

SCHEDULE 4 – METERING SERVICES TERMS AND CONDITIONS

Operative provisions

The parties agree:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this agreement, unless the context requires otherwise, any term appearing *like this* has the same meaning as in the Rules and the following terms shall have the following meanings:

Applicable Metering Laws means any law relating to, concerned with or otherwise relevant to the metering of electricity in the *National Electricity Market* and includes:

- (1) the *National Measurement Act 1960* (Cth) and any corresponding or similar State or Territory law;
- (2) provisions of the Rules and procedures authorised under the Rules that are expressed to apply to *Metering Coordinators, Metering Providers* and *Metering Data Providers* and which are relevant to Metropolis's category of registration with AEMO;
- (3) the *metrology procedure*; and
- (4) the *B2B Procedures* and MSATS.

Appointment means the appointment of Metropolis as the *Metering Coordinator, Metering Provider* and *Metering Data Provider* for a *Connection Point* for the Appointment Term;

Appointment End Date means the end date of an Appointment (which may be different from the End Date);

Appointment Start Date means the start date of an Appointment, (which may be different from the Commencement Date);

Appointment Term means the duration of an Appointment as agreed by the parties in writing, commencing on the Appointment Start Date and ending on the Appointment End Date;

Business Day means a day other than a Saturday, Sunday or public holiday in Melbourne or the State or Territory in which the Site is located;

Business Hours means the hours between 7:00am and 5:00pm on Business Days;

Commencement Date means the date set out in item 1.1 of Schedule 1;

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 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.

Customer means the person identified in item 2 of Schedule 1;

Customer Type means either the Business or Residential election, as defined in the *Customer Classification Code*;

Customer Size means either the Large or Small election, as defined in the *NMI Classification Code*;

Date of Execution means the date that this agreement is signed by the Customer;

Early Discharge Date means the date of termination an Appointment where an Appointment is terminated prior to the Appointment End Date in accordance with the Conditions;

End Date means the expiry date of this agreement, as set out in item 1 of Schedule 1;

Fees means the fees set out in Item 5 of Schedule 1 and where applicable fees in Schedule 3 including installation fees, site attendance fees, testing fees and any Service Discharge Fees;

Force Majeure Event means any event, cause or circumstances beyond the reasonable control of a party that prevents them fulfilling an obligation or obligations under this Agreement, either in whole or in part (with the exception of any obligation to pay). Includes but is not limited to war, strike, riot, storm, flood, terrorism, act of God, act or omission of AEMO;

Incumbent Provider means, where Metropolis is not the MP and/or MDP for a Site as at the Commencement Date or Intended Transfer Date (as applicable), the entity, company or person who is the MP and/or MDP as at the Commencement Date or the Intended Transfer Date (as applicable);

Intended Transfer Date means the intended date upon which a Site is to transfer to Metropolis for the provision of MP and MDP Services, as set out in item 5 of Schedule 1, or the Roll In Form – Additional NMIs, or agreed in writing by the parties;

Intellectual Property means all industrial and intellectual property rights both in Australia and throughout the world, whether registered or not and whether in existence now or devised in the future, and for the duration of the rights including any:

- (1) patents, copyright, registered or unregistered trademarks or service marks, trade names, brand names, domain names, indications of source or appellations of origin, registered designs and commercial names and designations, circuit layouts and database rights;
- (2) ideas, processes, inventions, discoveries, trade secrets, know-how, computer software (both source code and object code), confidential information and scientific, technical and product information; and
- (3) right to apply for or renew the registration of any such rights;

Large Site means a Site which is classified in MSATS as being a Customer Size which is Large;

Market Intermediary means the broker, consultant or third party named at item 3 of Schedule 1 who is authorised to act as an agent on behalf of the Customer or to receive access to information as though that party were the Customer;

Market Intermediary Value-Added Services Fee means the fees and charges the Customer has agreed to pay the Market Intermediary for services as noted in item 5 of Schedule 1 or, if not specified, as otherwise agreed between Metropolis and the Market Intermediary;

