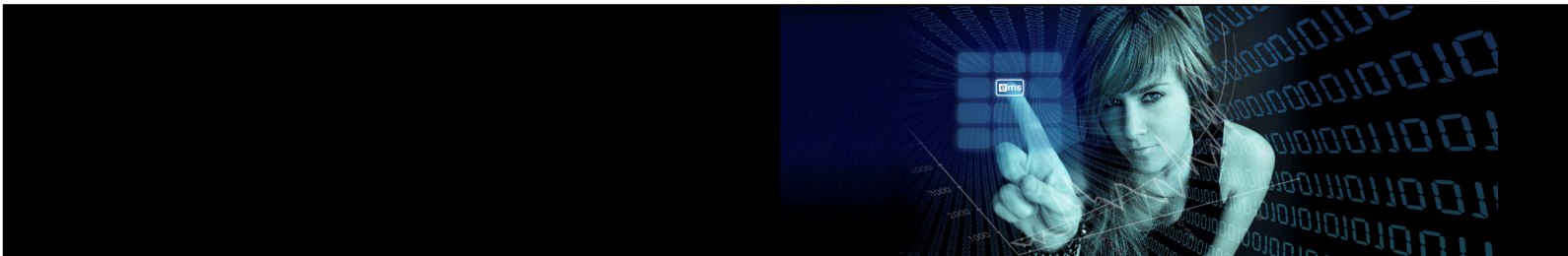




em⁶ ACCESS AGREEMENT

[] LIMITED
AND
ENERGY MARKET SERVICES LIMITED



DATED:**BETWEEN:**

(1) **Energy Market Services Limited** of Ground Floor, 96 The Terrace, Wellington (**EMS**); and

(2) [] (the **Customer**).

BACKGROUND

EMS provides the electricity operational and market information delivery system known currently as em⁶.

The Customer wishes to have access to em⁶, and EMS has agreed to allow the Customer to access em⁶, on the terms of this Agreement.

IT IS AGREED:**1. Interpretation**

In this Agreement, unless the context requires otherwise:

Agreement means this Access Agreement, including the Schedules;

Allowed Customer Use is defined in clause 5.2;

Allowed EMS Use is defined in clause 5.1;

Data means the data published on em⁶ from time to time;

Data Services means the data services set out in Schedule 1;

em⁶ means the electricity operational and market information delivery system provided by EMS known currently as em⁶;

em⁶ Website means www.em6.co.nz or such other website through which em⁶ is provided as EMS may notify to the Customer from time to time;

Fees means the fees for the Data Services set out in Schedule 1, as such fees may be changed from time to time under clause 6;

a **Material Imbalance** exists for particular Data if:

- (a) for any reason the Data does not include data relating to the Customer, or the Data relating to the Customer is of a lesser currency, frequency or quality than the Data relating to other persons; and
- (b) in EMS' view it would be unfair or illegal to allow the Customer to continue to have access to the Data;

Related Company has the same meaning as in the Companies Act 1993;

Restrictions means the restrictions on access to the Data on em6 from time to time;

Rulings Panel means the Rulings Panel established under the Electricity Governance Regulations 2003;

Specification means a document prepared by EMS setting out the Data and Restrictions;

Term means the period from the date of this Agreement to the date this Agreement is terminated;

Third Party Receiver means any third party

- (a) to whom the Customer provides Data; or
 - (b) to whom the Customer provides products or services using Data;
- whether or not such provision or use is authorised under this Agreement or otherwise;

Third Party Rights means intellectual property rights, rights to protect confidential information or any other rights of third parties that may be asserted against EMS or the Customer to prevent EMS' use of the Data, in accordance with clause 5.1 or the Customer's use of the Data; and

Working Days means Monday to Friday, excluding public holidays in Wellington.

2. Data services

- 2.1 EMS will provide the Data Services to the Customer for the Term.

