

A PLUS ES is a *Metering Coordinator, Metering Provider and Metering Data Provider* and provides corresponding services in accordance with the Rules.

B The Customer agrees to appoint and engage PLUS ES to provide the Services for the Sites, and PLUS ES accepts that appointment, on the terms and conditions of this agreement.

1 Term

1.1 Term and Renewal

(a) Subject to clause 1.1(b), the term of this agreement (**Term**) commences on the date of this agreement and, unless terminated earlier in accordance with its provisions, ends on the Expiry Date.

(b) The Expiry Date and the Term will, subject to clause 1.1(c), extend for a further period equal to the Extension Period:

- (i) at the end of the Initial Period; and
- (ii) at the end of each Extension Period thereafter.

(c) The Term will be extended if:

- (i) a party provides written notice to the other party no later than 2 months before the expiry of the then current Term that it wishes to extend the Term; and
- (ii) on or before the date which is 2 weeks after the giving of that notice, the other party agrees in writing to the extension or does not respond in writing to the notice.

(d) If this agreement is extended in accordance with clause 1.1(b), the Charges applying on the conclusion of the Initial Period or Extension Period (as applicable) will continue to apply, except that PLUS ES may vary the Charges in accordance with clauses 5.4 or 5.5 or as otherwise notified to the Customer.

1.2 Services Term

(a) The Customer's appointment of PLUS ES as the MC, MDP and MP (as relevant) for a Site commences on the Appointment Date and ends on the Services End Date.

(b) The end of a Services Term for one Site does not terminate this agreement or the Services Term in relation to any other Site.

2 Services

2.1 Provision of Services

(a) The Customer appoints PLUS ES to provide the Services for the Sites. PLUS ES agrees to provide the Services to the Customer for the Sites in exchange for the Charges.

(b) PLUS ES will provide the Services to the Customer for a Site for the Services Term for that Site, provided that PLUS ES is not obliged to provide any Services at that Site unless and until the status of the relevant MSATS Change Request becomes 'Pending' as described in the MSATS Procedures.

(c) Where PLUS ES is appointed at a Site:

- (i) as the MC only, references to Services in this agreement are taken to mean MC Services for that Site;
 - (ii) as the MDP only, references to Services in this agreement are taken to mean MDP Services for that Site;
 - (iii) as the MP only, references to Services in this agreement are taken to mean MP Services for that Site; and
 - (iv) as one or more of the roles described in paragraphs (i), (ii) and (iii), references to Services in this agreement are, as relevant, taken to mean MC Services, MDP Services and/or MP Services for that Site.
- (d) PLUS ES must for each Site where it is appointed to provide Services by the Customer perform the Services in accordance with the Regulations.

2.2 Appointment of PLUS ES

Where PLUS ES is appointed as MC, MP and/or MDP for a Site:

- (a) the Customer must procure (unless prohibited by a pre-existing agreement) that the Retailer:
 - (i) appoints PLUS ES to the roles for which it is providing the Service(s) under this agreement for the Customer's Small Sites (if applicable) on the terms and conditions set out in this agreement; and
 - (ii) records PLUS ES in MSATS as the MC, MP and/or MDP (as applicable) in respect of the relevant *connection point(s)*;
- (b) this agreement will apply to the provision of Services in respect of those Small Sites referred to in clause 2.2(a) at which PLUS ES is so appointed.

2.3 Termination of individual Sites

Subject to clause 12.3, the Customer may terminate this agreement in respect of a Site by giving at least 20 *business days* prior written notice to PLUS ES, specifying the relevant Site to be terminated.

2.4 Additional Services

If at any time, the Customer requires PLUS ES to provide Additional Services, the Customer may make a written request in a form as agreed from time to time by the parties. Additional Services may also be requested by the Customer through the Retailer.

3 Equipment and Metering Installations

3.1 Customer obligations

- (a) PLUS ES's risk and title is limited to the *meter* at a Site.
- (b) If the Equipment:
 - (i) is stolen, damaged, destroyed or otherwise interfered with (other than by PLUS ES); or
 - (ii) is not in accordance with this agreement (including any failure, non-conformance, deficiency, error, fault, malfunction, irregularity or other defect in respect of the Equipment); or

- (iii) reaches end-of-life (as determined by PLUS ES);

then Customer:

- (iv) must immediately notify PLUS ES, specifying the circumstances and matters in clauses 3.1(b)(i), 3.1(b)(ii) and 3.1(b)(iii) including the Equipment affected in reasonable detail;
- (v) in the case of clause 3.1(b)(i), must pay to PLUS ES on demand its reasonable costs and expenses of repairing, replacing, removing, rectifying or otherwise correcting (at PLUS ES' option) the Equipment or that part of the Equipment which has been affected, to the extent required to comply with the Rules;
- (vi) releases PLUS ES from its obligations under this agreement to the extent that it cannot perform its obligations due to the matters in clauses 3.1(b)(i), 3.1(b)(ii) and 3.1(b)(iii); and

- (c) The Customer must provide all necessary consents and authorities required for PLUS ES to carry out testing and inspection of the relevant *metering installation* in accordance with the Rules or the alternative testing practice approved by or arranged with AEMO.

