b) The Consultant will liaise and communicate with Select Solutions and will use the “New Site Roll-in / Variation Form” (or other document agreed in writing by the parties) to effect such requests.
- (c) Upon the request of Select Solutions (or the Consultant on Select Solutions’ behalf), the Customer must provide all information reasonably required by Select Solutions in order for the Services to be provided including:
  - (i) the NMI;
  - (ii) the Nominated Electricity Retailer;
  - (iii) the name of the Supply Address;
  - (iv) the address of the Supply Address;
  - (v) the existing meter details;
  - (vi) the period that the Services are to be provided at the Supply Address; and
  - (vii) confirmation from a registered medical practitioner or a hospital that a person residing at the Supply Address requires a life support machine.
- (d) The Customer must as soon as reasonably practicable (but in any event within 5 Business Days) notify Select Solutions if the Nominated Electricity Retailer changes and provide the details of the new Nominated Electricity Retailer.
- (e) Select Solutions will consider any request made in accordance with **clause 3.4(a)** and may (but is not required to) provide the Customer with a Metering Services Quotation. The Customer may accept the Metering Services Quotation by notice in writing to the Consultant.  
 For the avoidance of doubt, all Metering Services Quotation or other correspondence in connection with the **clause 3.3** will be sent by Select Solutions to the Consultant who will directly liaise and communicate with the Customer.
- (f) For avoidance of doubt, Select Solutions will not commence the provision of Services in respect of a new Supply Address until the Nominated Electricity Retailer has provided Select Solutions will all required information and documentation in accordance with Rules.

**3.5 Customer’s Obligations**

- (a) The Customer will co-operate with Select Solutions and give Select Solutions all reasonable assistance so as to allow Select Solutions to comply with all applicable Regulatory Requirements and its obligations under this Agreement. This obligation includes taking all necessary steps to enable Select Solutions to be

nominated as the MC in respect of the relevant Supply Address(es).

- (b) The Customer will ensure that Select Solutions and its Personnel have full, safe and legal access to the Supply Address(es) to enable them to perform the Services during Normal Business Hours. If Select Solutions requires access outside of Normal Business Hours, such access will be by prior agreement with the Customer and may incur additional fees.
- (c) Where Select Solutions requires access to any premises or sites which the Customer does not own, occupy or control, the Customer must use all reasonable endeavours to assist Select Solutions and its Personnel to gain access to such premises or sites.
- (d) The Customer and its Personnel must:
  - (i) as soon as reasonably practicable, notify Select Solutions at any time if it receives confirmation from a registered medical practitioner or a hospital that a person residing at a Supply Address requires a life support machine;
  - (ii) not interfere with, modify, or attempt to interfere with or modify, the Metering Equipment or the operation of the Metering Equipment in any way;
  - (iii) take (or will cause the owner, occupier or controller of the Supply Address to take) all necessary precautions to protect the Metering Equipment from damage or interference; and
  - (iv) ensure that all Metering Equipment installed under this Agreement is used only for the metering of electricity.

**4. Ownership of Metering Equipment**

**4.1 Select Solutions Property**

- (a) Unless otherwise agreed by the parties in writing, all Metering Equipment installed at a Supply Address remains the property of Select Solutions and does not become the property of the Customer or the owner or occupier of the Supply Address.
- (b) The Customer must ensure that the Metering Equipment is not damaged or interfered or tampered with by any person (other than Select Solutions or its Personnel) and will indemnify Select Solutions in respect of the costs of repairing or replacing (at Select Solutions’ election) any Metering Equipment that has been damaged or damaged or interfered or tampered with.

**5. Ownership of Metering Equipment**

**5.1 Liability Cap**

- (a) Subject to **clause 5.1(c)**, the total liability of either party (and each of their Related Bodies Corporate) for any liability, loss, damage, cost or expense arising out of or otherwise in connection with this Agreement (whether arising under an indemnity, in contract, tort (including negligence) or otherwise) is limited to the Cap Amount.
- (b) To the extent permitted by law, neither party is liable to the other for any indirect, economic or consequential loss of any kind including without limitation, loss of profits, loss of revenue, loss of operation, loss of business or anticipated savings or for any other indirect loss or damage whether or not that party was aware, or should have been aware, of the possibility of such loss or damage, whether such liability is based on, or claimed to be based on, any breach of contract, tort (including negligence) or any other act or omission on the part of the party causing the loss.