Metering Fees means the amount specified in item 5 of Schedule 1;

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Metering Equipment means any *meter* and/or metering equipment installed by Metropolis pursuant to this agreement or installed pursuant to a prior agreement between the Customer and Metropolis but used under this agreement;

MP and MDP Services means the services described in Schedule 2;

MSATS means the *Market Settlement and Transfer Solution Procedures*;

Residential Site means a Site which is not a Large Site or a Small Site and at which the Customer purchases electricity principally for personal, household or domestic use;

Roll In Form – Additional NMIs means the roll in form provided by Metropolis where the Customer wishes to roll in additional *NMIs* into the agreement;

Rules means the National Electricity Rules made under the National Electricity Law;

Schedule means a schedule to this agreement;

Service Discharge Fee means the fee that the Customer must pay to Metropolis in respect of any *Connection Point* for which the Customer elects to end Metropolis' provision of Services early rather than receive the Services for the full duration of the Appointment. This fee is equal to 50% of the Metering Fees that would have been payable in respect of the period from the Early Discharge Date to the Appointment End Date if the Appointment had continued until the Appointment End Date;

Services means the *Metering Coordinator, Meter Provider and Meter Data Provider* services;

Site means the property at which a *metering installation* is or is to be installed under this agreement or in respect of which the Services are or are to be provided;

Small Site means a Site which is classified in MSATS as being a Customer Size which is Small and a Customer Type which is Business;

Tax means any GST, stamp, duty, levy, deduction, carbon tax or withholding tax (plus interest thereon except where due to Metropolis default) but does not include income tax.

Term means the period from the Commencement Date to the End Date or the Termination Date as applicable;

Termination Date means the date of termination of this agreement where this agreement is terminated in accordance with clause 9 and ends on a date other than the End Date; and

Transition Period means the period from the date upon which Metropolis is appointed *Metering Coordinator* for a Site to the date that Metering Equipment is installed by Metropolis at the Site (i.e. the change-over period during which an Incumbent Provider's metering equipment is still installed at the Site);

Transition Services means in respect of a Site for which there is a Transition Period, the performance of the role of *Metering Provider* and *Metering Data Provider* in accordance with the Rules;

1.2 Interpretation

In this agreement headings and bold typing are included for convenience only and do not affect interpretation and, unless the context otherwise requires:

- (a) a reference to a word includes the singular and the plural of the word and vice versa;

- (b) if a word or phrase is defined, then other parts of speech and grammatical forms of that word or phrase have a corresponding meaning;
- (c) a reference to a document includes a reference to that document as amended, novated, supplemented, varied or replaced;
- (d) a reference to a clause is a reference to an item of that type in this agreement;
- (e) a reference to a party is a reference to a party to this agreement and includes a reference to that party's successors and permitted assigns;
- (f) a reference to a statute or regulation or a provision of a statute or regulation is a reference to that statute, regulation or provision as amended or a statute, regulation or provision replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws made or issued under that statute;
- (g) no provision of this agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this agreement or that provision;
- (h) a word or term defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the same meaning in this agreement where used in connection with the GST imposed under that Act; and
- (i) a reference to dollars is to the lawful currency of Australia.

2. TERM

2.1 Term

This agreement commences on the Commencement Date and continues in force for the Term.

2.2 Extension

The parties may agree to extend the Term by mutual agreement.

2.3 Provision of Services after expiry or early termination

Where Metropolis and the Customer have not formally agreed to extend the Term or renew the agreement, and Metropolis continues to provide *Metering Coordinator, Metering Provider* and *Meter Data Provider* Services in respect of any *metering installation* after the end of the Term, then the scope and cost of all MP and MDP Services will be as agreed between the *retailer* and Metropolis. Metropolis has no obligation to continue to provide the Services under the terms of this agreement beyond the end of the Term.