3.2 Testing and replacement

- (a) PLUS ES may at the Customer's cost provide Testing Services in respect of the *metering installation* at a given Site:
 - (i) on the commencement of this agreement where there is no existing or insufficient baseline or testing results or data at that Site; and
 - (ii) during the Term,
 to the extent PLUS ES considers is required for PLUS ES to meet its obligations in accordance with the Rules.
- (b) PLUS ES may from time to time install testing equipment at a Site or on the Customer's premises to undertake Testing Services.
- (c) Customer acknowledges and agrees that PLUS ES retains the right to carry out all activities on or in respect of the Equipment as necessary to ensure compliance with the Rules and Regulations.
- (d) Customer must cooperate in all respects (including signing any consents) to assist PLUS ES in procuring any consents, permits or approvals from any authority, network service provider or other party required in connection with the performance of PLUS ES' rights and obligations under this agreement, including any switching (where requested by the Customer as an Additional Service), testing or access permit associated with any supply interruption or access to the *metering installation* for any testing or other maintenance and to comply with its obligations under the Rules.

3.3 Interruption or loss of Customer supply

- (a) Customer acknowledges that the performance of the Services or any other right or obligation under

this agreement by PLUS ES may involve conditions upon which the particular activity will be conducted (for example, power or equipment may need to be turned off or power lost or interrupted). Customer acknowledges and agrees PLUS ES will endeavour to minimise any disruptions, but that PLUS ES assumes no responsibility for and is indemnified by the Customer for and against any Loss that the Customer or any third party may incur in respect of such conditions or any disruption or interruption.

3.4 Access

- (a) Customer must provide, and do all things necessary for the, safe, convenient, clear, unobstructed and reasonable access by PLUS ES to the *metering installation* at the Sites, and any other premises or property as reasonably required by PLUS ES and its subcontractors for the purposes of carrying out the Services to the extent that is required to ensure compliance in accordance with the Rules and to do anything reasonably necessary in connection with the performance of its rights and obligations under this agreement.
- (b) Customer must at its own cost obtain all required consents and/or approvals from any third party (including any landlord, neighbour, tenant or other party with an interest in the relevant land, property or *metering installation* other than the *meter*) that is required for PLUS ES to access, undertake and perform the Services and to do anything reasonably necessary in connection with the performance of its rights and obligations under this agreement.
- (c) If PLUS ES cannot gain access to the *metering installation* or any of the Sites or any other premises or property due to the Customer failing to satisfy clauses 3.4(a) or 3.4(b), then PLUS ES may charge the Customer for any incurred costs as a result of the deployment of staff and resources associated with the wasted visit.
- (d) PLUS ES will ensure that that the MP and the MDP comply with any reasonable or lawful request a Customer makes regarding the safety of any persons at the Site.

4 Data

4.1 Metering Data

- (a) PLUS ES agrees to comply with its obligations under the Rules as it applies to *metering data*.
- (b) Despite any other provision in this agreement, PLUS ES is not precluded from collecting or using Metering Data in any way, provided it is not used in a manner prohibited under the Rules or applicable law.

4.2 Collection and use

Customer consents to PLUS ES collecting, using and disclosing the Customer Data and Metering Data to perform PLUS ES' obligations and to exercise its rights in connection with this agreement or the Rules, and for any other lawful purpose (including for Business Purposes).

5 Charges
5.1 Payment for Services

- (a) The Customer must pay PLUS ES the applicable Charges for each Site for Services during the relevant Services Term in accordance with this agreement.
- (b) The Meter Annuity will be payable in respect of each Site while PLUS ES is appointed in any of the roles described in clause 2.1(c).

5.2 Retailer to collect Charges

- (a) The parties acknowledge that the Retailer may act as PLUS ES' billing agent and may invoice the Customer the Charges PLUS ES notifies to the Retailer as being payable by the Customer under this agreement (**Retailer Invoice**).
- (b) Subject to clause 5.2(d), if the Retailer does not invoice the Customer, or does not receive full payment from the Customer, for all the Charges, PLUS ES will invoice the Customer directly for those Charges in a form determined by PLUS ES (acting reasonably) and the Customer must pay PLUS ES directly for those Charges invoiced under this clause 5.2(b).
- (c) The Customer must pay:
- (i) each Retailer Invoice within the payment terms of the Retailer; and
 - (ii) each PLUS ES issued invoice under clause 5.2(b) within 30 days after the date of the invoice.
- (d) If the Customer pays the Charges in a Retailer Invoice, this will discharge the Customer's payment obligations to PLUS ES for a corresponding amount and the Customer will not be liable to pay PLUS ES that amount despite any failure of the Retailer to pass through the relevant Charges to PLUS ES.

5.3 Payment disputes

- (a) If the Customer disputes an amount payable that relates to the Services under this agreement, Customer must give written notice of the Dispute to PLUS ES, including details of the amount that is disputed and the reasons for the dispute, as soon as practicable and in any event within 10 *business days* after the circumstances giving rise to the dispute come to the Customer's attention (whether before or after Customer has paid the invoice). The Customer must still pay the undisputed amount within the period specified in clause 5.2(c).
- (b) The parties must continue to comply with their other obligations under this agreement during the period of any payment dispute, and any failure to pay the disputed amount will not be regarded as a breach of this agreement until the dispute is resolved.
- (c) If the parties agree or it is finally determined, in respect of the payment dispute, that an amount is payable by:
- (i) Customer to PLUS ES, the Customer must pay that amount within 10 *business days* of that agreement or determination; or

- (ii) PLUS ES to Customer, PLUS ES will refund that amount to Customer within 20 *business days* of that agreement or determination.

