

## **Terms and Conditions: MP, MDP and MC Services**

### **1. TERMS OF QUOTATION**

Each PLUS ES Quotation is issued on condition that it is not a legally binding offer and, accordingly, the Customer's acceptance of the Quotation will not result in a binding contract between PLUS ES and the Customer. However, (a) each Quotation is issued on these Terms and Conditions; (b) If Customer indicates to PLUS ES that it wishes to accept the Quotation and PLUS ES agrees by written notice to Customer ("**Acknowledgment of Quotation Acceptance**"), then these Terms and Conditions, the Quotation and the Acknowledgment of Quotation Acceptance together form a contract between PLUS ES and Customer in respect of all Metering Installations at the Site in accordance with the Quotation ("**Contract**"); (c) Customer is able to indicate to PLUS ES that it wishes to accept the Quotation for a period of 60 days from the date the Quotation is issued unless a different period is specified in the Quotation or it is varied, revoked or replaced by PLUS ES before Customer indicates that it wishes to accept it; and (d) Customer is able to indicate to PLUS ES that it wishes to accept a varied Quotation for a period of 60 days from the date of the variation.

### **2. TERMS OF AGREEMENT**

Subject to clause 2A, PLUS ES's sole obligation under the Contract shall be to use reasonable endeavours to provide the Services in accordance with the Contract.

### **3. CONDITION PRECEDENT TO PLUS ES OBLIGATION TO PROVIDE CERTAIN SERVICES**

Customer acknowledges and agrees that PLUS ES's provision of a particular Service at a Site will commence on the last to occur of the following dates (a) in respect of all Services, the later of the date that (i) PLUS ES has issued an Acknowledgment of Quotation Acceptance to Customer for that Site and (ii) Customer is in compliance with clause 10; (b) if the Accepted Quotation does not provide for PLUS ES to provide MC Services, the date that PLUS ES has been formally notified by the MC appointed in respect of the relevant Metering Installations at the Site that PLUS ES is permitted to perform the Services at that Site in accordance with the Accepted Quotation; (c) if the Accepted Quotation includes the provision by PLUS ES of MP Services (i) the date that PLUS ES is appointed as the Metering Provider for all Metering Installations at the Site in accordance with the Accepted Quotation for that Site, and all such appointments have been registered on MSATS, and (ii) the date that PLUS ES commences installing Metering Installations at the Site in accordance with the Accepted Quotation; (d) if the Accepted Quotation includes the provision by PLUS ES of MDP Services, the date that PLUS ES is appointed as the Metering Data Provider for all Metering Installations at the Site in accordance with the Accepted Quotation for that Site and all such appointments have been registered on MSATS; and (e) if the Accepted Quotation includes the provision by PLUS ES of MC Services, the date that PLUS ES is appointed as the Metering Coordinator for all Metering Installations at the Site in accordance with the Accepted Quotation for that Site, and all such appointments have been registered on MSATS.

Customer shall take all reasonable steps to ensure that, as provided in the Accepted Quotation for each Site (i) PLUS ES is appointed as the MC in respect of each Metering Installation at the Site for the duration of the Term (ii) PLUS ES is appointed as the MDP and/or MP in respect of each Metering Installation at the Site, for the duration of the Term; (iii) all such appointments have been registered and become effective on MSATS on a date that is as close as possible to, and no earlier than the Commencement Date for that Site; and (iv) subject to these Terms and Conditions, PLUS ES is not replaced in MSATS in respect of any such appointments during the Term.

### **4. CESSATION OF PLUS ES'S OBLIGATION TO PROVIDE CERTAIN SERVICES**

Customer agrees that PLUS ES's provision of the following Services in respect of each Metering Installation specified in the Accepted Quotation for a Site will cease immediately if any of the following occur: (a) in respect of all Services, MSATS indicates that the Metering Installation is inactive; (b) in respect of MC Services, PLUS ES is no longer registered in MSATS as the Metering Coordinator in respect of the Metering Installation; (c) in respect of MP Services, PLUS ES is no longer registered in MSATS as the Metering Provider in respect of the Metering Installation; or (d) in respect of MDP Services, PLUS ES is no longer registered in MSATS as the Metering Data Provider in respect of the Metering Installation.

PLUS ES may cease providing certain Products or Services under the Contract on written notice to the Customer, if: (i) the Customer is in breach of the Contract and fails to remedy the breach within 10 Business Days after notice in writing has been provided by the terminating party specifying the breach; or (ii) the Customer becomes insolvent or (iii) if PLUS ES's obligations are suspended under clause 22 due to Force Majeure for a period greater than 2 months.

Upon cessation of the provision of a Service, if a Metering Installation to which the Contract relates requires replacement or removal and a new Metering Coordinator, Metering Provider or Metering Data Provider is appointed in respect of the new Metering Installation, the Customer must ensure that PLUS ES is replaced in MSATS as Metering Coordinator, Metering Provider or Metering Data Provider (as applicable) in respect of the Metering Installation, on a date that is on, or is as close as possible before, the date that the Metering Installation is replaced or removed.

### **5. ADDITIONAL PRODUCTS OR SERVICES**

If PLUS ES identifies that Customer requires products or services in addition to the Products and Services specified in the Accepted Quotation in order for the Services to be performed, or Customer requests products or services in addition to the Products and Services specified in the Accepted Quotation, ("**Additional Products or Services**"), PLUS ES may provide Customer with a written supplementary quotation for the Additional Products or Services ("**Supplementary Quotation**") and shall proceed with supplying the Additional Products and Services in accordance with the Supplementary Quotation if Customer indicates to PLUS ES in writing that it wishes to accept the Supplementary Quotation. Customer is able to indicate to PLUS ES that it wishes to accept the Supplementary Quotation for a period of 60 days from the date the Supplementary Quotation is issued unless a different period is specified in the Supplementary Quotation or it is varied, revoked or replaced by PLUS ES before Customer offers to accept it. If PLUS ES considers that the Additional Products or Services should be provided before any of the Products or Services the subject of the Contract are provided, PLUS ES may to the extent it is lawful to do so, suspend the provision of the Products and Services under this Contract pending acceptance of the Supplementary Quotation by Customer and provision of the Additional Products and Services.

The Supplementary Quotation will be issued to Customer on the terms contained in the Supplementary Quotation. Additional Products or Services performed as a result of acceptance of the Supplementary Quotation will be performed on terms agreed between Customer and PLUS ES in relation to those Additional Products and Services and which are consistent with any applicable requirements of the Rules.

### **6. TESTING OF METERING INSTALLATIONS**

(a) Customer requirements: If PLUS ES is providing MC Services to Customer the Customer may request that PLUS ES test the accuracy or operation of any Metering Installation associated with the provision of the MC Services at any time. If the accuracy or operation of the relevant Metering Installation complies with the minimum requirements of the Rules, Customer is responsible for paying the cost of conducting the tests and that cost will be included in an invoice issued under clause 16. PLUS ES must pay for the cost of conducting the tests if the accuracy or operation of the relevant Metering Installation does not comply with the minimum requirements of the Rules. PLUS ES will inform Customer of the rates that will be charged for the tests if Customer is responsible for paying the cost of them under this clause 6(a) prior to conducting the tests. PLUS ES will not be obliged to proceed with any testing until the Customer accepts the rates to be charged for the tests. (b) PLUS ES is not obliged to undertake any testing pursuant to this clause 6 unless Customer provides PLUS ES with safe and adequate access to the relevant Site to conduct such testing.

#### **7. DRAWINGS AND DOCUMENTS**

All illustrations, drawings and particulars of Products and/or Services that from time to time accompany a Quotation or appear in a PLUS ES catalogue, advertisement or price list, are for information only and do not form part of the Quotation. All drawings and other documents, including without limitation digital records, accompanying a Quotation or provided through the provision of Products and Services ("**Drawings and Documents**") remain the property of PLUS ES and must be treated as confidential information of PLUS ES. Customer must not use Drawings and Documents for any purpose other than that specified in the Quotation and must not disclose them to a third party. If Customer does not indicate that it wishes to accept the Quotation within the 60 day period referred to in clause 1(c) or 1(d) (as applicable), the Drawings and Documents must be returned to PLUS ES within 14 days after the expiry of such 60 day period.

#### **8. FREIGHT**

If any Services involve the testing or modification of equipment owned by Customer at PLUS ES's premises, Customer will be responsible for the delivery of the equipment to PLUS ES's premises and the removal of the equipment from PLUS ES's premises on notification to Customer of completion of the test or modification. Removal must occur within 5 Business Days after such notification by PLUS ES. PLUS ES may agree to organise the return freight of the equipment to Customer (at Customer's cost) on completion of testing, but will only do so as agent of Customer. PLUS ES will not be responsible for the safe return of the equipment to Customer and will not be liable for any loss or damage to the equipment while it is in transit or during loading and unloading.

#### **9. TIME**

PLUS ES will use reasonable endeavours to make timely delivery of the Services. However, time is not of the essence in respect of the Contract or any PLUS ES obligation under it.

#### **10. SITE**

PLUS ES may perform the Services and supply the Products at the Site. Customer must permit PLUS ES the access to the Site that PLUS ES requires to (i) perform the Services and supply the Products; and (ii) comply with any obligations or exercise any rights PLUS ES has under the Rules as Metering Coordinator, Metering Provider and/or Metering Data Provider, including after the End Date, and must provide, without cost to PLUS ES, any assistance, facilities and utilities that PLUS ES reasonably requires for the purpose of performing the Services and supplying the Products and complying with its obligations or exercising its rights under the Rules. Immediately on indicating that it wishes to accept the Quotation in accordance with clause 1, Customer must notify PLUS ES in writing of any special hazards or danger at or in respect of the Site.

