

**Metropolis Metering Services Pty Ltd**  
ABN 53 116 717 321

**DIRECT METERING AGREEMENT**



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**This agreement** is made on the Date of Execution between the **Customer** and **Metropolis Metering Services Pty Ltd** ABN 53 116 717 321 (**Metropolis**).

## **Operative provisions**

The parties agree:

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

In this agreement, unless the context requires otherwise:

- (a) any term appearing *like this* has the same meaning as in the Rules; and
- (b) **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.

**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;

**Customer** means the person identified in item 2.1 of schedule 1;

**Customer Classification Code** has the meaning as per the Rules;

**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;

**Electricity Consumption Data** means *energy data* held in a *metering installation* in respect of which Metropolis provides the Services and *metering data* in respect of such a *metering installation* held in a *metering data services database* established and maintained by Metropolis;

**Fees** means the fees set out in or otherwise contemplated by schedule 2;

**Force Majeure** means any event, cause or circumstances beyond the reasonable control of a party that prevents them fulfilling an obligation or obligations under this Agreement. Includes but is not limited to war, strike, riot, storm, flood, terrorism, act of God.

**Large Site** means a Site which is classified in MSATS as being a Customer Size which is Large and a Customer Type which is Business or, alternatively, a Site at which an Instrument Transformer is associated with the *metering Installation*;

**Market Intermediary** means the broker, consultant or any third party whom 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 and is named in this agreement;

**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 1 of schedule 2 or, if not specified, as otherwise agreed between Metropolis and the Market Intermediary;

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**Meter Type** means the Single Phase 1 Element, Single Phase 2 Element, Three Phase, Whole Current, or Three Phase LVCT type of meter that best describes the Metering Installation at the Site as nominated by the Contractor;

**Metering Services Fee** means the fees and charges the customer has agreed to pay Metropolis for MP and MDP Services, inclusive of fees to be paid by Metropolis to the Marketing Intermediary, as noted in item 1 of schedule 2;

**MP and MDP Services** means the services described in sections 1 and 2 of schedule 4;

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

**NMI Classification Code** has the meaning as per the Rules;

**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;

**Retailer** means a person who is the holder of a retailer authorisation issued under the National Energy Retail Law in respect of the sale of electricity, including each Retailer entity separately, or all of them collectively, as the context requires;

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

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

**Site Type** means a Large Site, a Small Site or a Residential Site;

**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;

**Term** means the period from the Commencement Date to the Termination Date;

**Termination Date** means the date set out in item 1.2 of schedule 1; and

**Value Added Services** means the services described in section 3 of schedule 4;

## 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;

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- (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 unless terminated earlier in accordance with clause 9.

### **2.2 Extension**

If required by a party by notice given no later than three months before this agreement is due to expire under clause 2.1, the other party must negotiate in good faith an amendment to the Termination Date and an extension to the Term.

### **2.3 Provision of Services after expiry or early termination**

If Metropolis continues to provide *Metering Coordinator*, *Metering Provider* and *Meter Data Provider* Services in respect of any *metering installation* after the date on which this agreement expires under clause 2.1 or is terminated under clause 9, then the scope and cost of all MP and MDP Services will be as agreed between the *responsible person* and Metropolis. Metropolis has no obligation to continue to provide the Services under the terms of this agreement beyond the Termination Date.

## **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 3.

### **3.2 Appointment to *Metering Coordinator* by the *responsible person***

For Small Sites, The Customer is to use its best endeavours to have the *responsible person* engage Metropolis as *Metering Coordinator* by initiating appropriate change requests in MSATS. This applies to all small site *metering installations* listed in schedule 3.

### **3.3 Engagement and commencement of Services**

Following appointment, Metropolis must provide the Services for the *metering installations* for the Term of this agreement.

### **3.4 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.
- (b) If Metropolis discovers hazardous or defective equipment 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.

### **3.5 Timely delivery of Services**

Metropolis must commence to provide the Services in respect of the *metering installations* as soon as reasonably practicable. Metropolis will use all reasonable endeavours to complete the installation of metering at close as possible to the Commencement Date.

### **3.6 Metropolis' obligations**

In providing the Services Metropolis must:

- (a) exercise due care, skill and judgment in providing the Services;
- (b) comply with:

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- (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) other applicable law; and
  - (4) relevant codes of practice and relevant Australian Standards; and
  - (5) any reasonable and lawful instructions of the *responsible person*;
- (c) maintain any necessary accreditation and registration with AEMO as a *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 immediately informed of all matters affecting or likely to affect the Services;
  - (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; and
  - (h) do all things within Metropolis's power to protect the reputation and interests of the Customer.

### **3.7 Warranties**

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

## **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 there is an increase in the costs Metropolis incurs in providing the Services, Metropolis may adjust the Fees by an amount which is reasonable having regard to the amount of the increase in those costs.

### **4.3 Expenses**

Any additional or unusual expense reasonably and properly incurred by Metropolis in connection with the provision of Services under this agreement is payable or reimbursable by the Customer as soon as practicable after it has been incurred.

### **4.4 Defects**

- (a) In the event that Metropolis discovers hazardous or defective equipment at a Connection Point or that access to the Metering Installation is unsafe it will immediately report the condition to the Customer.
- (b) The Customer must arrange for the repair or replacement of hazardous or defective ancillary equipment (current transformers, voltage transformers, test blocks, fuses, switches or similar) and provide safe and unhindered access to the Metering Installation at no cost to Metropolis.

### **4.5 Invoices**

- (a) Metropolis must invoice the Fees to the *responsible person* for each *metering installation* at the end of each month. Upon request, a copy of this invoice will also be provided to the Customer.