5.4 Change in Law

PLUS ES may vary the Charges payable under this agreement or introduce new charges to reflect any increase in PLUS ES' direct or indirect costs of providing Services as a result of a Change in Law by providing notice to the Customer of this change along with supporting evidence.

5.5 Fee adjustments

- (a) The Charges may be adjusted annually with effect from 1 July of the relevant year ("**Review Date**") by written notice by PLUS ES to the Customer, in accordance with the following formula:

$$NC = \frac{A}{B} \times OP$$

where:

NC is the amount of the relevant Charge which will apply on and from 1 July of the current year;

A is Consumer Price Index (All groups, Weighted Average of Eight Capital Cities) last published before the relevant Review Date;

B is Consumer Price Index (All groups, Weighted Average of Eight Capital Cities), for the same quarter of the year as in A, for the prior year; and

OP is the amount of the relevant Charge applying on 30 June of the current year

6 GST and Stamp Duty
6.1 GST

- (a) Unless the context requires otherwise, words and phrases used in this clause that have a specific meaning in the GST law (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) shall have the same meaning in this clause.
- (b) Unless expressly stated otherwise, all amounts payable or the value of other consideration provided in respect of supplies made in relation to this agreement are exclusive of GST (if any).
- (c) Where any amount is payable as a reimbursement, indemnification or similar payment calculated by reference to a loss, cost, expense or other amount incurred, then that amount must be reduced by any input tax credit available to that party and, if a taxable supply, must be increased by the GST payable in relation to the supply and a Tax Invoice will be provided by the party being reimbursed or indemnified.

7 Confidentiality
7.1 Disclosure

A party must not disclose any Confidential Information of the other party to any person (other than the broker) without the prior written consent of the other party, except:

- (a) to the extent required or permitted under this agreement; or
- (b) under corresponding obligations of confidence as imposed by this clause, to an Affiliate, and its and its Affiliates' Personnel or professional advisers, except where prohibited by law; or

- (c) to the extent required by law or under a binding order of a government agency; or
- (d) in enforcing this agreement or in a proceeding arising out of or in connection with this agreement.

Each party must ensure that any person to whom it discloses Confidential Information of the other party under clause 7.1(b), does not do or omit to do anything which, if done or omitted to be done by that party, would constitute a breach of this clause 7.

7.2 Survival of obligation

This clause 7 survives for 3 years from the earlier of the Expiry Date and the date this agreement is terminated in accordance with clause 12.

8 Intellectual Property

8.1 PLUS ES IP

PLUS ES IP remains the property of PLUS ES (or its licensor). Nothing in this agreement assigns any Intellectual Property Rights in PLUS ES IP to the Customer.

8.2 Customer IP

- (a) All Customer IP remains the property of Customer. Nothing in this agreement assigns any Intellectual Property Rights in Customer IP to PLUS ES.
- (b) Where the Customer provides PLUS ES with Customer IP (for example, site induction materials or Customer reporting templates) which is required in order for PLUS ES to comply with its obligations under this agreement, then, unless otherwise agreed in writing between the parties, Customer grants PLUS ES a world-wide, non-exclusive, royalty free, perpetual and irrevocable licence (with the right to sub-license) to use, reproduce, modify, develop and otherwise exploit the Customer IP to the extent necessary to perform its obligations and exercise its rights in connection with this agreement.

8.3 Developed Material

- (a) PLUS ES will own all rights and all Intellectual Property Rights in and to any Developed Material immediately from creation (including part creation).
- (b) All Developed Material shall be vested PLUS ES, and the Customer will execute all such documents as may be necessary or desirable to ensure all such Intellectual Property Rights become and remain vested in PLUS ES.

9 Privacy

PLUS ES must, when and for the sole purpose of providing the Services, comply with Privacy Law, and not disclose Personal Information of Customer except:

- (a) to its Personnel to the extent necessary for the purposes of performing its obligations and exercising its rights under this agreement;
- (b) as required by law, subject to PLUS ES giving notice to the Customer immediately if it becomes aware that such a disclosure may be required;
- (c) with the prior consent of the Customer; or
- (d) to another Market Participant.

10 Limitation of liability

10.1 Limit

Subject to clause 10.4 and to the fullest extent permitted by Law, the aggregate liability of each party to the other party for any and all claims, whether in contract (including under an indemnity), tort or otherwise, under or in connection with this agreement is limited:

- (a) subject to paragraph (b), to an amount equal to the aggregate Charges paid or payable by Customer to PLUS ES over the 12 month period prior to the date of the claim; and
- (b) where the relevant liability arises less than 12 months after the Commencement Date, to the amount equal to 12 times the average monthly Charges paid by Customer to PLUS ES in the period from the Commencement Date to the date of the claim.

10.2 No consequential loss

To the fullest extent permitted by law and subject to any application of clause 10.5 in the circumstances, neither party will be liable to the other party under or in connection with this agreement for any Consequential Loss.

