

## **EMC Data Subscription Service**

### **Terms and Conditions**

#### **EXPLANATORY NOTES**

This is the application form for membership of the EMC Data Subscription Services (the “**Subscription Service**”).

By completing and submitting this application form to the Energy Market Company Pte. Ltd. (“**EMC**”), you agree to the terms and conditions below and shall be legally bound by the same once your application is approved.

Please therefore read the terms and conditions carefully and ensure that all the information that you provide in this application form are correct.

#### **EMC DATA SUBSCRIPTION SERVICE TERMS AND CONDITIONS**

The following terms and conditions, as well as the terms and conditions provided by EMC at its corporate website (the “**Website**”), shall apply to the access and use of the Subscription Service and Data, and to such other platform as may be applicable for the transmission or communication of the Data. In the event of any conflict between the following terms and conditions and those on the Website in connection with the access and use of the Subscription Service and Data, the following terms and conditions shall prevail to the extent of such conflict.

EMC reserves the right to modify these terms and conditions from time to time, and your continued access to and use of the Subscription Service after such modifications have been posted on the Website shall constitute your agreement to these terms and conditions as modified. If you do not agree with any of these terms and conditions as modified, please do not access or use the Subscription Service and the Data.

“**Data**” as provided under the Subscription Service shall be construed to include, without limitation, all data (whether current, forecast or historical), reports, forecasts, summaries, text, graphs, logos, databases, tables, designs, screen shots, and other documents, works or publications that are or will be made available to subscribers of the Subscription Service.

#### **1. Access and Membership**

- 1.1 In order to gain access to and use the Subscription Service and the Data, you must first submit an application for membership to the Subscription Service in the form on the Website (“**Application Form**”). EMC will inform you of the result of your application.
- 1.2 You warrant that the information details you provide in your Application Form are true, correct and complete. In the event of any subsequent change to your information details, you shall notify EMC of the relevant change without delay. You warrant that you are authorised to provide the information in the Application Form, and any subsequent change to that information, to EMC for the purposes of administering and

providing the Subscription Service and all other activities reasonably incidental thereto.

- 1.3 In the event that any information submitted by you is confidential or proprietary, you hereby grant to EMC an irrevocable, worldwide, transferable, sub-licensable, royalty-free licence to use such information for the purposes of administering and providing the Subscription Service and carrying out all other activities reasonably incidental thereto.
- 1.4 Notwithstanding anything in these terms and conditions, EMC reserves sole discretionary right to reject any Application Form without notice or assigning any reason thereto.
- 1.5 Your membership is non-transferable and shall commence upon notification by EMC to you of EMC's approval of your application.

## **2. Subscription Service**

- 2.1 On and from the Effective Date, you may access and use the Subscription Service and store the Data for your personal, non-commercial use or for internal business purposes.
- 2.2 Nothing in these terms and conditions shall prevent or restrict EMC from granting any other person access to the Subscription Service, or making the Data available to any other person, in each case on such terms and conditions as EMC shall in its absolute discretion deem fit.

## **3. Term**

Membership shall commence on the date of approval of the application as notified by EMC in writing or such other date as specified by EMC in writing (the "**Effective Date**") for a duration applicable to the type of subscription package selected for the Subscription Service, after which, the membership will automatically renew for a similar duration and on similar terms, unless you provide us written prior notice of not less than one (1) month before the renewal date.

## **4. Subscription Fee**

- 4.1 In consideration EMC agreeing to provide the Subscription Service, you agree to pay in advance the amount corresponding to the subscription package selected for the Subscription Service ("**Subscription Fee**") by way of cheque made payable to "Energy Market Company Pte Ltd" or by telegraphic or interbank transfer (remittance details will be provided on EMC's invoice). The payment shall be for access to and use of the Subscription Service and the Data as specified and shall be made in full, free of any deduction, withholding, set-off or counterclaim, including without limitation, deductions for bank charges. The amount payable shall be subject to GST.
- 4.2 If EMC does not receive the Subscription Fee in accordance with paragraph 4.1, EMC will either reject your application for the Subscription Service or terminate your

access to and use of the Subscription Service and Data and revoke the User ID and token issued to you, as the case may be.