3. Payment

- 3.1 The Customer must pay EMS the Fees.
- 3.2 The Fees are inclusive of all taxes other than GST, which must be paid by the Customer.
- 3.3 EMS will invoice the Customer monthly for the Fees. The Customer will pay the Fees on or before the 20th Working Day of the month following the month of invoice.
- 3.4 The Customer must not withhold payment of all or any portion of, or deduct or set-off any amount from, the Fees. If any amount of the Fees falls overdue for payment, the overdue amount will (without prejudice to any other right or remedy) bear default interest from the date on which payment is due until the date on which payment is made in full. Default interest will be calculated daily at the rate of 10% per annum and will be compounded monthly.

4. Restrictions on Customer's use

- 4.1 Subject to clause 4.2, the Customer:
 - (a) may not use the Data for any service that competes with em6;
 - (b) may make paper and (subject to clause 4.1(c)) electronic copies of the Data, provided all intellectual property notices and disclaimers are retained on the copies;
 - (c) may not copy the Data by way of any automated query tool, except to the extent the Customer has expressly purchased the right to do so as part of the Data Services; and

- (d) may not publish the Data or otherwise provide it to any third party (other than a Related Company), whether or not for commercial gain.

For the avoidance of doubt, clause 4.1(d) does not prevent the Customer using the Data for market reporting or to create value-added products that do not compete with em⁶.

- 4.2 The restrictions on the Customer's use of the Data in clause 4.1 do not apply to the extent:
- the Customer obtains EMS' prior written consent to the use of the Data in a way that would otherwise breach clause 4.1;
 - the Customer accesses the Data other than through em⁶; or
 - the Customer is the original source of the Data.
- 4.3 The Customer must not attempt to decompile or reverse engineer em⁶ or to circumvent the Restrictions.

5. Intellectual property rights and confidentiality

- 5.1 Subject to clause 5.3, the Customer grants EMS all necessary licences of intellectual property rights (other than Third Party Rights) to allow EMS to:

- publish the Data on em⁶; and
- allow third parties to copy and download the Data published on em⁶

in accordance with the Restrictions (**Allowed EMS Use**). Such licences are personal and royalty free. Subject to clause 5.3, the Customer irrevocably waives any right it may have against any person under any legal theory to stop or limit Allowed EMS Use, including on the basis of intellectual property rights infringement or breach of confidence.

- 5.2 The Customer acknowledges that other em⁶ customers may:

- access Data relating to the Customer through em⁶;
- copy or download such Data from em⁶; and
- use such Data for their own purposes.

(**Allowed Customer Use**). Subject to clause 5.3, the Customer irrevocably waives any right it may have against any person under any legal theory to stop or limit Allowed Customer Use, including on the basis of intellectual property rights infringement or breach of confidence.

- 5.3 The Customer will take steps to stop or limit Allowed EMS Use or Allowed Customer Use to the extent such use:

- is in breach of any statute or statutory instrument, including the Electricity Governance Regulations and Rules 2003;
- is required to be stopped or limited in order for the Customer to protect itself from any claim by a third party based on a Third Party Right; or
- is prohibited by order of any court, tribunal or regulatory body to which the Customer is a party, subject or submits, including the Electricity Commission and Rulings Panel.

- 5.4 Nothing in this Agreement is to be interpreted as an admission by EMS that:

- but for clause 5.1 it would not be entitled to use any Data for Allowed EMS Use; or
- but for clause 5.2 other em⁶ customers would not be entitled to use any Data for Allowed Customer Use.

- 5.5 Nothing in this Agreement or the fact the Data is published on em⁶ confers on the Customer any intellectual property rights in em⁶ or in any compilation of data comprised in em⁶. All such intellectual property rights are owned by EMS.

- 5.6 For the avoidance of doubt, EMS does not assert ownership of any intellectual property rights (other than the licences granted in clause 5.1) in individual Data. EMS acknowledges that the Customer maintains ownership of all intellectual property in all Data of which the Customer is the original source, and the Customer may use such data as it sees fit.

6. Changes

- 6.1 EMS may, from time to time, change the Data, Restrictions, Fees or any provision of this Agreement on at least 20 Working Days' notice to the Customer, unless the change is to the format of Data, in which case (subject to clause 6.2) EMS must give at least 30 Working Days' notice to the Customer.
- 6.2 EMS may, immediately on notice to the Customer, change the Data or Restrictions if the purpose of the change is to protect EMS from any claim by a third party based on a Third Party Right.
- 6.3 EMS may, immediately on notice to the Customer, restrict the Customer's access to particular Data if a Material Imbalance exists for that Data.
- 6.4 Any change made by EMS under clause 6.1, 6.2 or 6.3 will not affect the Fees unless a change to the Fees is notified under clause 6.1.
- 6.5 In clauses 6.1, 6.2 and 6.4, to "change" includes to add or delete.