10.3 Contribution to loss reduced

The liability of a party for breach of this agreement is reduced to the extent that an act or omission by the other party or its Personnel (including a negligent act or omission or breach of this agreement) contributed to the breach occurring and/or the Loss or damage resulting from the breach.

10.4 Personal injury or property damage

The liability of a party to the other party in respect of:

- (a) death, illness or injury of any person, is limited to \$50 million in aggregate;
- (b) Loss of or damage to any of the party's real property, is limited to \$20 million in aggregate; and
- (c) any obligation to pay the Charges, or any fraud or any liability which cannot by law be excluded, is not limited by this agreement.

10.5 Statutory warranties

Nothing in this agreement excludes or modifies the application or exercise of, or liability under any term, condition or warranty provided by law. However, to the fullest extent permitted by law, PLUS ES' liability to the Customer for any breach of such term, condition or warranty shall be limited, at PLUS ES' option, to:

- (a) supplying the Services again; or
- (b) paying the Customer the cost of having the Services supplied again.

10.6 Trustee's Limitation of Liability

- (a) Each Trustee enters into this agreement only in its capacity as trustee of its respective Trust and in no other capacity.
- (b) Subject to clause 10.6(e), the liability of each Trustee under or in connection with this agreement is limited to and can be enforced against the Trustee only to the extent to which it can be satisfied out of the assets of the relevant Trust of which the relevant Trustee is entitled to

apply in satisfaction of that liability. Subject to clause 10.6(e), this limitation of the Trustee's liability applies despite any other provision of this agreement and extends to all liability and obligations of the Trustee in any way in connection with any representation, warranty, conduct, omission, agreement or transaction related to this agreement.

- (c) Subject to clause 10.6(e), no person may bring proceedings against any of the Trustees in any capacity other than as Trustee of their respective Trusts. Subject to clause 10.6(e), if a party does not recover all moneys owing to it arising from non-performance of any obligations of each of the Trustees under this agreement by enforcing the rights referred to it in clause 10.6(b), it may not seek to recover the shortfall by:
- (i) bringing proceedings against the Trustee in its personal capacity; or
 - (ii) seeking the appointment of a liquidator, administrator, receiver (except in relation to the property of the Trust) or proving in winding up, administration or arrangement of or affecting the Trustee.
- (d) Subject to 10.6(e), the Customer waives its rights and releases the Trustee from any personal liability whatsoever, in respect of any Loss:
- (i) it may suffer as a result of any breach or non-performance by the Trustee of any of its obligations under this agreement; and
 - (ii) which cannot be paid or satisfied out of the assets of the relevant Trust.
- (e) The provisions of clauses 10.6(a) to 10.6(d):
- (i) do not apply to any obligation or liability of each of the Trustees to the extent that it is not satisfied because, under the trust deed of the respective Trust, or by operation of law, there is a reduction in the extent of the Trustees' indemnification out of the assets of the respective Trust, as a result of fraud, wilful default, negligence or breach of trust by the Trustee in the performance of the relevant Trustees' duties as trustee of the relevant Trust; and
 - (ii) do not exclude, restrict or modify the application of any liability of the respective Trustee to the extent it cannot by operation of law be excluded, restricted or modified.

11 Force Majeure

11.1 Event of Force Majeure

To the extent that a party's delay or inability to perform under this agreement is due to the existence or notification of a Force Majeure, the affected obligations of that party under this agreement will be suspended until the passing of the Force Majeure. The party affected by the Force Majeure must:

- (a) notify the other party of the Force Majeure; and
- (b) take reasonable steps to minimise any disruption to and resume the performance of its affected obligations.

12 Termination

12.1 Termination by Customer

The Customer may terminate this agreement:

- (a) for convenience, by giving not less than 60 *business days* written notice to PLUS ES;
- (b) for PLUS ES' material breach of a material term of this agreement, by giving 10 *business days* written notice to PLUS ES, provided that the Customer has first given written notice of the breach to PLUS ES and that breach is not remedied within 30 *business days* after PLUS ES receives the Customer's notice; or
- (c) with immediate effect by notice to PLUS ES if an Insolvency Event occurs with respect to PLUS ES.

12.2 Termination by PLUS ES

PLUS ES may terminate this agreement:

- (a) for convenience, by giving not less than 60 *business days* written notice to the Customer;
- (b) for the Customer's material breach by giving 10 *business days* written notice to the Customer, provided that PLUS ES has first given notice of the material breach to the Customer and that breach is not remedied within 20 *business days* after PLUS ES requests that the Customer remedy it; or
- (c) with immediate effect by notice to the Customer if:
 - (i) an Insolvency Event occurs with respect to the Customer; or
 - (ii) on 3 or more occasions in a 12 month period, the Customer fails to pay the undisputed proportion of an invoice in full and on time.

12.3 Exit Fees

The Customer must pay PLUS ES the Exit Fee on demand:

- (a) for all Sites, if the agreement is terminated by the Customer for convenience under clause 12.1(a); or
- (b) for all Sites, if the agreement is terminated by PLUS ES in accordance with clauses 12.2(b) or (c); or
- (c) for the relevant Site, if this agreement is terminated in respect of the Site under clause 2.3 and the date of termination is, in the case of a:
 - (i) Large Site, a date less than 3 years from the commencement of the Services Term for that Site; and
 - (ii) Small Site, a date less than 10 years from the commencement of the Services Term for that Site.