#### **11. PROTECTION OF PRODUCTS IN CUSTOMER'S POSSESSION**

Customer acknowledges that PLUS ES may supply and install Products at a Site in order to provide the Services during the Term or comply with any obligations PLUS ES has under the Rules as Metering Coordinator, Metering Provider and/or Metering Data Provider, including after the End Date. Unless specified in the Accepted Quotation for a Site or otherwise agreed in writing between PLUS ES and Customer, Customer agrees that PLUS ES, or a Related Entity, is and remains the sole legal and/or beneficial owner of the Products installed at the Site by PLUS ES ("**PLUS ES Products**"). Accordingly, Customer agrees that any such PLUS ES Products do not become the property of Customer or a fixture at the Site. Customer will ensure that all PLUS ES Products in its possession or installed at the Site are (a) protected from damage (b) only used for their intended use as specified in the relevant Accepted Quotation and (c) not interfered with, modified or altered in any way. Customer must comply with all reasonable directions of PLUS ES in relation to the protection of PLUS ES Products. If a Metering Installation requires removal or replacement, or the Contract ends in accordance with clauses 17 or 18, Customer must carefully remove and return to PLUS ES, or allow PLUS ES to remove and retake possession of, any PLUS ES Products installed at the Site. Customer must ensure that any such PLUS ES Products are returned to PLUS ES, or that PLUS ES is enabled to retake possession of any such PLUS ES Products, promptly and in sufficient time for PLUS ES to perform any obligations it may have under the Rules in relation to the Metering Installation.

#### **12. OWNERSHIP**

If PLUS ES agrees to sell (which word in this clause includes sale as agent for a Related Entity) a Product to Customer, legal and equitable title remains with PLUS ES, or a Related Entity, until Customer has paid PLUS ES the Total Amount Payable for the Product. Before title passes as per this clause, Customer must (a) not bail, pledge, mortgage, charge, grant a lien over, lease or assign the Product or grant any other security over it, or (b) not remove any identification labels from it; and (c) notify PLUS ES in writing of any intended sale of the property where it is located. If the Accepted Quotation does not indicate that PLUS ES intends to sell Customer a Product, the Product remains the property of PLUS ES, or the appropriate Related Entity.

#### **13. GOODS & SERVICES TAX (GST)**

Unless expressly stated otherwise, (a) the Total Amount Payable set out in this Contract includes GST (if any); and (b) unless expressly agreed, PLUS ES shall issue a Tax Invoice to Customer before Customer is due to pay for that supply.

#### **14. METERING SERVICES**

Any Services specified in an Accepted Quotation must be provided in accordance with chapter 7 of the Rules.

#### **15. FEES**

Fees are listed in the Quotation and are applicable until the expiry of the Term, subject to escalation as set out in this clause 15. Billing for Services specified in an Accepted Quotation for each Site will commence at the time that the particular Services are specified to commence under clause 3 and, except for MP Services, will continue to apply for all Products and Services provided up to the End Date. For MP Services, billing will continue to apply up to the date of complete removal of PLUS ES's Metering Installation. Additional Products or Services shall be billed monthly by PLUS ES and identified separately on each monthly invoice.

In addition, Customer must, in relation to each Site, pay reasonable costs associated with: **(a)** Services performed at Customer's request outside of normal business hours (7a.m. – 5p.m. each Business Day); **(b)** travel to the Delivery Address in excess of 100km of the nearest PLUS ES office. If PLUS ES is to apply such cost, then PLUS ES will indicate the full amount separately on the Quotation; **(c)** revisits & re-scheduling of Services to suit Customer requirements; **(d)** handling & disposal of hazardous materials located at the Delivery Address whilst carrying out the Services; **(e)** a communication link with features in excess of the minimum requirements of the Rules (**Non Standard Communication Link**) which needs to be installed at a Site. PLUS ES will supply as part of the MP Service, a communication link which will be installed in compliance with the Rules. PLUS ES will supply such links up to the value of \$200. If a Non Standard Communication Link is required and/or the cost of such a link is greater than \$200, then the Customer must pay the amount exceeding \$200. If a Non Standard Communication Link is to be installed, then PLUS ES will provide the difference in cost via a separate quotation to the Customer; **(f)** the testing of any Metering Installation including the meter, current transformer and/or voltage transformer that is required under the Rules to be tested. This includes all costs associated with the provision of compliant test certificates; **(g)** the amount reflecting any additional costs and expenses due to **(i)** any information supplied by Customer which PLUS ES relied on when preparing its Quotation proving to be incorrect or incomplete or **(ii)** the delivery of the Products, Services or Additional Products or Services being interrupted or delayed by or as a result of any act or omission of Customer or Customer's employees, contractors or agents or **(iii)** a change in the Rules or any applicable statute or regulation relating to the supply or measurement of electricity affecting the Products, Services or Additional Products or Services provided or **(iv)** safety related induction courses requested by Customer. Customer must pay for any reasonable costs that PLUS ES incurs in fulfilling Customer requirements at such courses. PLUS ES shall be reimbursed for costs relating to travel, accommodation and labour that it incurs during the period of the course. PLUS ES will provide reasonable justification of such costs when invoicing Customer; and **(h)** a revisit to the Customer Site in order to upgrade the Metering Installation with a meter containing features exceeding the minimum requirements of the Rules.

PLUS ES may in its absolute discretion, increase the Price on each anniversary of the commencement of the Services, by a percentage equal to the percentage rise (if any) in the Consumer Price Index (All Groups) Sydney over the preceding 12 months.

PLUS ES will supply as part of the MP Service, a Metering Installation that complies with the Rules. If the Customer requests PLUS ES to provide or perform value added services that require a higher specification Metering Installation than PLUS ES is required to provide under the Rules, and such a request occurs before PLUS ES installs the Metering Installation, then there will be no additional charge to the Customer for the installation of the higher specification Metering Installation. If the request for Services, including Value Added Services requires PLUS ES to make a Site re-visit in order to upgrade a Metering Installation already installed and compliant with the Rules, then the Customer must make a one-off payment to PLUS ES of \$150 (GST inclusive).

## 16. INVOICE

Unless otherwise arranged, invoices will be issued to the Customer by PLUS ES for amounts payable by Customer to PLUS ES under the Contract. 21 days after the end of each month (or as agreed between the parties) PLUS ES will issue to Customer a Tax Invoice for the Total Amount Payable under the Contract during that month. Customer must pay the full amount owing to PLUS ES within 21 days of receipt of the invoice or at the times agreed between the parties. Customer must pay interest on any late payments at the rate of the maximum per annum reference lending rate published by the Commonwealth Bank of Australia Limited at the date of default plus 2%.

## 17. TERM AND RENEWAL

Subject to clause 3, the Contract commences for a Site on the date when PLUS ES provides Customer an Acknowledgment of Quotation Acceptance for the Quotation for the Site ("**Commencement Date**") and ends on a date (the "**End Date**") which is the earlier to occur of **(a)** the completion of the Term in circumstances where Customer has provided a Termination Notification under this clause 17; **(b)** the Deliberate Cessation of Power Services by Customer's retail supplier to the Delivery Address associated with the Site; **(c)** termination of the Contract in accordance with clause 18; **(d)** the time that MSATS indicates that all Metering Installations specified in the Accepted Quotation for the Site are inactive; **(e)** PLUS ES is no longer registered in MSATS as the Metering Coordinator, Metering Provider and/or Metering Data Provider, as applicable, in respect of all Metering Installations specified in the Accepted Quotation for the Site; and **(f)** the Customer appointing another service provider to provide Services in relation to the Site. At least 30 days before the completion of the Term, Customer must notify PLUS ES in writing whether it wishes to terminate the Contract with respect to all Products, Services or Additional Products or Services for that Site ("**Termination Notification**"). If a Termination Notification is not given, the duration of the Contract shall be extended by 12 months from the end of the Term (such period being a "**Renewal Term**"), at prices to be agreed by PLUS ES and Customer, and this process shall also be repeated at the expiry of the first and each subsequent Renewal Term. If PLUS ES and Customer cannot agree on revised prices before the end of the Term or the then current Renewal Term, then PLUS ES's current market rates for the Products, Services or Additional Products and Services will apply.

The Customer must ensure that, if it has not already been so replaced, PLUS ES is replaced in MSATS in respect of the relevant Metering Installation as Metering Coordinator, Metering Provider and/or Metering Data Provider (as applicable), on a date that is, or is as close as possible to, the End Date. In the event that the End Date is triggered pursuant to clause 18(f) and the Metering Installations at the Site require replacement or removal, the Customer must ensure that PLUS ES is replaced in MSATS as Metering Coordinator, Metering Provider and/or Metering Data Provider (as applicable) in respect of the Metering Installation, on a date that is on, or is as close as possible before, the date that the Metering Installation is replaced or removed.