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

## **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.

### **6.2 Public liability insurance**

Metropolis must effect and maintain a public liability insurance policy for the Term for the amount of \$10,000,000.

## **7. INDEMNITY AND LIMITATION OF LIABILITY**

### **7.1 Indemnity**

- (a) To the maximum extent permitted by law, each party indemnifies and holds the other party harmless against any claims, liabilities, proceedings, costs, losses, expenses or damages incurred directly in connection with this agreement.
- (b) The liability arising from this indemnity is reduced proportionately to the extent that any act or omission by the other party contributed to the claim or loss.

### **7.2 Liability Cap**

To the maximum extent permitted by law, the liability of Metropolis to the Customer in respect of any claim arising out of Metropolis's breach of this agreement or negligent act or omission in connection with this agreement is limited to the greater of the:

- (a) \$10,000; and
- (b) amount Metropolis is able to recover under an insurance policy required to be maintained under this agreement.

### **7.3 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; or

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(c) loss arising from business interruption, suffered or incurred by the Customer, or any other person, and arising out of or in connection with this agreement.

## **8. FORCE MAJEURE**

The Customer releases Metropolis from any obligation under this agreement for any period during which Metropolis fails to perform that obligation where performance is prevented by any event, cause or circumstances beyond the reasonable control of Metropolis, provided that:

- (a) Metropolis uses reasonable endeavours to remove or mitigate the Force Majeure; and
- (b) immediately after the event, cause or circumstance occurs, Metropolis notifies the Customer of its existence and of the action that Metropolis intends to take to remove or mitigate the Force Majeure.

## **9. TERMINATION**

### **9.1 Termination for material breach**

- (a) If either party commits a material breach of this agreement and either:
  - (1) fails to remedy the breach within 30 business days from receipt of a written notice of default from the other party; or
  - (2) the breach is not capable of remedy,this agreement may be terminated with immediate effect by the other party giving a written notice of termination to the party in breach.
- (b) If an Insolvency Event occurs in relation to a party, and the services can no longer be provided, this agreement may be terminated with immediate effect by the other party giving a written notice of termination to the insolvent party.

### **9.2 Effect of termination**

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.

### **9.3 Survival**

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

## **10. GENERAL**

### **10.1 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.

### **10.2 Title**

Title to any *meter* provided and installed by Metropolis under this agreement remains vested in Metropolis. Title in any replacement *meter* or *meter* part vests in or remains vested in Metropolis.

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**10.3 Subcontracting**

Metropolis may engage subcontractors to provide the whole or any part of the Services.

**10.4 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.

**10.5 Amendment**

The parties may only amend this agreement if each party signs the written amendment.

**10.6 Severance**

If any provision of this agreement is void, voidable, unenforceable, illegal, prohibited or otherwise invalid in a jurisdiction, in that jurisdiction the provision must be read down to the extent it can be to save it but if it cannot be saved by reading it down, words must be severed from the provision to the extent they can be to save it but if that also fails to save it the whole provision must be severed. That will not invalidate the remaining provisions of this agreement nor affect the validity or enforceability of that provision in any other jurisdiction where it is not invalid.

**10.7 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.



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## SCHEDULE 4 – METERING COORDINATOR SERVICES

As *Metering Coordinator* Metropolis is responsible for the *Metering Installation* at any *Connection Point* and will:

1. Appoint a *Metering Provider* with the appropriate category of AEMO accreditation in accordance with Schedule 7.2 of the National Electricity Rules for the *Connection Point* to provide, install and maintain the *Metering Installation* in accordance with the requirements of the National Electricity Rules.
2. Appoint a *Metering Data Provider* with the appropriate category of AEMO accreditation in accordance with Schedule 7.3 of the National Electricity Rules for the *Connection Point* to collect, validate, substitute, estimate and deliver *Metering Data* in accordance with the requirements of the National Electricity Rules.
3. Ensure that *Metering Installations* meet the:
  - a. measurement accuracy requirements contained in Schedule 7.4 of the National Electricity Rules; and
  - b. minimum service specifications contained in Schedule 7.5 of the National Electricity Rules.
4. Ensure that the testing and inspection of *Metering Installations* is carried out in accordance with an alternative testing strategy as allowed by the National Electricity Rules.
5. Ensure that the *Metering Installation* and *Metering Data* security controls are provided in accordance with Section 7.15 of the National Electricity Rules.
6. Ensure relevant calibration certificates are held and available upon request for *Metering Installations* & Test Equipment.
7. Ensure that *Metering Installations* are located as close as practicable to the *Connection Point*.
8. Notify the Customer as soon as practicable if the accuracy of a *Metering Installation* does not comply with the requirements of the National Electricity Rules.
9. Ensure that *Metering Data* for each *Connection Point* is measured, collected, checked and stored:
  - a) in units of watt-hours (active energy);
  - b) as a minimum in 30-minute Intervals ending on the hour or on the half hour and, where identified by a time, means the 30 minute period ending at that time;
  - c) as import and export (“bi-directional”) data values where applicable; and
  - d) as otherwise stipulated by the National Electricity Rules.
10. Ensure that *Metering Data* for each *Connection Point* is supplied to the Customer:
  - a) once per day covering the period since the last Interval for which a value was supplied;
  - b) in an electronic format agreed between Metropolis and the Customer;
  - c) to the Delivery Address.
11. Ensure the Customer retains right of access to *Metering Data* collected, checked and stored in accordance with Clause 9 of this Schedule and supplied in accordance with Clause 10 of this Schedule and may request that the data be re-supplied at anytime during and after the Contract Term.

## VALUE ADDED SERVICES

The Customer at their option may engage Metropolis to provide Value Added Services in addition to the *Metering Coordinator* Services as described in Schedule 2, item 3.