12.4 Survival

Clauses 2.3, 5, 7, 9, 10, 12 and 13 and any other provisions of this agreement which are expressed to survive, or by their nature survive, termination of this agreement will continue independently from the other obligations of the parties and survive termination or expiry of this agreement. Termination or expiry of this agreement does not affect any rights or obligations that may have accrued under this agreement.

13 Dispute Resolution**13.1 Application**

If a dispute arises (other than a payment dispute under clause 5.3), the parties' respective representatives, as set out in the details or as updated from time to time by written notice, must use their reasonable endeavours to attempt to resolve the dispute within 10 *business days* after receiving notice of the dispute. Each party warrants that its representative has full authority to resolve any dispute.

13.2 Continuance of performance

The Customer and PLUS ES will continue to perform this agreement notwithstanding the existence of a dispute, to the extent that its obligations are not in dispute.

14 General**14.1 Assignment**

- (a) The Customer cannot assign or transfer any of its rights or obligations under this agreement without the prior written consent of PLUS ES.
- (b) PLUS ES may at any time and at its sole discretion assign or novate any right, benefit, interest or obligation under this agreement to any person or entity without the Customer's consent.

14.2 Governing Law and Jurisdiction

This agreement is governed by the laws of New South Wales.

14.3 Entire Agreement

The contents of this agreement constitute the entire agreement between the parties in relation to its subject matter and supersedes any prior oral or written negotiations, representations, understandings or arrangements made between the Customer and PLUS ES regarding the subject matter of this agreement.

14.4 Severability

- (a) If a provision in this agreement is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.
- (b) If it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this agreement.

15 Interpretation

In this agreement:

- (a) "date of this agreement" means the date that the Order Form is executed by the Customer and provided to PLUS ES;
- (b) words appearing in italics have the meaning assigned to them from time to time by the Rules;
- (c) words expressing the singular include the plural and vice versa;
- (d) words denoting a natural person include corporations and vice versa;
- (e) derivatives of a word defined in this agreement have a corresponding meaning;

- (f) headings are included for convenience only and shall not affect interpretation;
- (g) a reference to *metering installation* in this agreement includes CTs and/or VTs;
- (h) a reference to a person in this agreement or another agreement or document includes the person's successors and permitted assigns;
- (i) a reference to a document or agreement includes a reference to the document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (j) a reference to a statute includes a reference to or citation of all enactments amending or consolidating the statute and to an enactment substituted for the statute;
- (k) a reference to dollars and \$ refers to amounts in Australian currency;
- (l) each Order Form and the Schedules to this agreement form part of this agreement;
- (m) 'includes' in any form is not a word of limitation; and
- (n) all reports, notices, consents, approvals, requests and demands must be in writing.

15.2 Rules prevail to extent of any inconsistency

If there is any inconsistency between a provision of this agreement and the Rules, then the provision of the Rules will prevail to the extent of any inconsistency.

16 Customer Trustee

If the Customer is a trustee of a trust, it warrants in both its capacity as trustee and in its personal capacity that:

- (a) the trustee is the only trustee of the relevant trust;
- (b) there are no other arrangements or understandings in relation to the relevant trust other than the trust deed;
- (c) the trustee has the power under the trust deed and law to:
 - (i) execute and deliver this agreement; and
 - (ii) perform its obligations under this agreement;
- (d) all action required by the trust deed and law to authorise:
 - (i) the trustee's execution and delivery of this agreement; and
 - (ii) the performance of its obligations under this agreement
 has been taken;
- (e) the execution by the trustee of this agreement and the performance by it of its obligations or the exercise of its rights under this agreement does not contravene the trust deed or law;
- (f) no action is currently taking place or pending to remove the trustee as trustee of the trust or appoint a new or additional trustee of the trust;
- (g) the trustee has a right to be fully indemnified out of the assets of the trust (subject to law) in respect of the obligations incurred by it under this agreement;

- (h) the trustee is not and has never been in breach of the trust deed or the law (including its general duties as trustee of the trust) in a way that would limit the amount recoverable under the trustee's indemnity referred to at 16(g) above; and
- (i) the trust has not been terminated and no action is pending to terminate the trust.

17 Definitions

In this agreement, unless the context requires otherwise:

"Additional Services" means the services described in section 4 of Schedule 1 (and such other services agreed by the parties to be "Additional Services") that PLUS ES may provide in respect of a Site as and when required in accordance with clause 2.4.

"AEMO" means the Australian Energy Market Operator or any successor.

"Affiliate" means, as to a party, any corporation, partnership, firm, joint venture, limited liability company, association, joint-stock company, trust, unincorporated organisation, governmental organisation or body, or other entity that directly or indirectly controls, is under common control with, or is controlled by, such party; as used in this definition, "control" and its derivatives mean possession, directly or indirectly, of power to direct or cause the direction of the management or policies of such entity, organization or body, whether through ownership of voting securities or otherwise.

"Appointment Date", for a Site, means the later of:

- (a) the "Proposed Appointment Date" specified for that Site in clause 7 of the Order Form; and
- (b) the date that the status of the relevant MSATS Change Request for that Site becomes 'Pending' as described in the MSATS Procedures).