3. SERVICES

3.1 Appointment as *Metering Coordinator* by the customer

For Large Sites, the Customer by signing this agreement appoints Metropolis as *Metering Coordinator*. Metropolis will raise the necessary change requests in MSATS for the Large Sites listed in Schedule 1, Item 4.

3.2 Appointment to *Metering Coordinator* by the retailer

For Small Sites, the Customer is to use its best endeavours to have the *retailer* engage Metropolis as *Metering Coordinator* by initiating appropriate change

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requests in MSATS. This applies to all Small Site *metering installations* listed in Schedule 1, Item 4..

3.3 Engagement and timely commencement of Services

Subject to clause 3.4, following appointment, Metropolis must provide the Services for the *metering installations* for the Term of this agreement (subject to the term of each individual Appointment). Subject to clause 3.4, Metropolis must commence the provision of Services in respect of the *metering installations* as soon as reasonably practicable. Metropolis will use all reasonable endeavours to complete the installation of Metering Equipment as close as possible to the Commencement Date or the Intended Transfer Date (as applicable).

3.4 Transition of MP/MDP services from Incumbent Provider

(a) Where, as at the Commencement Date or the Intended Transfer Date (as applicable), there is an Incumbent Provider for a Site, the provisions of this clause 3.4 apply.

(b) Notwithstanding any other provision of this agreement, during the Transition Period:

(1) Metropolis will not appoint a *Metering Provider* or a *Metering Data Provider* for the Site and will not provide the MP and MDP Services to the Customer for the Site; and

(2) the Incumbent Provider will provide Transition Services to the Customer on the terms of the Incumbent Provider's existing arrangement with the Customer in respect of the Site.

(c) Metropolis will have no liability to the Customer in connection with the performance of Transition Services by the Incumbent Provider.

(d) To avoid doubt, Metropolis will appoint the Metering Provider and Metering Data Provider and provide the MP and MDP Services for the Site upon the expiry of the Transition Period.

3.5 Site Access

(a) The Customer must use reasonable endeavours to ensure that Metropolis has safe, convenient and unhindered access to Sites as reasonably required by Metropolis for the purpose of providing the Services. If the Customer requires Metropolis to access Sites outside Business Hours, reasonable additional charges may apply.

(b) If Metropolis discovers hazardous or defective equipment (including current transformers, voltage transformers, test blocks, fuses, switches or similar) at a Site, Metropolis must immediately report the condition to the Customer and the Customer must then arrange for and pay the cost of the repair or replacement of the equipment.

3.6 Additional Sites

(a) The Customer may request the provision of Services in respect of additional sites during the Term. Any requests should initially be made via the Market Intermediary.

(b) Metropolis will liaise with the Market Intermediary and consider any request made under clause (a).

(c) The Customer must provide any information reasonably requested by Metropolis, or the Market Intermediary on Metropolis' behalf, in respect of the request, including the NMI, the nominated *retailer*, the name (if applicable) and address of the Site, the period for which Services are required, and express notification in the event that any person residing at the Site requires a life support machine (such notification, where applicable, must be provided by a registered medical practitioner or a hospital).

(d) Where the parties agree to roll additional Sites into the agreement, the parties must execute a Roll In Form – Additional NMIs covering the new Sites and, following such execution, Metropolis will, subject to clause 3.4, commence the provision of Services at the relevant Site on the Intended Transfer Date or as soon as possible thereafter.

3.7 Metropolis' obligations

In providing the Services Metropolis must:

(a) exercise due care, skill and judgment in providing the Services;

(b) comply with:

(1) Applicable Metering Laws;

(2) *service level procedures* established, maintained and published by AEMO and applicable to the categories of registration relevant to Metropolis;

(3) the Rules;

(4) other applicable law;

(5) relevant codes of practice and relevant Australian Standards; and

(6) any reasonable and lawful instructions of the *retailer*;

(c) maintain any necessary accreditation and registration with AEMO as a *Metering Coordinator*, *Metering Provider* and a *Metering Data Provider* in any relevant category and any necessary accreditation or other approval under any State or Territory law;

(d) use personnel who are qualified to provide the Services;

(e) at its own expense immediately rectify any work that Metropolis has performed where that work is shown to be defective or of a standard below that required by this agreement;

(f) keep the Customer fully and promptly informed of all matters affecting or likely to affect the Services; and

(g) keep full and proper records of the Services provided and the work performed under this agreement and allow the Customer to inspect those records on reasonable notice.