## 18. TERMINATION

Either party may terminate the Contract on written notice if: **(a)** the other party is in breach of the Contract and fails to remedy the breach within 10 Business Days after notice in writing has been provided by the terminating party specifying the breach; or **(b)** the other party becomes insolvent or **(c)** Force Majeure occurs for a period greater than 2 months and all of PLUS ES's obligations under the Contract are suspended for that period. If the Contract is terminated in respect of any or all of the Products, Services or Additional Products or Services, Customer must **(a)** pay to PLUS ES all amounts then outstanding under any invoice, and **(b)** pay PLUS ES for work done and expenditure made by PLUS ES under the Contract since the date of the last invoice and up to the date of termination and **(c)** where PLUS ES terminates the Contract in respect of the Customer's breach in pursuant to clause 18(a), reimburse PLUS ES for any direct or indirect loss suffered by PLUS ES as a result of the termination including, without limitation, the Total Amount Owing and the legal costs incurred by PLUS ES in relation to the termination and the prior breach and **(d)** allow PLUS

ES access to the Delivery Address to obtain and remove any Products or other equipment owned by PLUS ES at the date of termination. PLUS ES may remove such items at the end of the Contract if it chooses.

#### **19. LIMITATION OF LIABILITY**

In this clause 19: (a) Australian Consumer Law has the meaning given to that term in section 4 of the Competition and Consumer Act 2010 (Cth); (b) Consumer has the meaning given to that term in section 3 of the Australian Consumer Law; and (c) PDH Goods or Services means goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption.

Under the Australian Consumer Law (and other similar legislation of Australian states and territories), certain statutory guarantees are conferred in relation to the supply of goods or services to a Consumer (Consumer Guarantees). Where Customer as a Consumer acquires goods and services under the Contract: (a) where the goods or services are PDH Goods or Services, the operation of the applicable Consumer Guarantees cannot be, and are not in the Contract, excluded, restricted or modified; or (b) where the goods or services are not PDH Goods or Services, PLUS ES limits its liability for a failure to comply with any Consumer Guarantee (other than where to do so would otherwise cause all or part of this clause to be void) to (at PLUS ES'S option): (i) in the case of goods, repairing or replacing the goods or paying the cost of having the goods repaired or replaced; and (ii) in the case of services, re-supplying the services or paying the cost of having the services re-supplied, and PLUS ES does not exclude or limit the operation of the Consumer Guarantees under any other provision of the Contract or in any other manner and Customer agrees that it is fair and reasonable in all the circumstances for PLUS ES'S liability to be so limited.

#### **20. EXCLUSION OF LIABILITY**

To the full extent permitted by applicable law, and subject to clause 19, under no circumstances and under no legal theory, whether in tort, contract or otherwise, shall PLUS ES, or a Related Entity, be liable to Customer or to any other person for any direct, indirect, consequential or financial loss or damage or other loss or damage of any character including any loss or damage by way of loss of revenue, loss of use, increased cost of working, loss of profit, loss of data, loss of goodwill, or work stoppage, computer failure, failure to provide the Products, Services or Additional Products and Services or malfunction of the Products or Additional Products, even if PLUS ES has been advised of the possibility of such loss or damage.

To avoid doubt, PLUS ES is not liable for any indirect, consequential, special, exemplary or punitive liabilities, losses, damages, costs or expenses, or for any loss of profits, revenue, business opportunity, interest, reputation goodwill, loss or destruction of data, or (except as explicitly set out in this clause (a)) loss of or interruption to the Customer's business.

#### **21. INDEMNITY**

Customer indemnifies and holds harmless PLUS ES, a Related Entity, and each of its employees, officers, agents and contractors against all direct losses, costs, damages, liabilities, claims, expenses, harm or injury which any of them may suffer or incur out of or in connection with: (a) any breach by Customer of the Contract or (b) the misrepresentation, misleading or deceptive conduct, negligence and/or other wrongful act or omission of Customer, its employees, agents or contractors in connection with the Contract.

#### **22. FORCE MAJEURE:**

If PLUS ES is delayed or is unable wholly or in part to perform any obligation under the Contract by reason of Force Majeure this Contract shall remain in effect except that such obligation shall be suspended and accordingly, neither PLUS ES nor a Related Entity will be liable for non-performance of that obligation for the period during which PLUS ES is affected. In this clause "Force Majeure" means any event beyond the reasonable control of PLUS ES, including any failure in the telecommunications network that prevents the transmission of metering data. Despite the foregoing, a party's obligation to pay any sum of money pursuant to any obligation under the Contract will not be released or discharged as a result of a Force Majeure.

#### **23. PRIVACY**

PLUS ES will handle any personal information obtained during the provision of the Services in accordance with its privacy policy and the requirements of the Rules. A copy of the PLUS ES Privacy Policy is available on request or may be viewed on the PLUS ES website: [www.plusES.com.au](http://www.plusES.com.au)

#### **24. VARIATION:**

All variations to this Contract must be in writing signed by duly authorised representatives of each party.

#### **25. ASSIGNMENT**

Customer must not assign its rights or transfer its obligations under this Contract without the prior written consent of PLUS ES which will not be unreasonably withheld. PLUS ES may at any time, without the consent of Customer, assign its rights or transfer or novate its liabilities and obligations under this Agreement and any asset delivered or provided under the Contract to any third party or any of PLUS ES's Related Entities (as that term is defined in the *Corporations Act 2001* (Cth), but must give prior written notification to the Customer where the assignment, transfer or novation is not to an PLUS ES Related Bodies Corporate (as that term is defined in the *Corporations Act 2001* (Cth)).

#### **26. PRECEDENCE & SURVIVAL**

If there is an inconsistency between the Accepted Quotation and these Terms and Conditions, the provisions of these Terms and Conditions prevail but only to the extent of the inconsistency.

Clauses 7, 8, 10, 11, 12, 15, 16, 18, 19, 20 and 32 survive the termination or expiry of the Contract.

#### **27. ENTIRE AGREEMENT**

The Contract is the entire agreement of the parties in relation to its subject matter and supersedes all other statements, representations, negotiations, arrangements, understandings, quotations, tenders and agreements between the parties in relation to it.

#### **28. SEVERANCE**

If any provision of the Contract is held by any court or tribunal to be invalid or otherwise unenforceable, that provision, to the extent of that invalidity or unenforceability, will no longer apply and the remaining provisions of the Contract shall continue to bind the parties.

#### **29. PROPER LAW**

The Contract is governed by the laws in force in the state or territory in which the Services are being supplied. PLUS ES and Customer irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts exercising jurisdiction in the relevant state or territory and waive, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.

### 30. NOTICES

Every notice, approval, consent or other communication ("**Notice**") issued by a party under the Contract must be issued by a duly authorised representative of the sending party to a duly authorised representative of the other party ("**Recipient**"). The Notice must be in writing and must be given to the Recipient by being sent by email transmission or sent by prepaid ordinary mail within Australia. A Notice is given, if sent by email transmission during any Business Day when the sending party's electronic equipment reported that the email had been sent. If the email transmission was sent after 5:00pm on a Business Day or on a day other than a Business Day, the Notice is deemed to have been given on the next Business Day. A Notice is given, if sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting.

### 31. DISPUTE RESOLUTION

If a dispute arises out of the Contract in relation Products, Services or Additional Products and Services being provided to meet the requirements of the Rules, the Rules dispute resolution process defined in clause 8.2 of the Rules will apply to any dispute between PLUS ES (or a Related Entity), and Customer, where Customer is a Code participant under the Rules.

If a dispute arises out of the Contract (including between PLUS ES (or a Related Entity), and Customer is not a Code Participant under the Rules), and the parties have not resolved the dispute within 7 days after one party gives written notice of the dispute to the other, the parties must endeavour to resolve the dispute through mediation. The mediator must be a person appointed by LEADR and the mediation shall be conducted in accordance with the mediation rules of LEADR. If the dispute is not resolved within 28 days after the appointment of a mediator, either party may, after giving written notice to the other party, commence court or arbitration proceedings. Nothing in this clause restricts the right of PLUS ES, a Related Entity or the Customer from seeking urgent interlocutory relief or (if applicable) to terminate the Contract in accordance with its terms.