"Business Purposes" means collection, use and/or disclosure of Customer Data and Metering Data for any lawful purpose, including combining it with other sources of data for analytics and research purposes, developing new technology, products and propositions, providing personalised services to Customer and facilitating collaborations and innovation with third parties that may require the exchange or combination of the Customer Data and Metering Data.

"Change Request" means a request to change participant identities in MSATS in accordance with the MSATS Procedures.

"Charges" means the Meter Annuity and any fees or charges agreed for any Additional Services, Testing Services, and any other amounts payable by the Customer to PLUS ES under this agreement.

"Confidential Information" of a party means all information of a confidential nature, in any form, concerning the contractual or commercial dealings, financial details, products or services (current or proposed), customers, employees, internal policy, the Intellectual Property Rights of the party (or its Affiliates) or dealings under this agreement, and including the terms and existence of this agreement and any Order Forms, but excludes Metering Data, Customer Data, and excludes information or material which is:

- (a) already in the public domain, or enters the public domain other than due to a breach of this agreement; or

- (b) obtained from a source other than the disclosing party, where that source is entitled to disclose it without an obligation of confidence.

"Consequential Loss" means special, incidental, indirect, consequential or punitive loss or damage, or for any loss of revenue, loss of profits (other than revenue or profit explicitly or implicitly comprised in the Charges or transactions contemplated by this agreement), failure to realise expected savings or other commercial or economic loss of any kind, whether in contract, tort (including negligence) or otherwise.

"Consumer Price Index" means the measure of inflation for all groups that is calculated and reported as a weighted average of the eight (8) capital cities by the Australian Bureau of Statistics each quarter and published by the Australian Bureau of Statistics in Catalogue 6401.0 – Table 1, Consumer Price Index – All Groups – or if that index is suspended or discontinued, the index substituted for it by the Australia Bureau of Statistics, or as otherwise agreed in writing by the parties.

"Corporations Act" means the *Corporations Act 2001* (Cth).

"Customer" has the meaning given to it in the Order Form.

"Customer Data" means a Customer's personal information (as that term is defined in the Privacy Act 1988 (Cth)) or other information about a Customer which is supplied by or on behalf of the Customer to PLUS ES, but excluding Metering Data.

"Customer IP" means any and all Intellectual Property Rights owned by or licensed to the Customer and which is provided by or on behalf of Customer to PLUS ES under this agreement, but excluding MC IP and Developed Material.

"CT" means current transformer.

"Developed Material" means all Materials and Intellectual Property Rights developed by, or on behalf of, PLUS ES under this agreement.

"Discloser" means the party who discloses or communicates Confidential Information (or the party on whose behalf it was so disclosed or communicated) to the other party (or person acting on its behalf).

"Equipment" means any equipment or component of a *metering installation* supplied by PLUS ES in connection with this agreement, including the *meter* and any associated infrastructure or equipment.

"Expiry Date" means the date 3 years from the date of this agreement, unless otherwise extended in accordance with clause 1.1(b).

"Exit Fee" means the exit fee calculated in accordance with section 6 of Schedule 1.

"Extension Period" means a period of 12 months.

"FRMP" means *financially responsible Market Participant*.

"Force Majeure" means any event, cause or circumstances beyond the reasonable control of a party and which could not have been prevented or overcome by the exercise of due diligence by that party, that prevents the party fulfilling an obligation or obligations under this agreement.

"Greenfield Site" means a Site that has never been energised.

"GST" means Goods and Services Tax as expressed in the GST Act.

"GST Act" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

"High Voltage Site" means a *connection point* where:

- (a) Customer is or becomes the end customer at that *connection point*; and
- (b) a PLUS ES owned or operated *metering installation* is installed at that connection point; and
- (c) a VT forms part of the *metering installation* referred to in paragraph (b),

and for the avoidance of doubt may be a *connection point* registered in MSATS with *NMI Classification Code* 'Large' or 'Small'.

"HV" means high voltage.

"Initial Period" means 3 years from the date of this agreement.

"Insolvency Event" in respect of a party, means:

- (a) a receiver, receiver and manager, trustee, administrator, other controller (as defined in the Corporations Act) or similar official is appointed over any of the assets or undertaking of that party;
- (b) the party suspends payment of its debts generally;
- (c) the party is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts or is presumed to be insolvent within the meaning of the Corporations Act;
- (d) the party enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (e) the party ceases to carry on business or threatens to cease to carry on business;
- (f) the party fails to comply with a statutory demand issued under Section 459F of the Corporations Act; or
- (g) an application or order is made for the winding up or dissolution of the party, or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of the party, otherwise than for the purposes of an amalgamation or reconstruction that has the prior written consent of the party.

"Intellectual Property Rights" means all copyright, trade mark, patent, design, confidential information, moral, trade secret, circuit layout and other like rights whether arising by common law or by statute or any right to apply for registration under a statute in respect of those or like rights.

"Large Site" means:

- (a) a *connection point* registered in MSATS with *NMI Classification Code* 'Large' and where:
 - (i) the Customer is or becomes the end customer at that *connection point*; and
 - (ii) a PLUS ES owned or operated *metering installation* is installed at that *connection point*; or
- (b) a High Voltage Site.

"Loss" includes loss, liability, damage, cost, charge, and expense.