- (c) The limitations of liability in this **clause 5.1(a)** and **clause 5.1(b)** will not apply to any liability arising as a result of death or personal injury to any person.

**5.2 Implied Warranties and Conditions**

- (a) To the extent permitted by law, all statutory or implied conditions and warranties are excluded from this Agreement.
- (b) In so far as the Vienna Convention for the International Sale of Goods might otherwise apply to this Agreement, that convention's application to this Agreement is expressly excluded.

**5.3 Application of the CCA**

- (a) Where Select Solutions is permitted under the CCA to limit its liability for a breach of a warranty provided for under this Agreement; or of a consumer guarantee under the CCA, Select Solutions' liability will be limited, at Select Solutions' sole discretion to;
  - (i) the replacement of the goods (including any Metering Equipment) or supply of equivalent goods;
  - (ii) the repair of the goods;
  - (iii) payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - (iv) payment of the cost of having the goods repaired.
- (b) The parties acknowledge and agree that:
  - (i) certain provisions of Schedule 2 to the CCA may not be excluded, restricted, or modified; and
  - (ii) to the extent that such provisions cannot be excluded, restricted, or modified, no provision of this Agreement will, or purports to exclude, restrict or modify, or will have the effect of excluding, restricting or modifying:
    - (1) the application in relation to the supply of goods (including any Metering Equipment), of any such provisions;
    - (2) the exercise of a right conferred by such provisions; or
    - (3) any liability of a person for failure to comply with a guarantee that applies under Division 1 of Part 3-2 of Schedule 2 to the CCA.

**6. Insurance**

**6.1 Insurance Requirements**

Each party must:

- (a) effect and maintain at its own expense a public liability insurance policy for an amount of \$20,000,000 per claim;
- (b) ensure that such insurances are maintained for a period of at least one year after termination or expiry of this Agreement; and
- (c) upon request by the other party, provide certificates of currency for such insurances.

**7. Termination**

**7.1 Select Solutions Rights of Termination**

Select Solutions may terminate this Agreement or its performance of the Services at a Supply Address by written notice where:

- (a) the Customer fails to pay any Fee when due and fails to remedy such non-payment within five (5) Business Days of being notified to do so by Select Solutions;

- (b) the Customer breaches any other obligation under this Agreement and fails to remedy such breach within 10 Business Days of being notified to do so by Select Solutions;

- (c) Select Solutions suffers an Event of Force Majeure, has notified the Customer, and that Event of Force Majeure has continued for a period of 30 days or more; or

- (d) an Insolvency Event occurs in relation to the Customer.

**7.2 Customer's Termination Rights**

- (a) The Customer may terminate this Agreement or the performance of the Services at a Supply Address by written notice:

- (i) without cause at any time by giving not less than 60 days written notice, provided that the Customer pays the Early Exit Fee;

- (ii) where Select Solutions breaches a material obligation under this Agreement and fails to remedy such breach within 10 Business Days of being notified to do so by the Customer; or

- (iii) Select Solutions suffers an Event of Force Majeure, has notified the Customer, and that Event of Force Majeure has continued for a period of 30 days or more.

- (b) The Customer may terminate the performance of the Services at a Supply Address under **clause 7.2(a)(i)** by providing seven (7) days' notice, if the owner or occupant of the Supply Address:

- (i) sells its business or the Supply Address; or

- (ii) ceases to operate its business from the Supply Address (whether or not the owner or occupant is the Customer).

**7.3 Obligations upon Termination**

- (a) Upon termination or expiry of this Agreement, the Customer must ensure that any Metering Equipment owned by Select Solutions is removed from the Supply Address(es) by a meter provider accredited by AEMO and returned to Select Solutions in accordance with Regulatory Requirements.

- (b) The Customer must pay all Fees incurred up to the effective date of termination.

- (c) Termination or expiry of this Agreement does not affect any rights accrued by either party at the date of termination or expiry.

**8. Dispute Resolution**

**8.1 Dispute Resolution Process**

- (a) If a dispute (other than an Invoice Dispute pursuant to **clause 9.4**) arises under or in relation to this Agreement, the dispute resolution provisions under section 8.2 of the Rules apply as if they were set out in this Agreement, except that:

- (i) all references to the "Rules Participant" are deleted and replaced with "party".