3.8 Warranties

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Metropolis warrants that it is registered by AEMO as a *Metering Coordinator*, *Metering Provider* and a *Metering Data Provider* in accordance with National Electricity Rules at the time of entering into this Agreement and undertakes that it will remain so registered for the Term.

3.9 Customer obligations

- (a) The Customer will cooperate with Metropolis and provide assistance reasonably required by Metropolis to enable Metropolis to comply with its obligations under this agreement, Applicable Metering Laws and the Rules. This obligation includes taking all necessary steps to procure the nomination of Metropolis as *Metering Coordinator* for all Sites.
- (b) The Customer must, or must procure that the Site owner must:
 - (1) as soon as reasonably practicable, notify Metropolis at any time if it receives confirmation from a registered medical practitioner or a hospital that a person residing at a Site requires a life support machine;
 - (2) not interfere with, modify, disassemble or attempt to interfere with, modify or disassemble any Metering Equipment or the operation of any Metering Equipment; and
 - (3) take all reasonable precautions to protect the Metering Equipment from damage or interference.

4. FEES AND EXPENSES

4.1 Fees

The Customer must pay Metropolis the Fees for the Services.

4.2 Fee adjustments

If as a result of a change in any Applicable Metering Law or Tax there is an increase in the costs Metropolis incurs in providing the Services, Metropolis may, on provision of written notice to the Customer, adjust the Fees by an amount which is reasonable and proportionate having regard to the amount of the increase in those costs. If requested by the Customer, Metropolis will provide the reasonable particulars of the increase to the Customer.

4.3 Expenses

If Metropolis becomes aware that it will need to incur any additional or unusual expenses in order to properly perform the Services under this agreement (with such need not being caused by Metropolis), it will notify the Customer and seek the Customer's prior approval in writing prior to incurring such costs or expenses. If the Customer approves such costs or expenses, they will be payable or reimbursable by the Customer as soon as practicable after they have been incurred by Metropolis. If the costs and expenses are not approved by the Customer then, without liability to the Customer and to the extent that Metropolis is consequently hindered or unable to perform the Services, Metropolis will be relieved of its obligations to perform the Services impacted by the Customer's non-acceptance.

4.4 Invoices

- (a) Metropolis must invoice the Fees to the *retailer* for each *metering installation* at the end of each

month. Upon request, a copy of this invoice will also be provided to the Customer.

- (b) Together with each invoice, Metropolis must provide to the *retailer* and the Customer any records reasonably required by the Customer to calculate and verify the amount invoiced.

4.5 Non-payment by retailer

Where the Customer has arranged for the applicable *retailer* to pay the Fees on its behalf and the retailer fails to pay the Fees by the due date, the Customer will pay the outstanding Fees within 5 days of written notice to do so from Metropolis.

5. GST

- (a) All amounts payable to a party under this agreement (other than an amount for GST payable to the party under this clause 5) have been calculated without regard to GST.
- (b) If the whole or any part of any such amount is the consideration for a taxable supply for which the supplying party is liable to pay GST, the supplying party may charge the party liable to pay for the taxable supply under this agreement, and that party must pay the supplying party, concurrently with the payment of that amount, an additional amount equal to the GST payable in respect of the taxable supply calculated on the basis that the value of the taxable supply is the amount payable for the taxable supply excluding any GST.
- (c) The recovery of consideration for any taxable supply made under this agreement is subject to the supplying party issuing to the party liable to pay for the taxable supply a tax invoice in respect of the supply.
- (d) Any reference to an expense incurred by a party in this agreement excludes any amount of GST forming part of the relevant expense when incurred by the party for which the party can claim an input tax credit.