## **5. Subscription Service and Data**

- 5.1 EMC derives its Data from sources which EMC believes to be accurate and up to date as at the time of publication. EMC nonetheless, reserves the right to update the Data at any time without notice.
- 5.2 The Data is provided to you solely for general information and nothing in the Data may be construed as advice. You are strongly advised to make your own enquiries and seek independent advice from the relevant industry professionals before acting or relying on any Data that is made available to you under the Subscription Service. You agree that the provision of the Subscription Service by EMC or your use of such service and any Data provided therein shall not create any advisor-advisee or fiduciary relationship between you and EMC.
- 5.3 EMC does not owe you or any third party any obligation to establish and/or maintain any system whatsoever in order for you to gain and/or maintain access to and use of the Subscription Service and the Data. You agree that you shall be solely responsible for establishing and/or maintaining any such system.
- 5.4 You agree that your access to and use of the Subscription Service and the Data shall at all times be subject to and in accordance with the data access guidelines stipulated in Appendix A hereto.

## **6. Acknowledgement of EMC's Proprietary Rights**

- 6.1 You acknowledge and agree that the Data provided on the Subscription Service has been selected, compiled, coordinated, arranged and prepared by EMC through the application of methods and standards of judgment used and developed through the expenditure of considerable work, time and money by EMC and are protected by copyright, trademark and other forms of proprietary rights. All rights, title and interest in and to the Data are owned, licensed to or controlled by EMC. You acknowledge that you do not acquire any rights or interests over, or any licenses to the Data.
- 6.2 You may only download, store or use the Data for your own personal information and research or for internal information and research within your company or firm. Save as expressly provided by these terms and conditions, you may not in any form or by any means, and shall not permit any affiliate to, use, adapt, reproduce, distribute, publicly perform, communicate to the public, publish, transfer, sell, rent, lease, license, decompile, reverse engineer, assign (whether directly or indirectly, by operation of law or otherwise), transmit, disclose or otherwise make the Data, whether wholly or in part, available to any other person, or on another website, on-line service or bulletin board, or in hard copy, or on any other media ("**Republication**"), or create any derivative works therefrom, without the express prior written consent of EMC or in the case of third party material, from the owner of the proprietary rights in that material. Without prejudice to the requirement to obtain prior written consent from EMC for any Republication, or the right to any remedy that EMC may have in the event of a breach of this paragraph, you acknowledge and agree that EMC shall have

the further right to impose a fee additional to the Subscription Fee for any Republication or distribution made by you for any purpose other than the purposes allowed herein.

## **7. Member's Use and Conduct**

As a condition of use of the Subscription Service and Data, you warrant and undertake to EMC that you shall:

- (a) keep your token, User ID and password, and any portable data storage device provided to you by EMC secure, confidential and protected against unauthorised access or use by any persons who are not authorised;
- (b) be solely responsible for any and all consequences of any activity carried out through the access to and use of the Subscription Service and Data with your token, User ID or password or portable data storage device provided to you by EMC regardless of whether such access and/or use was authorised by or known to you or not;
- (c) not use or allow any other person to use the Subscription Service in any way which interferes with the availability to or use by other users nor do anything that degrades the operational performance of the Website or the Subscription Service;
- (d) not upload or distribute any files that contain viruses, corrupted files or any other similar computer program that may adversely affect the operational performance of another computer or information access platform or system;
- (e) not use any device, software or routine or attempt to interfere with the proper functioning of the Website or Subscription Service or any transaction offered at the Website or Subscription Service;
- (f) not use the Subscription Service and Data for any purposes other than the purposes stated within these terms and conditions;
- (g) not use the Subscription Service and Data in a manner that is immoral or would give rise to a criminal offence or civil liability or otherwise violate any law in any jurisdiction;
- (h) where you become aware that the Data or any part thereof is being used or obtained by any third parties for any unauthorised purposes, you shall give written notice of such unauthorised use to EMC as soon as reasonably practicable; and
- (i) where personal data has been provided to us, you have notified such persons of the purposes for which EMC requires their personal data and you have obtained their prior consent or you are fully authorised to consent on their behalf to EMC's collection, use and disclosure of their personal data for purposes set out in paragraph 18.