### 32. DEFINITIONS

In these Terms and Conditions: "Accepted Quotation" means the Quotation accepted by the Customer and the subject of these Terms and Conditions; "Acknowledgement of Quotation Acceptance" is defined in clause 1; "Additional Products or Services" is defined in clause 5; "PLUS ES" means PLUS ES (ABN 30 179 420 673), a partnership carried on by: (a) Blue PES Partner Pty Ltd (ACN 622 175 428) as trustee for the Blue PES Partner Trust; (b) ERIC Alpha AUP Corporation 1 Pty Ltd (ACN 621 524 374) as trustee for ERIC Alpha AUP Trust 1; (c) ERIC Alpha AUP Corporation 2 Pty Ltd (ACN 621 524 454) as trustee for ERIC Alpha AUP Trust 2; (d) ERIC Alpha AUP Corporation 3 Pty Ltd (ACN 621 524 525) as trustee for ERIC Alpha AUP Trust 3; and (e) ERIC Alpha AUP Corporation 4 Pty Ltd (ACN 621 524 605) as trustee for ERIC Alpha AUP Trust 4; "PLUS ES Products" is defined in clause 11; "Business Day" means a day that is not a Saturday, Sunday or listed as a public holiday on the settlements calendar published by the Australian Energy Market Operator (AEMO) from time to time in respect of the state or territory of the primary business residence of the parties to the Contract; "**Commencement Date**" is defined in clause 17; "**Contract**" is defined in clause 1; "**Customer**" is the person to whom the Accepted Quotation is directed, being either the electricity Retailer for the Site(s) or the Large Customer at the Site(s); "**Deliberate Cessation of Power Services**" means the physical disconnection of power services due to site closure, vacancy, or the site otherwise becoming non-habited by the customer, or non-payment of electricity bills, and does not include the transfer of the customer's retail electricity contract from one retailer to another; "**Delivery Address**" means each address specified in an Accepted Quotation to which PLUS ES will require access to provide Services at the Site(s) the subject of the Accepted Quotation; "**Drawings and Documents**" is defined in clause 7; "**End Date**" is defined in clause 17; "**Force Majeure**" is defined in clause 22; "**FRMP**" means the 'financially responsible' 'Market Participant' as those terms are defined in the Rules; The terms "**GST**" and "**Tax Invoice**" have the meanings given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth); "**Large Customer**" has the meaning given to that term in the Rules; "**LEADR**" means the organisation of that same name that performs Alternative Dispute Resolution; "**MC**" means a Metering Coordinator; "**MC Services**" means all services a Metering Coordinator is required to provide under the Rules, except in respect of Type 5, Type 6 and Type 7 Metering Installations; "**MDP**" means a Metering Data Provider; "**Metering Coordinator**" has the meaning given to it in the Rules; "**Metering Data Provider**" has the meaning given to it in the Rules; "**Metering Provider**" has the meaning given to it in the Rules; "**Metering Installation**" means the metering installation (as defined in the Rules) for a Site; "**Metering Point**" has the meaning given to it in the Rules; "**MP**" means a Metering Provider. "**MSATS**" means the market administration system as used by the electricity market for site registrations; "**MDP Services**" means all services a MDP is required to provide under the Rules except in respect of Type 5, Type 6 and Type 7 Metering Installations; "**MP Services**" means all services a MP is required to provide under the Rules except in respect of Type 5, Type 6 and Type 7 Metering Installations; "**Non Standard Communication Link**" is defined in clause 15; "**Notice**" is defined in clause 30; "**Price**" means the price or prices set out in the Accepted Quotation for the provision of Products and/or Services for a Site (and includes the cost of delivery of the Products to the Delivery Address) as varied in accordance with these Terms and Conditions; "**Products**" means a meter and communications device (if applicable) that meets the requirements of Chapter 7 of the Rules selected by PLUS ES for provision of Services; "**Quotation**" means a written PLUS ES quotation referring to these Terms and Conditions; "**Recipient**" has the meaning given in clause 30; "**Related Entity**" means any entity that is a subsidiary of PLUS ES, or any partnership that leases assets to PLUS ES, including the Ausgrid Asset Partnership (ABN 48 622 605 040); "**Renewal Term**" has the meaning given in clause 17; "**Rules**" means the 'National Electricity Rules' (as defined in the National Electricity Law or in any replacement legislation), as those rules are amended or replaced from time to time; "**Services**" for a Site, means any of the MC Services, MDP Services, MP Services and/or Products specified in the Accepted Quotation for that Site, except in respect of Type 5, Type 6 and Type 7 Metering Installations and subject to any qualifications or variations indicated in the Accepted Quotation or otherwise indicated in writing to Customer by PLUS ES; "**Site**" means each site the subject of an Accepted Quotation, at which is located a Metering Point specified for delivery of the services set out in the Accepted Quotation; "**Supplementary Quotation**" is defined in clause 5; "**Term**" in respect of a Site, is the period described in the Accepted Quotation for that Site beginning on the Commencement Date; "**Total Amount Owing**" is the total amount identified on the Accepted Quotation with respect to the terminating Service(s) minus all payments received for the terminating Service(s) up until the date of termination; "**Total Amount Payable**" is the Price plus GST; "**Transfer Date**" means, in respect of a Site, the date on which all the conditions precedent in clause 2A have been satisfied for that Site; "**Type**" means, in relation to a Metering Installation, the Metering Installation type as determined in accordance with the Rules.

# TERMS & CONDITIONS: VALUE ADDED PRODUCTS & SERVICES

The Products and Services referred to in the attached Quotation agreed between PLUS ES and Customer are provided to Customer on these terms and conditions, and the terms of the Quotation, which together form a contract between PLUS ES and Customer (referred to below as "this Agreement").

## 1. VALUE ADDED PRODUCTS AND SERVICES

- 1.1 PLUS ES will provide Customer the Products and Services on the terms and conditions of this Agreement.
- 1.2 If PLUS ES determines that, in order for PLUS ES to provide the Products or Services, or both, additional products and services ("**Additional Products and Services**") will need to be provided to Customer:
- (a) PLUS ES may provide Customer with a supplementary quotation for the Additional Products and Services;
  - (b) PLUS ES may suspend the provision of the Products and Services until the Customer accepts such supplementary quotation; and
  - (c) when such supplementary quotation is accepted by Customer:
    - (i) this Agreement will be amended by such supplementary quotation; and
    - (ii) PLUS ES will provide Customer with the Additional Products and Services.
- 1.3 PLUS ES may terminate this Agreement by notice to Customer if Customer does not accept any supplementary quotation for Additional Products and Services within 7 days of the date of such supplementary quotation.

## 2. USE OF SERVICE DELIVERABLES

- 2.1 Customer must not use any survey report, drawing or other document, or any data or other information, provided by PLUS ES as part of the Services ("**Service Deliverables**") except for the purpose specified in the Quotation, or if no such purpose is specified, for Customer's internal business purposes.
- 2.2 Customer must not:
- (a) use any Service Deliverable for the benefit of any third party;
  - (b) give any third party access to or possession of any Service Deliverable, provided that Customer may give its suppliers access to the Service Deliverables solely for the purpose of using those Service Deliverables to provide services to Customer;
  - (c) copy any Service Deliverable, except with the written permission of PLUS ES; and
  - (d) remove any proprietary notices or disclaimers from any Service Deliverable, and Customer must reproduce such notices and disclaimers on any copy of the Service Deliverables which PLUS ES permits Customer to make.

## 3. PLUS ES EQUIPMENT ON CUSTOMER'S SITE

- 3.1 PLUS ES may install and operate its equipment, or the equipment of a Related Entity ("**PLUS ES Equipment**") on Customer's premises for the purpose of providing the Services.
- 3.2 Customer must:
- (a) prepare and maintain the operating environment for the PLUS ES Equipment in accordance with PLUS ES's directions;
  - (b) notify PLUS ES prior to installation of the PLUS ES Equipment of any hazards at Customer's premises;
  - (c) provide PLUS ES with all access to Customer's premises and all assistance PLUS ES requires to install, operate, de-install and remove the PLUS ES Equipment; and
  - (d) comply with all other directions of PLUS ES in relation to the PLUS ES Equipment.
- 3.3 Customer must not, and must not permit any third party to:
- (a) use or operate the PLUS ES Equipment, except with the written consent of PLUS ES; (b) de-install, move, modify, alter, repair or interfere with the PLUS ES Equipment; or
  - (c) alter, obscure or remove any proprietary notices on the PLUS ES Equipment.
- 3.4 Title in the PLUS ES Equipment does not pass to Customer.
- 3.5 Customer must not, and must not attempt to, assign, mortgage, pledge, sell, charge, encumber, sublet, part with possession of, grant any lien, licence or other encumbrance over, or otherwise dispose of or deal with, or permit or suffer to exist any lien or other encumbrance over, the PLUS ES Equipment, and shall keep the PLUS ES Equipment free from any distress, execution or other legal process.
- 3.6 Customer must indemnify PLUS ES, or a Related Entity, against:
- (a) loss of or damage to the PLUS ES Equipment during any period in which the PLUS ES Equipment is on Customer's premises, except any loss or damage caused by the negligence of PLUS ES; and
  - (b) any claim or action by any officer, employee, agent or contractor of Customer in relation to the PLUS ES Equipment, and any loss, damage, cost or expense suffered or incurred by PLUS ES in relation to any such claim or action.

## 4. DELIVERY OF CUSTOMER'S EQUIPMENT TO PLUS ES

- 4.1 If Services include PLUS ES testing or modifying Customer's equipment at PLUS ES's premises, Customer must: (a) deliver or arrange delivery of the Customer's equipment to PLUS ES's premises; and
- (b) unless otherwise agreed with PLUS ES, remove or arrange removal of Customer's equipment from PLUS ES's premises within 5 days of PLUS ES advising Customer that it no longer requires Customer's equipment.
- 4.2 If PLUS ES agrees to arrange delivery of Customer's equipment to or from PLUS ES premises to Customer's premises, PLUS ES will do so as Customer's agent, and PLUS ES will not be liable for any loss of or damage to Customer's equipment during delivery or loading or unloading.

## 5. EQUIPMENT SALE

- 5.1 PLUS ES will sell (including any sale as agent for a Related Entity) the Sale Equipment and Customer will purchase the Sale Equipment.
- 5.2 Title in the Sale Equipment will pass to the Customer upon payment of the purchase price of the relevant Sale Equipment.
- 5.3 Unless otherwise agreed by the parties, Customer is responsible for delivery of the Sale Equipment from PLUS ES's premises to Customer's premises.
- 5.4 Risk in the Sale Equipment will pass to Customer:
  - (a) if Customer is responsible for delivery of the Sale Equipment, when PLUS ES gives possession of the Sale Equipment to Customer or Customer's representative; or
  - (b) if PLUS ES is responsible for delivery of the Sale Equipment, on delivery of the Sale Equipment on to Customer's premises.
- 5.5 PLUS ES does not represent or warrant that the Sale Equipment is fit for Customer's purposes.
- 5.6 Unless the Quotation expressly states otherwise, the Sale Equipment will not have been, nor will be, tested by PLUS ES.