7. Support services

- 7.1 EMS will provide the support services for em⁶ set out in Schedule 2.

8. Specification

- 8.1 EMS will make the Specification available on the em⁶ Website.
- 8.2 EMS will promptly update the Specification on every change to the Data or Restrictions under clause 6.1.

9. No warranties

- 9.1 EMS excludes all warranties and representations about the Data. Without limitation, EMS does not warrant or represent:
- (a) that the Data are complete, accurate, up-to-date or fit for any particular purpose made known to EMS or otherwise;
 - (b) that any particular Data will be or continue to be, published on em⁶; or
 - (c) that any particular Data is not subject to Third Party Rights.
- 9.2 EMS does not warrant or represent that the Data Services will be continuously available or available at any particular time during the Term.
- 9.3 The Customer is acquiring the Data Services for business purposes and accordingly the provisions of the Consumer Guarantees Act 1993 do not apply.

10. Liability

- 10.1 Neither party will, under any circumstances, be liable under the law of tort, contract or otherwise for any loss of profits or savings or for any indirect or consequential loss or damage, however caused, arising out of or in connection with this Agreement, em⁶ or the Data.
- 10.2 EMS will not, under any circumstances, be liable under the law of tort, contract or otherwise for any loss or damage arising out of or in connection with the Customer's or any third party's use of Data obtained through em⁶. Without limitation, EMS will have no liability in connection with:
- (a) the Customer's reliance on Data obtained through em⁶; or
 - (b) any other em⁶ customer's non-compliance with the terms and conditions on which that customer has access to em⁶.
- 10.3 If for any reason a party is liable to the other in connection with this Agreement, em⁶ or the Data, that party's liability will be limited, in aggregate, to the Fees paid or payable by the Customer to

EMS under this Agreement. This limitation of liability does not apply to the indemnity in clause 10.4.

- 10.4 The Customer indemnifies EMS against any cost, expense, loss or damage suffered or incurred by EMS as a result of any claim:
- (a) by a Third Party Receiver that the Data is not complete, accurate, up-to-date or fit for any particular purpose made known to EMS or otherwise; or
 - (b) by a third party as a result of any breach by the Customer of its obligations under this Agreement.

11. Termination

- 11.1 Either party may terminate this Agreement at any time by giving at least 20 Working Days' notice to the other party.
- 11.2 Either party may terminate this Agreement immediately on notice to the other party if:
- (a) the other party commits a material breach of this Agreement and the breach is not remedied within 10 Working Days of the first party notifying the other party of the breach and requiring it to be remedied; or
 - (b) the other party becomes insolvent, bankrupt or unable to pay its debts as and when they fall due, goes into liquidation, passes a resolution that it be wound up or is the subject of an application for winding up, enters into any arrangement with its creditors, has a receiver, statutory manager or similar person appointed in respect of any material part of its assets, or has an administrator appointed to it.
- 11.3 EMS may terminate this Agreement immediately on notice to the Customer if a Material Imbalance exists for any Data, whether or not EMS has exercised its right to restrict access to that Data under clause 6.3.
- 11.4 The Customer may terminate this Agreement immediately on notice to EMS given within:
- (a) the notice period for any change to the Data, Restrictions, Fees or provisions of this Agreement under clause 6.1;
 - (b) 20 Working Days of EMS notifying the Customer of any change to the Data or Restrictions under clause 6.2; or
 - (c) 20 Working Days of EMS restricting the Customer's access to particular Data under clause 6.3, provided the restriction is still in place at the time of the Customer's notice to terminate.
- 11.5 Termination of this Agreement will not affect any rights and remedies of the parties that accrued before termination.
- 11.6 The following provisions of this Agreement will survive the termination of this Agreement:
- (a) clauses 5.1 to 5.4, but only for Data that is published on em⁶ at the time of termination;
 - (b) clauses 5.5, 5.6 and 10; and
 - (c) all other provisions of this Agreement that expressly, or by implication are intended to, survive termination of this Agreement.