## **8. Audit by EMC**

8.1 Upon sixty (60) days' written notice, EMC, or any person(s) nominated by EMC from time to time, shall be entitled, and you shall permit such person(s), to have:

- (a) access to your registered office and any other premises at which you receive, use, store and process the Data to ensure your compliance under these terms and conditions; and
- (b) access to and the right to inspect your accounts and records and all instruments used in connection with or relating to the Subscription Service or Data.

In exercising its audit rights under this paragraph 8, EMC will observe your reasonable security arrangements.

8.2 Without prejudice to EMC's remedies under these terms and conditions or under common law, in the event the audit reveals any breach by you under these terms and conditions, you shall take immediate action to rectify the breach identified during such audit and the cost of such audit shall be borne by you. In the event the audit does not reveal any breach by you under these terms and conditions, the cost of such audit shall be borne by EMC.

## **9. Indemnity**

9.1 Notwithstanding any other provision in these terms and conditions, you agree to indemnify EMC, its affiliates, officers, partners and employees (each an "**EMC Indemnified Person**") against any and all claims, actions, proceedings, investigations, demands, judgments which may be instituted, made, threatened or alleged against an EMC Indemnified Person and/or any liability incurred by an EMC Indemnified Person arising out of or in connection with:

- (a) your receipt, use, storage and processing of the Subscription Service, Data or any information or data included in or derived from the Subscription Service; or
- (b) any act or omission that results in any breach of these terms and conditions by you.

9.2 The indemnities contained in this paragraph 9 shall extend (without limitation) to all liabilities which any EMC Indemnified Person may incur in investigating, preparing, disputing or defending, or providing evidence in connection with any claim, or mitigating any liability on its part in respect of any claim, or otherwise enforcing its rights under this paragraph 9 which shall be additional and without prejudice to any rights which it may have at common law or otherwise.

## **10. Limitation of Liability**

- 10.1 EMC makes no representation or warranty of any kind in respect of the accuracy, correctness, currency, completeness, reliability, quality, timeliness, non-infringement or fitness for any purpose whatsoever of the Data. You acknowledge and agree that the Data are provided for general information only and EMC accepts no responsibility or liability for any consequence of your use of or reliance on any Data provided by EMC.
- 10.2 You acknowledge that part or all of the Data may be provisional in nature and subject to revision, change or modification, whether pursuant to the Singapore electricity market rules or otherwise. You therefore acknowledge and agree that the Data (whether provisional or otherwise) is provided on an “as is” basis solely for reference and does not constitute advice or solicitation or the subject or basis of any binding representation, warranty or contractual obligation of any nature.
- 10.3 EMC does not warrant that the Subscription Service or the Data will be provided free of interruptions or errors or external interference of any nature, or that any identified defect will be corrected, or that the Subscription Service or the Data are secure, complete, reliable, free of computer viruses or other malicious, destructive or corrupting code, program or macro. You acknowledge that access to the Subscription Service may have to be interrupted by EMC from time to time for system maintenance and servicing reasons. You undertake to take your own precautions (at your own expense) to ensure that the processes and measures which you employ for accessing the Subscription Service and Data do not expose you to the risk of computer viruses or other malicious, destructive or corrupting computer code or other forms of interference or damage to your own computer system. EMC shall in no event be responsible or liable for any losses, damages, claims, liabilities, fees, costs or expenses in connection with your use of or reliance on the Subscription Services and Data, or any system, server or connection failure, error, omission, interruption, delay in transmission, interference, computer virus or other malicious, destructive or corrupting code, program or macro, including any interference or damage to your computer system, in connection with your access or use of the Subscription Service or the Data.
- 10.4 You hereby acknowledge and agree that all disclaimers and exclusions of liability contained in these terms and conditions represent a fair and reasonable allocation of the risks and benefits of the agreement between you and EMC, taking all relevant factors into consideration, including without limitation the value of the consideration provided by you to EMC and the availability and costs of insurance with respect to the said risks. You further agree that these disclaimers and limitations shall be enforceable to the fullest extent permitted by applicable law.

**11. Discontinuation of the Subscription Service, Suspension and Termination of Access and/or Membership**

11.1 You acknowledge and agree that:

- (a) without prejudice to any right or remedy EMC may have under these terms and conditions or at law, EMC may at its absolute discretion suspend, with immediate effect, your access to or use of the Subscription Service and Data including revoking or suspending the token and User ID issued to you for any reason, including without limitation, if EMC reasonably believes that you have breached any of your obligations under these terms and conditions. In the event you fail to rectify such breach within seven (7) days of EMC's notification of such breach, EMC is entitled to terminate the membership; and
- (b) EMC may in its sole discretion and at any time discontinue providing the Subscription Service and the Data for any reason whatsoever without any notice and /or incurring any liability to you.