## 6. FEES & PAYMENT

- 6.1 Customer must pay PLUS ES:
  - (a) the Fees;
  - (b) the amount PLUS ES reasonably believes reflects the additional costs and expenses incurred by PLUS ES due to:
    - (i) Services performed at Customer's request outside normal business hours (7am – 5pm on Business Days);
    - (ii) travel to any Customer premises which are more than 100 km from the nearest PLUS ES premises;
    - (iii) revisits and re-scheduling of Services to suit Customer requirements;
    - (iv) handling and disposal of hazardous materials located at Customer's premises;
    - (v) the establishment of any required communication link between the parties;
    - (vi) any information supplied by Customer and relied on by PLUS ES when preparing the Quotation being incorrect, misleading or incomplete;
    - (vii) the delivery of Products or Services under this Agreement being interrupted or delayed by Customer; or
    - (viii) any change in any law or regulatory requirement.
- 6.2 PLUS ES may, in its absolute discretion, increase the Fees:
  - (a) on each anniversary of the Commencement Date, by a percentage not exceeding the percentage increase, if any, in the Consumer Price Index (All Groups) Sydney over the preceding 12 months;
  - (b) on the commencement of any term subsequent to the Minimum Term, to PLUS ES's then current rates for the goods and services provided under this Agreement.
- 6.3 PLUS ES will invoice Customer for amounts owing to PLUS ES under this Agreement at the times specified in the Quotation, or if no such times are specified in relation to any Products or Services, on delivery of the Products or Services.
- 6.4 Customer must pay the amount specified in each invoice issued by PLUS ES within 21 days of receipt of the invoice or within such other period as may be agreed by the parties.
- 6.5 Customer must pay interest on any overdue amount calculated daily at the rate equal to 1% per annum above the Commonwealth Bank of Australia Corporate Overdraft Reference Rate as published from time to time, or if that rate does not exist for any reason, such other similar rate as agreed by the parties.

## 7. GST

- 7.1 Words used in this clause which have a defined meaning in the GST Law have the same meaning as in the GST Law unless the context indicates otherwise.
- 7.2 The Fees and other amounts payable by Customer under this Agreement do not include GST.
- 7.3 To the extent that any supply made by PLUS ES under or in connection with this Agreement is a taxable supply, the consideration for that supply must be increased by an amount equal to the amount of that consideration multiplied by the rate at which GST is imposed in respect of the supply.
- 7.4 PLUS ES must issue a Tax Invoice to the Customer no later than 7 days after payment of GST inclusive fees or other amounts under this Agreement.
- 7.5 If either party is entitled under this Agreement to be reimbursed or indemnified by the other party for a cost or expense incurred in connection with this Agreement, the reimbursement or indemnity payment must not include any GST component of the cost or expense to the extent to which an input tax credit may be claimed by the party entitled to be reimbursed or indemnified, or by its representative member.

## 8. TERM & TERMINATION

- 8.1 This Agreement:
  - (a) commences on the commencement date specified in the Quotation, or if no commencement date is specified in the Quotation, on the date the parties entered into this Agreement ("**Commencement Date**"); and
  - (b) continues until:
    - (i) if a minimum term is specified in the Quotation ("**Minimum Term**"), the expiry of the Minimum Term, unless terminated earlier or renewed in accordance with this Agreement; or
    - (ii) if there is no Minimum Term, until all Products and Services have been provided, unless terminated earlier in accordance with this Agreement.
- 8.2 If there is a Minimum Term, this Agreement will be renewed for successive terms of the same duration as the Minimum Term. If either party wishes this Agreement not to be renewed at the expiry of the Minimum Term or any subsequent term, it must give the other party at least 30 days notice of such wish.
- 8.3 PLUS ES may terminate this Agreement by notice to Customer if any overdue Fees are not paid within 10 days of

a notice requiring the Customer to pay such Fees.

8.4 Either party may terminate this Agreement by giving notice to the other party if:

- (a) the other party is in material breach of this Agreement and fails to rectify the breach within 10 days of being given notice requiring it to do so;
- (b) an Insolvency Event occurs with respect to the other party; or
- (c) a Force Majeure Event affecting a party continues for a period of 30 days or more.

## 9. EFFECT OF TERMINATION

9.1 If this Agreement is terminated, Customer must allow PLUS ES access to Customer's premises to de-install and remove the PLUS ES Equipment, and Customer must immediately return to PLUS ES any other property of PLUS ES in Customer's possession or control.

9.2 If this Agreement is terminated by PLUS ES pursuant to clause 8.4(a) or (b), Customer must immediately pay any Fees due at the date of termination, together with the present value of any Fees that would have become due in the period between the date of termination and the date of expiry of the then current term of this Agreement.

## 10. WARRANTIES

Except as expressly provided by this Agreement and apart from any condition or warranty implied by law which may not be excluded, restricted or modified, neither PLUS ES nor a Related Entity makes representations, conditions or warranties, express or implied, under this Agreement.

## 11. LIMITATION OF LIABILITY

11.1 Subject to clauses 11.2 and 11.3, PLUS ES (and its agents, contractors, employees and Related Entity) are not liable for any Loss, however caused (including, without limitation, by the negligence of PLUS ES), suffered by the Customer in connection with this Agreement, including without limitation, any Loss suffered or incurred in connection with the use of any Products, Services or Service Deliverables (including, without limitation, the adoption or implementation of any initiatives or recommendations made in any Service Deliverables or as part of providing the Products or Services).

11.2 If the Australian Consumer Law or any other legislation implies a guarantee, condition or warranty into this Agreement in respect of goods or services supplied, and the liability of PLUS ES or a Related Entity for breach of that condition or warranty may not be excluded but may be limited, clause 11.1 does not apply to that liability and instead the liability of PLUS ES or a Related Entity for any breach of that condition or warranty is limited to:

- (a) in the case of a supply of goods, PLUS ES doing any 1 or more of the following (at its election):
  - (i) replacing the goods or supplying equivalent goods;
  - (ii) repairing the goods;
  - (iii) paying the cost of replacing the goods or of acquiring equivalent goods;
  - (iv) paying the cost of having the goods repaired; or
- (b) in the case of a supply of services, PLUS ES doing either or both of the following (at its election):
  - (i) supplying the services again; or
  - (ii) paying the cost of having the services supplied again.

11.3 Nothing in this Agreement is intended to exclude, restrict or modify rights which the Customer may have under the Australian Consumer Law or any other legislation which may not be excluded, restricted or modified by agreement.

## 12. INDEMNITY

Customer indemnifies and holds harmless PLUS ES and any Related Entity, against all losses, damages, liabilities, claims, costs, charges, outgoings, expenses, harm or injury which any of them may suffer or incur in connection with:

- (a) any breach by Customer of this Agreement; or
- (b) any misrepresentation, misleading or deceptive conduct, negligence or any other wrongful act or omission of Customer, its employees, agents or contractors.

## 13. COVENANT NOT TO SUE

Customer covenants not to make any claim or take any action against any officer, employee, agent, contractor, licensor or supplier of PLUS ES in relation to this Agreement.

## 14. INTELLECTUAL PROPERTY

Except for any license rights expressly granted to Customer under this Agreement, Customer obtains no title or Intellectual Property Rights in the Service Deliverables or the Products.

## 15. CONFIDENTIALITY

15.1 Customer agrees to keep confidential, and not to use or disclose, any Confidential Information, including Confidential Information provided to or obtained by Customer prior to the Commencement Date, except as expressly permitted under this Agreement.

15.2 The obligations of confidence in this clause 15 do not apply to Confidential Information:

- (a) that is in the public domain otherwise than as a result of a breach of this Agreement or other obligation of confidence; or
- (b) that is already known, rightfully received or independently developed, by Customer free of any obligation of confidence.

15.3 Customer will not be in breach of the obligations of confidence in this clause 15 by disclosing Confidential Information that is required to be disclosed under compulsion of law by a court or governmental agency, provided that, prior to disclosing such information, Customer has promptly notified PLUS ES in writing and Customer has exhausted all reasonable steps (whether required by PLUS ES or not) to maintain such Confidential Information in confidence.