- (ii) clause 8.2.3 of the Rules is omitted;

- (iii) the notice provisions set out in **clause 13.2** will apply in respect of all notices and correspondence in respect of any such dispute;

- (iv) Rule 8.2.1 of the Rules is omitted and replaced with the following:

"Clause 8.2.1

- (a) Subject to Rule 8.2.1(b), where any dispute under or in relation to this Agreement arises the parties must

comply with the procedures set out in Rules 8.2.4 to 8.2.12 before taking any other action in relation to the dispute.

- (b) Rule 8.2.1(a) does not prevent a party seeking an urgent interlocutory injunction from a court of competent jurisdiction."
- (b) To the extent that the incorporation of the dispute resolution procedures of the Rules into this Agreement confers upon any person power to resolve disputes between the parties, the parties will be bound by the exercise of that power as contemplated by the Rules. The parties will continue to perform their obligations under this Agreement during the resolution of any dispute.
- (c) A party must not commence legal proceedings in respect of a Dispute unless the party has first complied with this **clause 8**.

**9. Payment Terms**

**9.1 Fees**

- (a) In consideration of Select Solutions providing the Services, the Customer will pay Select Solutions the Fees.
- (b) In respect of a Supply Address, the Fees will be charged monthly in arrears starting on the date Select Solutions commences providing the Services to the Customer in relation to a Supply Address.
- (c) Where the Customer has arranged for its Nominated Electricity Retailer to pay the Fees on its behalf and the Nominated Electricity Retailer fails to make such payment by the due date, the Customer will pay the outstanding Fees within five (5) days of written notification from Select Solutions.

**9.2 Invoices**

- (a) Select Solutions will render a GST compliant tax invoice in accordance with the requirements of the A New Tax System (Goods and Services Tax) Act 1999 (Cth) for the relevant Fee which is payable without set off or deduction by the Customer within 30 days of the date of the invoice. Each compliant tax invoice must:
  - (i) be calculated in accordance with this Agreement; and
  - (ii) contain sufficient detail to enable Customer to verify its accuracy.
- (b) The Customer will pay Select Solutions interest accruing from day to day on all amounts outstanding on invoices as at the due date for payment at an annual rate that is 2 per cent above the corporate overdraft rate quoted from time to time by the Commonwealth Bank of Australia. The Customer must pay Select Solutions such outstanding amounts upon demand.

**9.3 GST**

- (a) Unless expressly stated otherwise, all amounts payable under this Agreement are exclusive of GST.
- (b) If a party (**GST Supplier**) makes a supply to another party (**GST Recipient**) in connection with this Agreement, the GST Recipient must pay the GST Supplier an amount equal to any GST payable by the GST Supplier in relation to that supply (**GST Amount**), unless the amount payable by the GST Recipient for that supply is already expressed to be inclusive of GST.
- (c) The GST Amount must be paid at the same time and in the same manner as making payment of any monetary consideration on which the GST is calculated. If the GST Amount is not calculated on monetary

consideration, the GST Recipient must pay the GST Amount within seven (7) days of receipt of a written demand from the GST Supplier.

- (d) The GST Recipient's obligation to pay the GST Amount is conditional on the GST Supplier providing the GST Recipient with a tax invoice that complies with the relevant law. The GST Supplier must do all other things reasonably requested by the GST Recipient to enable the GST Recipient to obtain any input tax credit or other statutory set-off to which it is entitled.
- (e) The amount recoverable on account of GST under this **clause 9.3** will include any fines, penalties, interest and other charges incurred as a result of late payment or other default by the GST Recipient under this Agreement.
- (f) If a party is required to pay, reimburse or indemnify another party for any cost, expense or other amount that the other party has incurred or will incur in connection with this Agreement, that amount will be reduced by any amount for which the other party (or representative member if this is not the other party) can claim an input tax credit, partial input tax credit or other like offset.

**9.4 Invoice Disputes**

- (a) If Customer (acting both reasonably and in good faith) disputes the whole or any portion of the amount claimed in a tax invoice submitted by Select Solutions (**Invoice Dispute**), The Customer must:
  - (i) notify Select Solutions within 10 Business Days of receipt of the tax invoice of the reasons for the dispute; and
  - (ii) pay the portion of the tax invoice which is not in dispute.
- (b) Representatives of the parties must meet within 7 days of the notice under **clause 9.4(a)** and endeavour in good faith to resolve the dispute. If, at the meeting, the Dispute:
  - (i) is resolved, the Customer must pay the amount agreed by the parties together with interest in accordance with **clause 9.2(b)** within 14 days of the dispute having been resolved.
  - (ii) is not resolved, the matter will be referred to the respective senior managers of the parties for resolution.