11.2 Termination of membership shall occur:

- (a) upon one (1) month's written notice from either party without cause;
- (b) with immediate effect in the event you commit a material breach of these terms and conditions and such breach is not capable of remedy or if capable of remedy, not remedied within seven (7) days after EMC giving you notice of such breach;
- (c) upon written notice by EMC if payment of the Subscription Fee is not received by EMC by the payment due date; or
- (d) upon the Subscription Service being discontinued by EMC, at its discretion.

11.3 Upon the termination or suspension of your membership, your rights of access to and use of the Subscription Service and the Data, the User ID and token id that was issued to you shall lapse and you will not be able to access and use the Subscription Service and the Data further.

11.4 You agree that no fees, charges or monies paid to EMC for the provision of the Subscription Service and/or the Data shall be refunded wholly or in part to you in the event of any suspension or termination of access and use of the same should you terminate your membership without cause pursuant to paragraph 11.2(a) or if EMC terminates your membership pursuant to paragraph 11.2(b). In the event EMC terminates your membership without cause pursuant to paragraph 11.2(a) or termination occurs due to the Subscription Service being discontinued under paragraph 11.2(d), EMC shall refund to you the Subscription Fees paid in advance by you, pro-rated according to the remaining number of days left in the subscription package in which the Subscription Services were paid for but not provided.

- 11.5 Any termination of membership under this paragraph 11 shall be without prejudice to the accrued rights of EMC under the terms and conditions herein or to any rights to which EMC may be entitled to at law.
- 11.6 Paragraphs 6, 9 and 10 will survive any termination of access to the Subscription Service and Data.

## **12. Legal & Equitable Remedies**

- 12.1 EMC reserves the right to seek all remedies available at law and in equity in respect of any violation of these terms and conditions, including the right to deny or restrict access to the Subscription Service and Data to any particular person, or to block access from a particular internet address to the Subscription Service and Data, at any time and at its sole and absolute discretion, without providing any reasons whatsoever.
- 12.2 You acknowledge and agree that your breach of these terms and conditions can irreparably harm EMC and in such event EMC will not have an adequate remedy at law for such breach. You agree and consent that in the event of such breach, EMC shall be entitled, without posting bond and in addition to all other rights and remedies to which EMC may be entitled, to have an order of specific performance or an injunction issued requiring any such violation to be cured and enjoining all persons involved from continuing the violation. The existence of any claim or cause of action that EMC or any other person may have against you shall not constitute a defence or bar to the enforcement of this paragraph.

## **13. Confidentiality**

- 13.1 You agree and undertake that you shall keep confidential and shall not use for your own purposes nor without the prior written consent of EMC disclose to any third party any and all information received from EMC, or any information that you have acquired in connection with these terms and conditions, that is of a confidential or proprietary nature (including trade secrets and information of commercial value), including but not limited to:
- (a) any documentation or other materials that are marked as "Confidential" by EMC;
  - (b) any information concerning EMC's methods of compiling the Data; and/or
  - (c) these terms and conditions,
- (collectively, "**Confidential Information**").
- 13.2 You may disclose the Confidential Information to an employee who needs such information in order to carry out his duties as an employee, provided that such employee undertakes to keep it confidential.
- 13.3 Nothing in this paragraph 13 shall restrict your right or obligation to disclose the Confidential Information, if and to the extent that:

- (a) such Confidential Information is public knowledge or already known to you at the time of disclosure as evidenced by written records or subsequently becomes public knowledge other than by breach of these terms and conditions;
- (b) such Confidential Information subsequently comes lawfully into your possession from a third party who does not owe an obligation of confidentiality to EMC; or
- (c) such Confidential Information is required to be disclosed by law, court order or the rules or regulations of any government or regulatory authority or the requirements of any stock exchange on which your shares are listed on, provided that in such an instance, the you shall immediately inform EMC of such a requirement and reasonably co-operate with EMC so as to provide EMC the opportunity, at its own expense, to (i) contest and assist in opposing any requirement of disclosure of EMC's Confidential Information; (ii) seek judicial protection against the disclosure; and (iii) have such required disclosure be made under a protective order.