12. No assignment

- 12.1 Neither party may assign any of its rights or obligations under this Agreement to any third party without the other party's prior written consent, which must not be unreasonably withheld.

13. Notices

- 13.1 Any notice required to be given under this agreement will be deemed validly given if delivered by hand, posted or sent by facsimile transmission or email to the intended recipient's address, facsimile number or email address set out in Schedule 1 or as otherwise notified by the recipient from time to time.
- 13.2 Notices will be deemed to have been given and received:

- (a) if delivered personally, when delivered;
- (b) if sent by post, two Working Days after posting;
- (c) if sent by fax, on the date of successful transmission as indicated on the confirmation generated by the sender's machine (provided there is no manifest error in such date); and
- (d) if sent by email, on the date generated by the sender's machine as the date of sending of the email (provided there is no manifest error in such date).

14. Third parties

- 14.1 Subject to clauses 14.2 and 14.3, nothing in this Agreement is intended to create any obligation that is enforceable by any person who is not a party to this Agreement.
- 14.2 Clause 5.1 is also for the benefit of any person against whom the Customer takes steps to stop or limit Allowed EMS Use and may be enforced by them against the Customer. Clause 5.2 is also for the benefit of any person against whom the Customer takes steps to stop or limit Allowed Customer Use and may be enforced by them against the Customer.
- 14.3 The disclaimers, exclusions, limitation and indemnity in clauses 9 and 10 are also for the benefit of EMS' Related Companies and may be enforced by them against the Customer. The exclusion and limitation in clauses 10.1 and 10.3 are also for the benefit of the Customer's Related Companies and may be enforced by them against EMS.

15. Variations

- 15.1 Subject to clause 6, no variation to this Agreement will be effective unless it is in writing and signed by both parties.

16. Partial invalidity

- 16.1 If any provision of this Agreement is invalid, illegal or unenforceable for any reason, that provision will be severed from this Agreement and the remaining provisions of this Agreement will continue in full force and effect as if the severed provision had never been included.

17. No waiver

- 17.1 Any waiver by either party of any of its rights or remedies under or in connection with this Agreement will be effective only if it is in writing and signed by that party.

18. Rights cumulative

- 18.1 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law.

19. Governing law

- 19.1 This Agreement is governed by the laws of New Zealand. The parties submit to the exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this Agreement.

20. Entire agreement

- 20.1 This Agreement is the whole and only agreement between the parties relating to its subject matter. Each party acknowledges that it has not been induced to enter into this Agreement by any representation made by or on behalf of the other party that is not repeated in this Agreement.

21. EXECUTION

ENERGY MARKET SERVICES LIMITED

Signed by:	Quintin Tahuu
Title:	Service Delivery Manager
Date:	

Signed (signatory):

THE CUSTOMER

Name of Organisation:	[] Limited
Signed by:	
Title:	
Date:	

Signed (signatory):

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SCHEDULE 1

DATA SERVICES, FEES AND CONTACTS

SERVICE	DATASET NOTES	DELIVERY	MONTHLY FEE (\$, excl. GST)	Allowable Users Increment	Purchased
30 minute SCADA	<ul style="list-style-type: none"> ▪ Generation ▪ Load ▪ Quality ▪ HVDC 	Web Application	200	1	
Constraints	<ul style="list-style-type: none"> ▪ Constraints Change ▪ Branch Constraints ▪ Constraints Data 	Web Application	200	1	
Dispatch	<ul style="list-style-type: none"> ▪ Dispatch Data 	Web Application	200	1	
Reserves	<ul style="list-style-type: none"> ▪ Reserve Amounts By Island Summary ▪ Reserve Quantities by Island And Class ▪ Reserve Prices by Island And Class ▪ Latest Reserve Factors ▪ Aggregated Reserves ▪ Average Dispatched Quantities ▪ Reserve Amounts By Source ▪ Reserves Extract ▪ Constraint Amounts By Source ▪ Reserve Frequency By Source 	Web Application	200	1	
Network	<ul style="list-style-type: none"> ▪ Arc Flow Data ▪ Branch Data ▪ Market Nodes Data ▪ Node/Bus 	Web Application	200	1	
Master Files	<ul style="list-style-type: none"> ▪ Calendar Entry ▪ Code Table ▪ Code Table Type ▪ Locations Data ▪ Party Data 	Web Application	0	0	