If the respective senior managers are unable to resolve the dispute within 7 days the matter may be referred to dispute resolution pursuant to **clause 8**.

**10. Change in Law or Tax**

**10.1 Change Events**

- (a) In this **clause 10 Change Event** means, after the Commencement Date:
  - (i) a change in an existing Regulatory Requirement, or introduction of any new Regulatory Requirement, that requires a substantial modification to the role or requirements of the MC MP or MDP Services or substantially affects the manner in which Select Solutions performs its obligations under this Agreement; or
  - (ii) a change in an existing Tax, or introduction of any new Tax, calculated by reference to the MC, MP Services or MDP Services or the assets or resources used to provide the MC, MP Services or MDP Services, or any change in the interpretation, administration or application to Select Solutions of such a Tax; or

- (iii) a change in Australian Standards or good electricity industry practice (as defined in the Rules) that, as a matter of law, expressly requires a mandatory and substantial modification to the to the role or requirements of the MC, MP Services or MDP Services or substantially affects the manner in which Select Solutions performs its obligations under this Agreement.
- (b) If by reason of any Change Event there is an increase in the total cost (net of any saving) to Select Solutions of fulfilling its obligations under this Agreement, Select Solutions may pass on the increased cost to the Customer through an increase in the Fees.

**11. Intellectual Property**

**11.1 Ownership of Intellectual Property**

- (a) This Agreement does not assign the Intellectual Property of either party existing as at the date of this Agreement and neither party may assert ownership of any part or all of the other party's Intellectual Property existing as at the date of this Agreement.
- (b) The Customer acknowledges that all Intellectual Property developed or created by Select Solutions in the provision of the Services is and will remain the sole property of Select Solutions and the Customer will not in any way challenge, dispute or infringe the Intellectual Property of Select Solutions.

**12. Confidential Information**

**12.1 Obligation of Confidence**

- (a) Each party to this Agreement must keep confidential and will not disclose or make available directly or indirectly to any third party any information or material of whatever nature and in whatever medium that becomes available to it in the course of this Agreement. In particular, each party must keep confidential:
  - (i) information relating to the financial position, marketing or business development of the other party or a Related Body Corporate;
  - (ii) information concerning customers or suppliers of the other party or a Related Body Corporate; and
  - (iii) details of the conversion rate and performance measures achieved as a result of this Agreement.
- (b) Each party acknowledges that the Confidential Information is the other party's exclusive property and that unauthorised use or disclosure of it could cause damage to the other party.
- (c) Each party must keep confidential, and prevent unauthorised use and disclosure of the other party's Confidential Information.

**12.2 Exceptions**

- (a) Notwithstanding **clause 12.1**, Select Solutions may:
  - (i) provide relevant information about the Customer to AEMO and to the relevant retailers or network service providers to the extent reasonably required to perform its obligations under this Agreement and to anyone entitled to the information under any laws, Regulatory Requirements or the Rules;
  - (ii) disclose information about the Customer to a credit-reporting agency including the Customer's identity and the fact that the Customer has applied to purchase services from Select Solutions; and
  - (iii) obtain at any time during negotiation of this Agreement or during the Term a credit report

from a credit-reporting agency containing credit information about the Customer or information concerning the Customer's commercial activities or commercial credit worthiness.

- (b) Nothing in **clause 12.1** restricts the disclosure of Confidential Information by a party:
  - (i) (Public domain): where the information has come into the public domain other than through the fault of the party disclosing the information;
  - (ii) (Legal Proceedings): to enforce its rights or to defend any claim or action under or in connection with this Agreement;
  - (iii) (Regulatory body): to the extent required by a lawful requirement of any government authority or stock exchange having jurisdiction over a party to this Agreement or its related bodies corporate;
  - (iv) (Law): to the extent required under any law, accounting standard, administrative guideline, directive, request or policy, whether or not having force of law;
  - (v) (Advisers): to the extent necessary to brief legal and financial advisers about the party's affairs, but only where such advisers have been required to keep the information confidential;
  - (vi) (Employees): to any of its employees to whom it is necessary to disclose the information; or
  - (vii) (Consent): where the disclosure has been approved in writing by the other party.