15.4 Customer must not make or cause to be made any unauthorised disclosure, use or access in relation to Confidential Information. If Customer becomes aware of any such unauthorised disclosure, use or access, Customer must: notify PLUS ES immediately; promptly provide PLUS ES with full details of, and assist PLUS ES in investigating, such disclosure, use or access; cooperate with PLUS ES in any investigation or litigation against third parties deemed necessary by PLUS ES to protect rights in Confidential Information; and use its best endeavours to



- prevent a recurrence of the unauthorised disclosure, use or access.
- 15.5 Customer acknowledges that PLUS ES and its licensors and other associates may suffer financial and other loss or damage in relation to a breach of this clause 15, and that monetary damages may be an insufficient remedy. Customer also acknowledges that in addition to any other remedy available at law or in equity, PLUS ES or a Related Entity, is entitled to injunctive relief to prevent a breach of, and to compel the specific performance of, this clause 15.
- 16. FORCE MAJEURE**
- Neither PLUS ES, nor a Related Entity, will be liable for any delay or failure to perform obligations under this Agreement caused by any Force Majeure Event.
- 17. DISPUTE RESOLUTION**
- 17.1 If a dispute arises in relation to this Agreement and the parties have not resolved the dispute within 7 days of one party giving written notice of the dispute to the other, the parties must, before commencing legal proceedings, endeavour to resolve the dispute through mediation.
- 17.2 The mediator must be a person appointed by LEADR and the mediation shall be conducted in accordance with the mediation rules of LEADR.
- 17.3 If the dispute is not resolved within 28 days of the appointment of a mediator, either party may, after giving written notice to the other party, commence court proceedings.
- 17.4 Nothing in this clause restricts the right of PLUS ES, a Related Entity, or Customer to seek urgent interlocutory relief or to terminate this Agreement in accordance with its terms and conditions.
- 18. NOTICES**
- 18.1 Any notice given by either party in relation to this Agreement must be:
- (a) addressed to the other party;
  - (b) signed by a person duly authorised by the party giving the notice; and
  - (c) either:
    - (i) delivered by hand or posted to the address of the other party; or
    - (ii) sent by facsimile transmission to the facsimile number of the other party.
  - (d) Any notice sent by facsimile will be deemed to have been given on receipt by the sender of a transmission control report from the dispatching machine showing the correct number of pages, the correct facsimile number and the result of the transmission is 'OK', provided that, if the time of delivery or completion of the facsimile transmission is after 4p.m. on any Business Day or during any day that is not a Business Day, the notice will be deemed to have been given on the next Business Day.
- 19. VARIATION**
- PLUS ES may amend these terms and conditions from time to time by notice posted on the PLUS ES Website effective from the time of posting.
- 20. ASSIGNMENT**
- 20.1 Customer may not assign its rights or obligations under this Agreement without the prior written consent of PLUS ES.
- 20.2 PLUS ES may assign its rights, and may novate its rights and obligations, under this Agreement. If PLUS ES wishes to novate its rights and obligations under this Agreement to a third party, Customer must enter into a novation agreement with PLUS ES and the relevant third party on terms specified by PLUS ES to give effect to such novation.
- 21. PRECEDENCE**
- If there is an inconsistency between the Quotation and these terms and conditions, these terms and conditions prevail to the extent of the inconsistency.
- 22. ENTIRE AGREEMENT**
- The Quotation and these terms and conditions are the entire agreement of the parties in relation to the subject matter of this Agreement and supersede all other statements, representations, negotiations, arrangements, understandings, quotations, catalogues, advertisements, price lists, tenders and agreements, whether verbal or in writing.
- 23. SEVERANCE**
- 23.1 If any provision of this Agreement is void, unenforceable or illegal in a jurisdiction, it is severed from the remainder for the purposes of enforcement in that jurisdiction.
- 23.2 The remainder of this Agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.
- 23.3 This clause 23 has no effect if the severance:
- (a) alters the basic nature of this Agreement; or
  - (b) is contrary to public policy.
- 24. WAIVER**
- 24.1 Waiver of any right, power, authority, discretion or remedy arising on a breach of this Agreement must be in writing and signed by the party granting the waiver.
- 24.2 This clause 24 may not itself be waived except in writing.
- 25. GOVERNING LAW**
- 25.1 This Agreement is governed by the laws of New South Wales.
- 25.2 Each party submits to the non-exclusive jurisdiction of the courts of New South Wales.
- 26. DEFINITIONS**
- In these terms and conditions:
- "Additional Products and Services"** has the meaning given to it in clause 1.2;

"**PLUS ES**", means PLUS ES (ABN 30 179 420 673), a partnership carried on by: (a) Blue PES Partner Pty Ltd (ACN 622 175 428) as trustee for the Blue PES Partner Trust; (b) ERIC Alpha AUP Corporation 1 Pty Ltd (ACN 621 524 374) as trustee for ERIC Alpha AUP Trust 1; (c) ERIC Alpha AUP Corporation 2 Pty Ltd (ACN 621 524 454) as trustee for ERIC Alpha AUP Trust 2; (d) ERIC Alpha AUP Corporation 3 Pty Ltd (ACN 621 524 525) as trustee for ERIC Alpha AUP Trust 3; and (e) ERIC Alpha AUP Corporation 4 Pty Ltd (ACN 621 524 605) as trustee for ERIC Alpha AUP Trust 4. ("**PLUS ES Equipment**") has the meaning given to it in clause 3.1; and

"**PLUS ES Website**" means the website operated by PLUS ES at <http://www.webgraphs.com.au/> and <http://www.plusES.com.au/>, pages within that site or such other website as may be nominated by PLUS ES from time to time.

"**Business Day**" means a day on which banks are open for general business in Sydney, excluding Saturdays, Sundays and public holidays;

"**Commencement Date**" has the meaning given to it in clause 8.1;

"**Confidential Information**" means any confidential information of PLUS ES or a Related Entity (whether contained in tangible or intangible form, including, without limitation, written or printed documents, oral statements and any digital media) which relates to PLUS ES or the subject matter this Agreement and includes, without limitation: (a) the Service Deliverables; (b) any information relating to the personnel, policies or business strategies of PLUS ES; (c) any information passed to PLUS ES by a third party, including business partnerships, counter parties and related bodies corporate which is in itself confidential as between PLUS ES and the third party or otherwise subject to agreed conditions of non-disclosure; and (d) the Quotation;

"**Customer**" is the customer specified in the Quotation;

"**Fees**" means the fees set out in the Quotation, as varied pursuant to clause 6.2;

"**Force Majeure Event**" means any event beyond the reasonable control of PLUS ES, including any failure in the telecommunications network which prevents the transmission of metering data;

"**GST**" means goods and services tax or similar value added tax levied or imposed in Australia under the GST Law or otherwise on a supply;

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

"**GST Law**" has the meaning given to it in the GST Act;

"**Insolvency Event**" in relation to a party (**insolvent party**) means: (a) the insolvent party ceases, or takes steps to cease, to conduct its business in the normal manner; (b) the insolvent 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; (c) the insolvent party is unable to pay its debts when they are due or is deemed under the Corporations Act 2001 to be insolvent; (d) a liquidator or provisional liquidator is appointed to the insolvent party or a receiver, receiver and manager, administrator, trustee or similar official is appointed over any of the assets or undertakings of the insolvent party; or (e) an application or order is made, or a resolution is passed, for the winding up of the insolvent party;

"**Intellectual Property Rights**" means all industrial and intellectual property rights throughout the world and includes rights in respect of copyright, patents, trade marks, designs, trade secrets, know-how, confidential information and circuit layouts;

"**Loss**" means any damages, losses, claims, demands, actions, liability, expenses and costs including (without limitation) and indirect, consequential or economic losses or any special damages;

"**LEADR**" means the organisation known as Lawyers Engaged in Alternative Dispute Resolution;

"**Minimum Term**" has the meaning given to it in clause 8.1;

"**Products**" means the products specified in the Quotation or any supplementary quotation provided by PLUS ES and accepted by Customer, if any;

"**Quotation**" means a written PLUS ES quotation attached to or referring to these terms and conditions;

"**Related Entity**" means any entity that is a subsidiary of PLUS ES, or any partnership that leases assets to PLUS ES, including the Ausgrid Asset Partnership (ABN 48 622 605 040); "**Sale Equipment**" means any equipment PLUS ES has agreed to sell (including any sale as agent for a Related Entity) to Customer under this Agreement, as specified in the Quotation;

"**Service Deliverables**" has the meaning given to it in clause 2.1;

"**Services**" means the services specified in the Quotation or any supplementary quotation provided by PLUS ES and accepted by Customer, if any;

"**Tax Invoice**" includes any document or record treated by the Commissioner of Taxation as a tax invoice or as a document entitling a recipient to an input tax credit.

# TERMS & CONDITIONS: WEBGRAPHS

## Registered Users

Access to and use of the WebGraphs System is provided to Customer on these terms and conditions, and the terms of the Quotation agreed between AUSGRID and Customer, which together form a contract between AUSGRID and Customer (referred to below as "this Agreement").

### 1. WEBGRAPHS SYSTEM

- 1.1 AUSGRID will grant Customer access to and use of the WebGraphs System through the AUSGRID Website to produce WebGraphs Reports.
- 1.2 Customer must obtain an Internet connection, and any other software and equipment AUSGRID notifies Customer from time to time is necessary to enable Customer to access and use the WebGraphs System.
- 1.3 AUSGRID may upgrade, modify or replace the WebGraphs System from time to time.

### 2. SERVICE EXCLUSIONS

The services to be provided by AUSGRID under this Agreement do not include, and AUSGRID does not represent or warrant that such services include:

- (a) providing the WebGraphs System 24 hours a day, 7 days a week or free of interruptions or errors;
- (b) verifying that the data used on the WebGraphs System is complete, accurate and not out of date;
- (c) ensuring that WebGraphs Reports are complete, accurate and not out of date;
- (d) eliminating physical geographic limitations or variance in allowable CO2 emission trends between different jurisdictions;
- (e) interpreting the WebGraphs Reports for Customer or providing any advice in relation to the use by Customer of WebGraphs Reports;
- (f) ensuring that Customer's use of the WebGraphs System and WebGraphs Reports complies with laws and regulations applicable to Customer;
- (g) the User Instructions, the WebGraphs Reports or any other material downloaded by Customer from the WebGraphs System is free from any virus or computer software routine or hardware components designed to: (i) permit unauthorised access to, or use by third parties of, Customer's or any other person's systems or data; (ii) disable, damage or erase the User Instructions, the WebGraphs Reports, any other material downloaded by Customer from the WebGraphs System, or Customer's or any other person's systems or data; or (iii) perform any other similar actions; or
- (h) ensuring that the WebGraphs System is free from unauthorised access.