"LV" means low voltage.

"Material" means material in whatever form, including documents, specifications, designs, plans, reports, products,

equipment, information, data, concepts, inventions, processes, formulae, know-how, graphic layouts, images and software.

"MC" means the role of *Metering Coordinator* as expressed in the Rules.

"MC Services" means the services described in section 1 of Schedule 1 of this agreement.

"MDP" means *Metering Data Provider*.

"MDP Services" means the services described in section 2 of Schedule 1 of this agreement.

"Meter Annuity" means, for a particular Site, the "Meter Annuity" applicable for that Site as specified in the relevant Order Form.

"Metering Data" means *metering data*, *NMI standing data* and all other information and data relating to a Site which is collected or generated by, a PLUS ES *metering installation*.

"MP" means *Metering Provider*.

"MP Services" means the services described in section 3 of Schedule 1 of this agreement.

"MSATS" means the Market Settlements and Transfer Solutions business system operated by AEMO to manage Change Requests and register participants responsible for *connection points*.

"MSATS Procedures" means the applicable version of the *MSATS Procedures: CATS Procedures Part 1 Principles and Obligations* as published and amended by AEMO from time-to-time.

"National Electricity Law" means the Schedule to the *National Electricity (South Australia) Act 1996* and jurisdictional legislation that forms the legal framework for the National Electricity Market.

"National Electricity Rules" or **"Rules"** means the National Electricity Rules referred to in the National Electricity Law.

"Order Form" means the agreed Order Form to which this agreement is attached and which is executed by the Customer.

"Personnel" means, in relation to an entity, the officers, employees, agents, consultants or contractors of that entity or employees or contractors of a contractor to that entity.

"PLUS ES" means PLUS ES (ABN 30 179 420 673).

"PLUS ES IP" means any and all Intellectual Property Rights owned by or licensed to PLUS ES, which PLUS ES uses in connection with the provision of the Services under this agreement, and includes any and all Materials and Intellectual Property Rights developed by, or on behalf of, PLUS ES under this agreement.

"Regulations" means the Rules, any Act or subordinate legislation applicable to the provision of Services, any terms and conditions of licences or authorities granted for the purpose of undertaking Services by PLUS ES and any requirements imposed by (or agreed with) AEMO relating to the undertaking of Services by PLUS ES (including any requirements imposed by AEMO in any contract between AEMO and PLUS ES) as amended from time to time.

"Retailer" means the relevant FRMP(s) for the Sites.

"Retailer Invoice" has the meaning given to it in clause 5.2(a).

"Review Date" has the meaning given to it in clause 5.5(a).

“Services” means, in respect of a Site, the “Services” specified in clause 4.1(b) of the Order Form which PLUS ES is appointed by the Customer to perform (or as the parties may otherwise agree from time to time in writing).

“Services End Date” for a Site is the earlier of:

- (a) the date on which another service provider is recorded in MSATS as the MC, MDP, MP (as relevant) for that Site;
- (b) the abolishment date of the *NMI* for that Site;
- (c) the date that this agreement is terminated in accordance with clause 12;
- (d) the date which is the final day of the Services Term; and
- (e) the date on which this agreement is terminated in respect of the Site under clause 2.3.

“Services Term” means, in respect of a Site:

- (a) the period specified in the Details of the Order Form as the “Services Term” (or the period ending on the “Services Term End Date” specified in the Details of the Order Form as the “Services Term End Date”) for that Site and which commences on the Appointment Date; or
- (b) if no such “Services Term” is specified, the period of 3 years from the Appointment Date (in the case of a Large Site) or the period of 10 years from the Appointment Date (in the case of a Small Site).

“Site” means, subject to clause 2.3, each Large Site and Small Site for which the Customer has appointed PLUS ES to provide Services as specified in an Order Form.

“Small Site” means a *connection point* registered in MSATS with *NMI Classification Code* ‘Small’ where:

- (a) Customer is or becomes the end customer at that *connection point*, and
- (b) a PLUS ES owned or operated *metering installation* is installed at that *connection point*,

but excludes a High Voltage Site.

“Tax Invoice” means an invoice provided in accordance with the GST Act.

“Term” has the meaning given to it in clause 1.1(a).

“Testing Services” means the services described in section 5 of Schedule 1 that PLUS ES may provide in respect of a Site as and when required in accordance with clause 3.2(a).

“Trust” means (as the case requires):

- (a) The Blue PES Partner Trust; or
- (b) The ERIC Alpha AUP Trust 1; or
- (c) The ERIC Alpha AUP Trust 2; or
- (d) The ERIC Alpha AUP Trust 3; or
- (e) ERIC Alpha AUP Trust 4.

“Trustee” means (as the case requires):

- (a) Blue PES Partner Pty Ltd (ACN 622 175 428); or
- (b) ERIC Alpha AUP Corporation 1 Pty Ltd (ACN 621 524 374); or
- (c) ERIC Alpha AUP Corporation 2 Pty Ltd (ACN 621 524 454); or

- (d) ERIC Alpha AUP Corporation 3 Pty Ltd (ACN 621 524 525); or
- (e) ERIC Alpha AUP Corporation 4 Pty Ltd (ACN 621 524 605).

“VT” means *voltage transformer*.