**13. General**

**13.1 Customer Warranties**

- (a) Where the Customer enters into this Agreement through an agent, the Customer both represents and warrants that the agent has authority to enter into and bind the Customer to these terms and conditions.
- (b) If the Customer is made up of more than one entity, an obligation of those parties under this Agreement is joint and several and the rights of those persons under this Agreement are held jointly.

**13.2 Notices**

- (a) A notice, approval, consent or other communication in connection with this Agreement:
  - (i) may be given by the relevant representative of the relevant party;
  - (ii) must be in writing; and
  - (iii) must be left at the address of the addressee, or sent by prepaid ordinary post to the address of the addressee or sent by email.
- (b) Unless a later time is specified in it a notice, approval, consent or other communication takes effect from the time it is received.
- (c) A letter or email is taken to be received:
  - (i) in the case of a posted letter, on the third business day after posting; and
  - (ii) in the case of email, upon receipt of a delivery and "read" confirmation provided the email is sent before 5pm on a Business Day in the recipient's location.

**13.3 Force Majeure**

- (a) If a party is unable wholly or in part to perform on time (**Affected Party**) and as required an obligation under

this Agreement (other than an obligation to pay Fees or any other monies) by reason of the occurrence of an Event of Force Majeure, then that obligation is suspended so far as the Affected Party's ability to perform is affected by that Event of Force Majeure.

- (b) If the Affected Party's obligations under this Agreement are suspended in accordance with **clause 13.3** as a result of an Event of Force Majeure, then the Affected Party must:
- (i) give notice to the other party of reasonable particulars of the Event of Force Majeure and the probable extent to which the Affected Party will be unable to perform or be delayed in performing its obligations;
  - (ii) use reasonable endeavours to mitigate the consequences of that Event of Force Majeure; and
  - (iii) keep the other party informed of the status of the Event of Force Majeure.

#### **13.4 Entire Agreement**

The parties acknowledge that this Agreement embodies the whole understanding between them relating to the subject matter of this Agreement and supersedes any and all oral and written negotiations and communications by or on behalf of any of them.

#### **13.5 Assignment**

Neither party to this Agreement may assign, novate or otherwise dispose of its rights or obligations under this Agreement without the prior written approval of the other party which may not be unreasonably withheld.

#### **13.6 Amendments**

No variation of any provision of this Agreement will be effective unless it is in writing, refers specifically to this Agreement and is duly executed by each party.

#### **13.7 No Adverse Construction**

This Agreement will not be read and construed adversely in relation to a party only because that party was responsible for its drafting.

#### **13.8 Waiver**

Neither party will be deemed to have waived any right, power or privilege under this Agreement or any portion thereof unless that waiver has been duly executed in writing and acknowledged by the party concerned. The failure of a party to enforce at any

time any of the provisions of this Agreement will not be construed as a waiver of that provision, nor will it affect the validity of this Agreement or any part thereof, or the right of that party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement will be held to be a waiver of any other or subsequent breach.

#### **13.9 Severability**

If any provision of this Agreement is found to be void, voidable by a party, unenforceable, invalid or illegal and would not be so if a word or words were omitted, then that word or those words are to be severed and if this cannot be done, the entire provision is to be severed from this Agreement and that omission or severance will not affect the validity or enforceability of the remaining provisions of this Agreement.

#### **13.10 Survival**

Neither expiry nor termination of this Agreement will be taken to release the parties from the obligations in this Agreement that by their nature survive the expiry or termination of this Agreement including, without limitation, all warranties and representations and obligations of indemnity or confidentiality or obligations relating to Intellectual Property Rights.

#### **13.11 Costs**

Except as otherwise provided in this Agreement, each party will bear its own costs arising out of the negotiation, preparation and execution of this Agreement.

#### **13.12 Further Assurances**

Each party will do all things and execute all further documents reasonably required to give full effect to the terms of this Agreement.

#### **13.13 Counterparts**

This Agreement may be executed in any number of counterparts. All counterparts taken together will be taken to constitute one instrument.

#### **13.14 Electronic Signatures**

The parties expressly consent and agree this Agreement may be signed electronically by an authorised representative of each party. The parties agree that any such electronic signatures will be treated, for purposes of validity, enforceability as well as admissibility, the same as hand-written signatures.

#### **13.15 Governing Law**

This Agreement is governed by and will be construed in accordance with the laws of the State of Victoria. The parties submit to the exclusive jurisdiction of the courts of Victoria.