13.4 You acknowledge and agree that damages alone may be an inadequate remedy for a breach of paragraph 13 and that EMC shall be entitled to seek preliminary and permanent injunctive relief to preserve such confidentiality or limit improper disclosure of such Confidential Information, but nothing herein shall preclude EMC from pursuing any other action or remedy for any breach or threatened breach of these terms and conditions.

13.5 This paragraph 13 shall survive the termination of these terms and conditions.

#### **14. Force Majeure**

No failure, delay or default in performance of any obligation of EMC shall constitute an event of default or a breach of these terms and conditions, to the extent that such failure to perform, delay or default arises out of a cause that is beyond the reasonable control of EMC, including but not limited to action or inaction of governmental, regulatory, civil or military authority, fire, strike, lockout or other labour dispute, flood, war, riot, theft, earthquake and other natural disasters. You agree to take all necessary action to mitigate the consequences of any such cause.

#### **15. Waiver**

Failure by EMC to enforce at any time any of the provisions herein shall not be construed nor shall be deemed to be a waiver of EMC's rights hereunder nor in any way affect the validity of the whole or any part of these terms and conditions nor prejudice EMC's rights to take action in the future.

#### **16. Severability**

The invalidity, illegality or unenforceability of any of these terms and conditions shall not affect the validity, legality and enforceability of the remaining provisions of these terms and conditions.

## **17. Governing Law and Jurisdiction**

17.1 You agree that your access and use of the Subscription Service and Data, and these terms and conditions, shall be governed by and construed according to Singapore law.

17.2 You agree to submit to the non-exclusive jurisdiction of the Singapore courts.

## **18. Personal Data**

EMC may require the personal data of you and/or your employees, for the purposes of processing your application, managing and administering the Subscription Services and User IDs and sending to you information and updates about the Subscription Services and any other products and services, which may be of interest. If you provide us with such personal data, you consent to EMC's collection, use and disclosure of such personal data for the purposes set forth in this paragraph.

## **19. Remedies Not Exclusive**

Except as expressly provided in these terms and conditions, no remedy conferred by any of the provisions of these terms and conditions is intended to be exclusive of any other remedy and each remedy shall be cumulative and shall be in addition to every other remedy under these terms and conditions or at law.

## **20. Rights of Third Parties**

Except as provided under paragraph 9, a person or entity who is not a party to these terms and conditions shall have no right under the Contracts (Rights of Third Parties) Act (Cap 53B) to enforce any term of these terms and conditions.

## **21. Headings**

Paragraphs and Appendix headings are inserted for convenience only and shall not affect the construction or interpretation of these terms and conditions.

## **APPENDIX A (Applicable only to the real-time subscription packages, unless otherwise stated)**

### ***Data Subscription Access Guidelines***

Access will be given to the:

1. NEMS Trading Portal
2. NEMS API
3. The Members area of the EMC Corporate Website.

The API specification can be found on EMC's website [www.emcsg.com](http://www.emcsg.com).

### ***Access Requirements***

To access EMC's systems a user ID, password and token for digital access is required to be issued. The application form for this digital access can also be found on the EMC website.

The Subscriber is restricted to the maximum number of connections as set out in the subscription package and shall be via the user ID(/s), password(/s) and token(/s) issued.

On successful application EMC will issue the token(s) via secure courier.

### ***Technical Requirements***

1. A PC with an internet connection (refer to EMC website for a list of the most appropriate internet browsers for viewing website content).
2. For subscribers using Data Services, the external company lease line fixed IP address of the user's PC should be supplied to EMC to allow EMC to configure access to the NEMS systems, as these are protected by a firewall.

### **For access to Historical Data Sets**

3. Software that supports CSV files (for example, MS-Excel).
4. A PC that supports a portable data storage device.

### ***Usage Restriction***

1. No "hammering" of the Trading Website or API is permitted.
2. Repeated requests to the same URL should not be less than every 5 minute apart (e.g. Accessing All DPR Reports).
3. Repeated requests to different URLs for similar data should not be less than every 5 minutes apart (e.g. Access each DPR of a day for every period).