### 3. CUSTOMER OBLIGATIONS

- 3.1 Customer must comply with the User Instructions when accessing and using the WebGraphs System.
- 3.2 Customer must keep confidential any passwords or other login identification used by Customer to access the WebGraphs System, and immediately notify AUSGRID if any such password or login identifier is disclosed to any third party. Customer is responsible for any use of such passwords or other login identification until such time as Customer notifies AUSGRID they have been disclosed to a third party.
- 3.3 Customer must not:
  - (a) use the WebGraphs System except for producing WebGraphs Reports;
  - (b) use WebGraphs Reports except for its own internal business purposes;
  - (c) allow more than one Customer user to access and use the WebGraphs System at any particular time;
  - (d) use the WebGraphs System for the benefit of any third party, including without limitation, through a service bureau arrangement;
  - (e) give any third party access to or possession of the WebGraphs System, the User Instructions or any WebGraphs Report;
  - (f) decompile or reverse engineer the WebGraphs System, or permit any third party to do so, except as expressly permitted under the Copyright Act 1968 (Cth);
  - (g) modify, develop, or create derivative works based on, the WebGraphs System, the User Instructions or the WebGraphs Reports;
  - (h) copy the User Instructions or the WebGraphs Reports, except with the written permission of AUSGRID; or
  - (i) remove any proprietary notices or disclaimers from the WebGraphs System, the User Instructions or any WebGraphs Report, and Customer must reproduce such notices and disclaimers on any copy of the User Instructions or the WebGraphs Reports which AUSGRID permits Customer to make.

### 4. RETAILER CUSTOMERS

- 4.1 If Customer is an energy retailer, and AUSGRID has agreed in writing to permit Customer to resupply the goods and services provided by AUSGRID under this Agreement to Customer's customers:
  - (a) Customer may:
    - (i) distribute copies of the User Instructions to its customers;
    - (ii) sub-license its customers the rights to access and use the WebGraphs System, User Instructions and WebGraphs Reports granted to Customer under this Agreement (but not the rights granted under this clause);

- (iii) use the WebGraphs System, User Instructions and WebGraphs Reports to advise Customer's customers in relation to their energy consumption;
  - (b) Customer must ensure that each customer to whom it resupplies the goods and services provided under this Agreement complies with the terms and conditions of this Agreement as if it was the Customer under this Agreement; and
  - (c) Customer must indemnify AUSGRID against any claim or action by any customer of Customer in relation to the WebGraphs System, WebGraphs Reports or any WebGraphs Report, and any loss, liability, damage, cost, charge, outgoing or expense suffered or incurred by AUSGRID in connection with any such claim.
- 4.2 Any sub-licence to access and use the WebGraphs System, the User Instructions granted by Customer to any of its customers automatically terminates on termination or expiry of this Agreement.
- 5. FEES & PAYMENT**
- 5.1 Customer must pay AUSGRID:
  - (a) the Fees;
  - (b) the amount AUSGRID reasonably believes reflects the additional costs and expenses incurred by AUSGRID due to:
    - (i) any information supplied by Customer and relied on by AUSGRID when preparing the Quotation being incorrect, misleading or incomplete;
    - (ii) the delivery of goods or services under this Agreement being interrupted or delayed by Customer; or
    - (iii) any change in any law or regulatory requirement.
- 5.2 AUSGRID may, in its absolute discretion, increase the Fees:
  - (a) on each anniversary of the Commencement Date, by a percentage not exceeding the percentage increase, if any, in the Consumer Price Index (All Groups) Sydney over the preceding 12 months;
  - (b) on the commencement of any term subsequent to the Minimum Term, to AUSGRID's then current fees for the goods and services provided under this Agreement.
- 5.3 AUSGRID will invoice Customer monthly in arrears for all amounts owing to AUSGRID under this Agreement.
- 5.4 Customer must pay the amount specified in each invoice issued by AUSGRID within 21 days of receipt of the invoice or within such other period as may be agreed by the parties.
- 5.5 Customer must pay interest on any overdue amount calculated daily at the rate equal to 1% per annum above the Commonwealth Bank of Australia Corporate Overdraft Reference Rate as published from time to time, or if that rate does not exist for any reason, such other similar rate as agreed by the parties.
- 6. GST**
- 6.1 Words used in this clause which have a defined meaning in the GST Law have the same meaning as in the GST Law unless the context indicates otherwise.
- 6.2 The Fees and other amounts payable by Customer under this Agreement do not include GST.
- 6.3 To the extent that any supply made by AUSGRID under or in connection with this Agreement is a taxable supply, the consideration for that supply must be increased by an amount equal to the amount of that consideration multiplied by the rate at which GST is imposed in respect of the supply.
- 6.4 AUSGRID must issue a Tax Invoice to the Customer no later than 7 days after payment of GST inclusive fees or other amounts under this Agreement.
- 6.5 If either party is entitled under this Agreement to be reimbursed or indemnified by the other party for a cost or expense incurred in connection with this Agreement, the reimbursement or indemnity payment must not include any GST component of the cost or expense to the extent to which an input tax credit may be claimed by the party entitled to be reimbursed or indemnified, or by its representative member.
- 7. TERM & TERMINATION**
- 7.1 This Agreement:
  - (a) commences on the commencement date specified in the Quotation, or if no commencement date is specified in the Quotation, on the date the parties entered into this Agreement ("**Commencement Date**"); and
  - (b) continues until the expiry of the minimum term specified in the Quotation ("**Minimum Term**"), unless terminated earlier or renewed in accordance with this Agreement.
- 7.2 This Agreement will be renewed for successive terms of the same duration as the Minimum Term. If either party wishes this Agreement not to be renewed at the expiry of the Minimum Term or any subsequent term, it must give the other party at least 30 days notice of such wish.
- 7.3 AUSGRID may terminate this Agreement by giving 7 days notice to Customer if AUSGRID ceases to provide to its customers the goods and services provided under this Agreement.
- 7.4 AUSGRID may terminate this Agreement by notice to Customer if any overdue Fees are not paid within 10 days of a notice requiring the Customer to pay such Fees.
- 7.5 Either party may terminate this Agreement by giving notice to the other party if:
  - (a) the other party is in material breach of this Agreement and fails to rectify the breach within 10 days of being given notice requiring it to do so;
  - (b) an Insolvency Event occurs with respect to the other party; or
  - (c) a Force Majeure Event affecting a party continues for a period of 30 days or more.
- 8. EFFECT OF TERMINATION**
- 8.1 If this Agreement is terminated:

- (a) Customer must immediately cease accessing and using the WebGraphs System and the User Instructions;
  - (b) Customer must immediately destroy all records of the passwords and other login identifiers used by Customer to access the WebGraphs System; and
  - (c) Customer must immediately return, or if requested by AUSGRID, destroy all copies of the User Instructions in Customer's possession or control.
- 8.2 If this Agreement is terminated by AUSGRID pursuant to clause 7.5(a) or (b), Customer must immediately pay any Fees due at the date of termination, together with the present value of any Fees that would have become due in the period between the date of termination and the date of expiry of the then current term of this Agreement.
- 9. WARRANTIES**
- Except as expressly provided by this Agreement and apart from any condition or warranty implied by law which may not be excluded, restricted or modified, AUSGRID makes no representations, conditions or warranties, express or implied, under this Agreement.
- 10. LIMITATION OF LIABILITY**
- 10.1 Subject to clauses 10.2 and 10.3, AUSGRID is not liable for any loss or damage, however caused (including, but not limited to, by the negligence of AUSGRID), suffered by the Customer in connection with this Agreement, including without limitation, any loss or damage suffered or incurred in connection with the use of the WebGraphs System or any WebGraphs Report.
- 10.2 If the Australian Consumer Law or any other legislation implies a condition or warranty into this Agreement in respect of goods or services supplied, and AUSGRID's liability for breach of that condition or warranty may not be excluded but may be limited, clause 10.1 does not apply to that liability and instead AUSGRID's liability for any breach of that condition or warranty is limited to:
- (a) in the case of a supply of goods, AUSGRID doing any 1 or more of the following (at its election):
    - (i) replacing the goods or supplying equivalent goods;
    - (ii) repairing the goods;
    - (iii) paying the cost of replacing the goods or of acquiring equivalent goods;
    - (iv) paying the cost of having the goods repaired; or
  - (b) in the case of a supply of services, AUSGRID doing either or both of the following (at its election):
    - (i) supplying the services again;
    - (ii) paying the cost of having the services supplied again.
- 10.3 Nothing in this Agreement is intended to exclude, restrict or modify rights which the Customer may have under the Australian Consumer Law or any other legislation which may not be excluded, restricted or modified by agreement.
- 11. INDEMNITY**
- Customer indemnifies and holds harmless AUSGRID against all losses, damages, liabilities, claims, costs, charges, outgoings, expenses, harm or injury which any of them may suffer or incur in connection with:
- (a) any breach by Customer of this Agreement; or
  - (b) any misrepresentation, misleading or deceptive conduct, negligence or any other wrongful act or omission of Customer, its employees, agents or contractors.
- 12. COVENANT NOT TO SUE**
- Customer covenants not to make any claim or take any action against any officer, employee, agent, contractor, licensor or supplier of AUSGRID in relation to this Agreement.
- 13. INTELLECTUAL PROPERTY**
- Except for any licence rights expressly granted to Customer under this Agreement, Customer obtains no title or Intellectual Property Rights in the WebGraphs System, the User Instructions or the WebGraphs Reports.
- 14. CONFIDENTIALITY**
- 14.1 Customer agrees to keep confidential, and not to use or disclose, any Confidential Information of AUSGRID, including Confidential Information provided to or obtained by Customer prior to the Commencement Date, except as expressly permitted under this Agreement.
- 14.2 The obligations of confidence in this clause 14 do not apply to Confidential Information:
- (a) that is in the public domain otherwise than as a result of a breach of this Agreement or other obligation of confidence; or
  - (b) that is already known, rightfully received or independently developed, by Customer free of any obligation of confidence.
- 14.3 Customer will not be in breach of the obligations of confidence in this clause 14 by disclosing Confidential Information that is required to be disclosed under compulsion of law by a court or governmental agency, provided that, prior to disclosing such information, Customer has promptly notified AUSGRID in writing and Customer has exhausted all reasonable steps (whether required by AUSGRID or not) to maintain such Confidential Information in confidence.
- 14.4 Customer must not make or cause to be made any unauthorised disclosure, use or access in relation to AUSGRID's Confidential Information. If Customer becomes aware of any such unauthorised disclosure, use or access, Customer must: notify AUSGRID immediately; promptly provide AUSGRID with full details of, and assist AUSGRID in investigating, such disclosure, use or access; cooperate with AUSGRID in any investigation or litigation against third parties deemed necessary by AUSGRID to protect its rights in its Confidential Information; and use its best endeavours to prevent a recurrence of the unauthorised disclosure, use or access.
- 14.5 Customer acknowledges that AUSGRID and its licensors and other associates may suffer financial and other loss or damage in relation to a breach of this clause 14, and that monetary damages may be an insufficient remedy.