Schedule 1 Services and Charges

1 MC Services

PLUS ES will perform specified functions required in the role of *Metering Coordinator* in respect of each of the Sites in accordance with the Rules, the *metrology procedures* or any other applicable Regulations, or as otherwise directed by AEMO or the Australian Energy Regulator.

2 MDP Services

PLUS ES will:

(A) with respect to Sites that are connected to a *distribution network* or *transmission network* directly connected to the *NEM*, or an on-market *child connection point* in an embedded network, perform the obligations required in accordance with its role as *Metering Data Provider* for each of the relevant Sites as set out in the Regulations including the Rules, the *metrology procedures* and any other applicable law that directly relates to the provision of the *metering data services* (as applicable to the scope of appointment of that MDP); or

(B) with respect to Sites other than as described in section 2(A), provide to the Customer *metering data* related to the relevant Sites daily (or as agreed with the Customer in writing from time to time).

3 MP Services

PLUS ES will:

(A) with respect to Sites that are connected to a *distribution network* or *transmission network* directly connected to the *NEM*, or an on-market *child connection point* in an embedded network, perform the obligations required in accordance with its role as *Metering Provider* for each of the relevant Sites as set the Regulations, including the Rules, the *metrology procedures* and any other applicable law that directly relates to the provision of testing, installation and/or maintenance (as applicable to the scope of appointment of that MP) of each *metering installation* at the relevant Sites;

(B) with respect to Sites other than as described in section 3(A) provide meters and services in accordance with and to the extent required under applicable law, with such services including:

- (i) installation services;
- (ii) device management and equipment testing; and
- (ii) general systems and administration related to the activities in (i) and (ii) above; and

(C) with respect to a Greenfield Site, conduct a review of site documentation to assess compliance with the Rules, review the compliance status of *instrument transformers* associated with the *metering installation*, and conduct pre-commissioning checks of all metering secondary circuits to ensure the correct connection of Equipment (**Greenfield Installation Service**).

4 Additional Services

PLUS ES may from time to time offer to provide 'value-added' Additional Services for a Site. These Additional Services will be ordered in accordance with clause 2.4.

(A) Additional Services – WebGraphs

For the purposes of this schedule, Webgraphs (WG) means the Contractor's proprietary internet-based system for interval metering data reporting which permits Customers to better manage their energy consumption at a connection point using on-line reports and graphs comprising of the following packages:

- (A) for Small Site customers, the "WebGraphs Energy Awareness Pack"; and
- (B) for Large Site customers, the "WebGraphs Commercial Pack".

Webgraphs can only be sold where PLUS ES is supplying MDP Services.

(B) Additional Services – Power Quality

For the purposes of this schedule, Power Quality (PQ) means additional data provided with Webgraphs reports that includes volts, amps and/or harmonics depending on the metering configuration.

(C) Additional Services – Data Forwarding

For the purposes of this schedule, Data Forwarding (DF) means the *NMI12* data provided to the Customer or their authorised representative.

5 Testing Services

For the purposes of this schedule, HV CT and VT Testing means the testing of the VTs and CTs at high *voltage metering installations*, for the purposes of ensuring asset performance and compliance with the Rules.

PLUS ES will perform specified functions required to carry out the HV CT and VT Testing in respect of the specified Sites in accordance with the Regulations or as otherwise directed by or arranged with AEMO. This involves but is not limited to:

- 1) on notification from PLUS ES to the Customer that there is a requirement to perform testing the Customer, within 90 days after such notification, facilitating access and temporary supply interruption to the relevant Site, for the duration of the testing (up to 8 hours):
 - a. facilitating the supply interruption itself – through distributor and Customer HV switching; and
 - b. facilitating access permits for the HV network;
- 2) attending site with testing equipment;
- 3) testing the accuracy of CTs and VTs at the *metering installation* by injecting high voltages and currents on to the isolated primary conductors;
- 4) measuring CT & VT secondary output and comparing with standard instruments to determine the phase and amplitude errors;
- 5) preparing test reports for CTs and VTs, and making test reports available to the Customer; and
- 6) using test results to determine overall errors and compliance against the Rules.

For the purposes of this schedule, LV CT Testing means the testing of the CTs at low voltage *metering installations*, for the purposes of ensuring asset performance and compliance with the Rules.

PLUS ES will perform specified functions required to carry out LV CT Testing in respect of the specified Sites in accordance with the Regulations or as otherwise directed by or arranged with AEMO. This involves but is not limited to:

- 1) on notification from PLUS ES to the Customer that there is a requirement to perform testing the Customer, within 90 days after such notification, facilitating access and temporary supply interruption to the site, for the duration of the testing (up to 4 hours);
- 2) attending site with testing equipment;
- 3) testing the accuracy of CTs at the *metering installation* by secondary injection;
- 4) preparing test reports for CTs, making test reports available to the Customer; and
- 5) using test results to determine compliance against the Rules.

6 Exit Fee

The Exit Fee will be calculated as the aggregate amount equal to the sum of: (for each relevant Site) (A) the applicable Meter Annuity for a given Site, multiplied by (B) the Services Term remaining for that Site immediately before the date of termination. Where the Order Form for the Site did not stipulate a Services Term, the Services Term will be 3 years from the date of the Order Form for Large Sites and 10 years from the date of the Order Form for Small Sites.