6. INSURANCE

6.1 Professional indemnity insurance

Metropolis must effect and maintain a professional indemnity insurance policy for the Term for the amount of \$5,000,000 per claim and in the aggregate.

6.2 Public liability insurance

Each party must effect and maintain a public liability insurance policy for the Term for the amount of \$10,000,000 per occurrence and in the aggregate.

6.3 Proof of insurance

Each party must, on request of the other party, provide certificates of currency for such insurance.

7. LIMITATION OF LIABILITY

7.1 Liability Cap

- (a) To the maximum extent permitted by law, the aggregate liability of Metropolis to the Customer in respect of this agreement is limited to the greater of:

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- (1) \$10,000; and
- (2) the amount Metropolis actually recovers under an insurance policy required to be maintained under this agreement, up to a maximum of:
 - (A) \$10,000,000 in aggregate in respect of public liability insurance;
 - (B) \$5,000,000 in aggregate in respect of professional indemnity insurance.

7.2 No liability for consequential loss

Metropolis is not liable to the Customer in contract, in tort, in equity by operation of statute or otherwise, for any kind of:

- (a) indirect, consequential or incidental loss or damage;
- (b) loss of profit, anticipated profit, revenue or opportunity;
- (c) loss arising from business interruption; or
- (d) any other type of economic loss

suffered or incurred by the Customer, or any other person, arising out of or in connection with this agreement.

8. FORCE MAJEURE

If a party is unable to perform an obligation under this agreement as a result of a Force Majeure Event, that party (**Affected Party**) is released from performing that obligation in so far as it is affected by the Force Majeure Event, provided that the Affected Party:

- (a) notifies the other party of the reasonable particulars of the Force Majeure Event and the extent to which the Affected Party believes it will be prevented or delayed from performing its obligations;
- (b) uses reasonable endeavours to mitigate the impacts of the Force Majeure Event;
- (c) keeps the other party informed of the status of the Force Majeure Event; and
- (d) recommences the performance of its affected obligations as soon as reasonably practicable after the Force Majeure Event has ceased.

9. TERMINATION

9.1 Customer's rights of termination

The Customer may terminate this agreement or the performance of the Services at a Site by written notice:

- (a) if Metropolis breaches a material term of this agreement and either:
 - (1) fails to remedy the breach within 20 Business Days of receipt of a written notice to do so from the Customer; or
 - (2) the breach is not capable of remedy,
 in which case this agreement may be terminated with immediate effect by the

Customer giving a written notice of termination to Metropolis;

- (b) without cause at any time subject to the provision of at least 60 days written notice to Metropolis and provided that the Customer must pay the Service Discharge Fee;
- (c) at any time on provision of at least 7 days written notice if the Customer (or the Site owner, if not the Customer) sells its business or the Site or ceases to operate its business at the Site, provided that the Customer must pay the Service Discharge Fee. (The Service Discharge Fee will be waived by Metropolis if another customer enters into a similar metering services agreement with Metropolis at the Site);
- (d) if Metropolis suffers a Force Majeure Event and that Force Majeure Event has materially impacted Metropolis' performance of the Services for a period of more than 30 days;
- (e) if Metropolis loses its accreditation as MC, MP and or MDP;
- (f) if an Insolvency Event occurs in respect of Metropolis and the services can no longer be provided, in which case this agreement may be terminated to the extent permitted under the Corporations Act by the Customer giving a written notice of termination to Metropolis.

9.2 Metropolis' rights of termination

Metropolis may terminate this agreement or the performance of the Services at a Site by written notice:

- (a) if the Customer breaches a material term of this agreement and either:
 - (1) fails to remedy the breach within 20 Business Days of receipt of a written notice to do so from the Customer; or
 - (2) the breach is not capable of remedy,
 in which case this agreement may be terminated with immediate effect by Metropolis giving a written notice of termination to the Customer;
- (b) where the Customer fails to pay any Fee when due and fails to remedy such non-payment within 10 Business Days of being notified to do so by Metropolis, in which case the Customer will also be liable to pay the Service Discharge Fee;
- (c) if an Insolvency Event occurs in respect of the Customer, in which case this agreement may be terminated to the extent permitted under the Corporations Act by Metropolis giving a written notice of termination to Metropolis.