Customer also acknowledges that in addition to any other remedy available at law or in equity, AUSGRID is entitled to injunctive relief to prevent a breach of, and to compel the specific performance of, this clause 14.

**15. FORCE MAJEURE**

AUSGRID will not be liable for any delay or failure to perform its obligations under this Agreement caused by any Force Majeure Event.

**16. DISPUTE RESOLUTION**

16.1 If a dispute arises in relation to this Agreement and the parties have not resolved the dispute within 7 days of one party giving written notice of the dispute to the other, the parties must, before commencing legal proceedings, endeavour to resolve the dispute through mediation.

16.2 The mediator must be a person appointed by LEADR and the mediation shall be conducted in accordance with the mediation rules of LEADR.

16.3 If the dispute is not resolved within 28 days of the appointment of a mediator, either party may, after giving written notice to the other party, commence court proceedings.

16.4 Nothing in this clause restricts the right of AUSGRID or Customer to seek urgent interlocutory relief or to terminate this Agreement in accordance with its terms and conditions.

**17. NOTICES**

17.1 Every notice, approval, consent or other communication ("**Notice**") issued by a party under the Contract must be issued by a duly authorised representative of the sending party to a duly authorised representative of the other party ("**Recipient**"). The Notice must be in writing and must be given to the Recipient by being sent by email transmission or sent by prepaid ordinary mail within Australia. A Notice is given, if sent by email transmission during any business day in New South Wales ("**Business Day**"), when the sending party's electronic equipment reported that the email had been sent. If the email transmission was sent after 5:00pm on a Business Day or on a day other than a Business Day, the Notice is deemed to have been given on the next Business Day. A Notice is given, if sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting.

17.2 AUSGRID may give notice to Customer in relation to matters affecting users of the WebGraphs System generally by posting the notice on the AUSGRID Website, and such notices will be effective from the time of posting.

**18. VARIATION**

AUSGRID may amend these terms and conditions from time to time by notice posted on the AUSGRID Website effective from the time of posting.

**19. ASSIGNMENT**

19.1 Customer may not assign its rights or obligations under this Agreement without the prior written consent of AUSGRID.

19.2 AUSGRID may assign its rights, and may novate its rights and obligations, under this Agreement. If AUSGRID wishes to novate its rights and obligations under this Agreement to a third party, Customer must enter into a novation agreement with AUSGRID and the relevant third party on terms specified by AUSGRID to give effect to such novation.

**20. PRECEDENCE**

If there is an inconsistency between the Quotation and these terms and conditions, these terms and conditions prevail to the extent of the inconsistency.

**21. ENTIRE AGREEMENT**

The Quotation and these terms and conditions are the entire agreement of the parties in relation to the subject matter of this Agreement and supersede all other statements, representations, negotiations, arrangements, understandings, quotations, tenders and agreements, whether verbal or in writing.

**22. SEVERANCE**

22.1 If any provision of this Agreement is void, unenforceable or illegal in a jurisdiction, it is severed from the remainder for the purposes of enforcement in that jurisdiction.

22.2 The remainder of this Agreement has full force and effect, and the validity or enforceability of that provision in any other jurisdiction is not affected.

22.3 This clause 22 has no effect if the severance:

- (a) alters the basic nature of this Agreement; or
- (b) is contrary to public policy.

**23. WAIVER**

23.1 Waiver of any right, power, authority, discretion or remedy arising on a breach of this Agreement must be in writing and signed by the party granting the waiver.

23.2 This clause 23 may not itself be waived except in writing.

**24. GOVERNING LAW**

24.1 This Agreement is governed by the laws of New South Wales.

24.2 Each party submits to the non-exclusive jurisdiction of the courts of New South Wales.

**25. DEFINITIONS**

In these terms and conditions:

"**AUSGRID**" means Ausgrid Operator Partnership (ABN 78 508 211 731), trading as Ausgrid, a partnership carried on under that name by:

- (a) Blue Op Partner Pty Ltd (ACN 615 217 500) as trustee for the Blue Op Partner Trust;
- (b) ERIC Alpha Operator Corporation 1 Pty Ltd (ACN 612 975 096) as trustee for ERIC Alpha Operator Trust 1;
- (c) ERIC Alpha Operator Corporation 2 Pty Ltd (ACN 612 975 121) as trustee for ERIC Alpha Operator Trust 2;
- (d) ERIC Alpha Operator Corporation 3 Pty Ltd (ACN 612 975 185) as trustee for ERIC Alpha Operator Trust 3; and

(e) ERIC Alpha Operator Corporation 4 Pty Ltd (ACN 612 975 210) as trustee for ERIC Alpha Operator Trust 4.

**"AUSGRID Website"** means the website operated by AUSGRID at <http://www.webgraphs.com.au/>, pages within that site or such other website as may be nominated by AUSGRID from time to time;

**"Business Day"** means a day on which banks are open for general business in Sydney, excluding Saturdays, Sundays and public holidays;

**"Commencement Date"** has the meaning given to it in clause 7.1;

**"Confidential Information"** means any confidential information of AUSGRID (whether contained in tangible or intangible form, including, without limitation, written or printed documents, oral statements and any digital media) which relates to AUSGRID or the subject matter of this Agreement and includes, without limitation: (a) the WebGraphs System, the User Instructions and the WebGraphs Reports; (b) any information relating to the personnel, policies or business strategies of AUSGRID; (c) any information passed to AUSGRID by a third party, including business partnerships, counter parties and related bodies corporate which is in itself confidential as between AUSGRID and the third party or otherwise subject to agreed conditions of non-disclosure; and (d) the Quotation;

**"Customer"** is the customer specified in the Quotation;

**"Fees"** means the fees set out in the Quotation, as varied pursuant to clause 5.2;

**"Force Majeure Event"** means any event beyond the reasonable control of AUSGRID, including any failure in the telecommunications network which prevents the transmission of metering data;

**"GST"** means goods and services tax or similar value added tax levied or imposed in Australia under the GST Law or otherwise on a supply;

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

**"GST Law"** has the meaning given to it in the GST Act;

**"Insolvency Event"** in relation to a party (**insolvent party**) means: (a) the insolvent party ceases, or takes steps to cease, to conduct its business in the normal manner; (b) the insolvent 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; (c) the insolvent party is unable to pay its debts when they are due or is deemed under the Corporations Act 2001 to be insolvent; (d) a liquidator or provisional liquidator is appointed to the insolvent party or a receiver, receiver and manager, administrator, trustee or similar official is appointed over any of the assets or undertakings of the insolvent party; or (e) an application or order is made, or a resolution is passed, for the winding up of the insolvent party;

**"Intellectual Property Rights"** means all industrial and intellectual property rights throughout the world and includes rights in respect of copyright, patents, trade marks, designs, trade secrets, know-how, confidential information and circuit layouts;

**"LEADR"** means the organisation known as Lawyers Engaged in Alternative Dispute Resolution;

**"Minimum Term"** has the meaning given to it in clause 7.1;

**"Quotation"** means a written AUSGRID quotation attached to or referring to these terms and conditions;

**"Tax Invoice"** includes any document or record treated by the Commissioner of Taxation as a tax invoice or as a document entitling a recipient to an input tax credit;

**"User Instructions"** means the instructions provided by AUSGRID for use of the WebGraphs System from time to time;

**"WebGraphs Reports"** means reports on Customer's energy consumption produced using the WebGraphs System; and

**"WebGraphs System"** means the system known as WebGraphs made available by AUSGRID through the AUSGRID Website, as may be modified or replaced by AUSGRID from time to time.