9.3 Effects of termination

- (a) Upon termination or expiry of this agreement, or the performance of Services at a Site, the Customer must take all reasonable steps to ensure that Metering Equipment is removed from the Sites and returned to Metropolis in accordance with Applicable Metering Laws and the Rules.
- (b) The Customer must pay all Fees incurred up to the effective date of termination.

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- (c) Termination of this agreement will not prejudice or otherwise affect any rights and obligations of the parties expressed in this agreement to survive termination of this agreement, nor will it prejudice or otherwise affect any right or remedy one party has against another party in respect of any breach of this agreement before termination, but will terminate all other rights and obligations of the parties under this agreement.

9.4 Survival

This clause 9 and clauses 4, 5, 7, 10, 11, 12 and 13 survive termination of this agreement.

10. INTELLECTUAL PROPERTY

10.1 Ownership of background intellectual property

Each party will retain ownership of its Intellectual Property existing as at the Commencement Date of this agreement and this agreement does not assign or transfer any rights to such existing Intellectual Property.

10.2 Ownership of developed intellectual property

All Intellectual Property developed or created by Metropolis in the course of performing the Services is and will remain the sole property of Metropolis and the Customer will not dispute, challenge or infringe the Intellectual Property of Metropolis.

11. CONFIDENTIAL INFORMATION

11.1 Obligation to maintain confidence

- (a) Each party agrees to keep all Confidential Information delivered, made available or otherwise acquired pursuant to or for the purposes of this agreement confidential and agrees only to use such Confidential Information for the purposes of this agreement and not to disclose any Confidential Information to any third party unless the disclosing party has given its prior written consent.
- (b) Each party acknowledges that the unauthorised use or disclosure of the other party's Confidential Information could cause damage to the other party.
- (c) Each party must establish and maintain effective security measures to protect the Confidential Information of the other party against unauthorised access, copying, use or disclosure.

12. METERING DATA

Notwithstanding clause 11 (Confidential Information), the Customer acknowledges and agrees that Metropolis may use or disclose (including to third parties) *metering data* collected during the performance of the Services for the following purposes:

- (a) in connection with the development of products, services and solutions that Metropolis may wish to offer the Customer or other customers;
- (b) analysing *metering data* (whether discretely or aggregated with third party *metering data*) to uncover trends or commonalities in energy usage including usage patterns and tariffs; and

- (c) any other purpose agreed to by the Customer.

13. GENERAL

13.1 Independent contractor

The relationship between Metropolis and the Customer under this agreement is one of independent contract and neither this agreement nor anything contained in this agreement nor implied constitutes any other relationship.

13.2 Title

Title to any Metering Equipment, including any part thereof, provided and/or installed by Metropolis under this agreement remains vested in Metropolis.

13.3 Subcontracting

Metropolis may engage subcontractors to provide the whole or any part of the Services provided that Metropolis remains fully and solely liable to the Customer for the performance of this Agreement and for the acts and omissions of its subcontractors.

13.4 Customer Warranties

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. 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.

13.5 Governing law and jurisdiction

This agreement is governed by the laws of Victoria. The parties submit to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria.

13.6 Amendment

The parties may only amend this agreement if both parties sign the written amendment.

13.7 Severance

The Parties acknowledge and agree that if any provision or part of any provision of this agreement is unenforceable, it will be read down to be enforceable or, if it cannot be read down, the term will be severed from the agreement without affecting the enforceability of any part of such provision or any other provision.

13.8 Entire agreement

This agreement constitutes the entire agreement of the parties in respect of the subject matter of this agreement and supersedes all prior discussions, undertakings and agreements.