Archive Data	<ul style="list-style-type: none"> ▪ Trader Agreements ▪ Trader Parents 				
	<ul style="list-style-type: none"> ▪ TPOIS Half Hourly ▪ TPOIS Half Hourly Totals 	Web Application	0	0	
Location Factors and Market Prices	<ul style="list-style-type: none"> ▪ Location Factors ▪ Market Prices ▪ Reserve Prices (60s & 6s) 	Web Application	200	1	
	<ul style="list-style-type: none"> ▪ Home Page Graphing Filter ▪ Personal Reports Filter 	Web Application	200	1	
10 minute SCADA	<ul style="list-style-type: none"> ▪ Generation ▪ Load ▪ Quality ▪ HVDC 	Web Application	200	1	
	<ul style="list-style-type: none"> ▪ SCADA RCPD Reports and Charts 	Web Application	200	1	
FTP 30 minute SCADA	<ul style="list-style-type: none"> ▪ Generation ▪ Load ▪ Quality ▪ HVDC 	FTP	200	1	
	<ul style="list-style-type: none"> ▪ Constraints Data ▪ Branch Constraints 	FTP	200	1	
FTP Reserves	<ul style="list-style-type: none"> ▪ Reserve Quantities by Island And Class ▪ Aggregated Reserves ▪ Reserve Amounts By Source 	FTP	200	1	
	<ul style="list-style-type: none"> ▪ Arc Flow ▪ Branch Data ▪ Market Nodes Data ▪ Node/Bus 	FTP	200	1	
Web Services 30 minute SCADA	<ul style="list-style-type: none"> ▪ Dispatch Data ▪ SCADA Load ▪ SCADA Generation ▪ SCADA HVDC ▪ SCADA Quality 	Web Services	500	3	
	<ul style="list-style-type: none"> ▪ SCADA Load ▪ SCADA Generation 	Web Services	500	3	

	<ul style="list-style-type: none"> ▪ SCADA HVDC ▪ SCADA Quality 				
Web Services RCPD	<ul style="list-style-type: none"> ▪ SCADA RCPD 	Web Services	500	3	
Web Services 1 minute SCADA	<ul style="list-style-type: none"> ▪ SCADA Load ▪ SCADA Generation ▪ SCADA HVDC ▪ SCADA Quality 	Web Services	500	3	
Web Services Reserves	<ul style="list-style-type: none"> ▪ Aggregated Reserves 	Web Services	500	3	
Web Services Network	<ul style="list-style-type: none"> ▪ Arc Flow 	Web Services	500	3	
Additional named users	Enhancement	n/a	200 per named user		
Total					

Notes

1. The Data in each dataset and the Restrictions are set out in the Specification.
2. The Customisation enhancement allows the Customer to apply filters to the Data through the em⁶ Website.
3. The number of users accessing the em⁶ Website simultaneously is subject to a maximum named user limitation. Each dataset and enhancement includes the number of named users specified in the above table. For example, if the Customer purchases the SCADA Data and Dispatch Data Web Applications, the Customer will be entitled to two named users. If the Customer also purchases the SCADA Web Services the Customer will be entitled to five named users.
4. Datasets available via both web application and web services may be accessed by web services without purchase of the web application, however not all datasets will necessarily be available via web services that are accessible by the web application.
5. Datasets available via both web application and FTP may be accessed by FTP without purchase of the web application, however not all datasets will necessarily be available via FTP that are accessible by the web application.

CONTACT DETAILS

EMS	
Name of Organisation:	Energy Market Services Limited
Business Address:	Ground Floor, 96 The Terrace, PO Box 5363, Wellington
Contact Name:	Quintin Tahau
Title:	Service Delivery Manager
Fax:	04 463 0801
Email:	quintin.tahau@ems.co.nz
The Customer	
Name of Organisation:	
Business Address:	
Contact Name:	
Title:	
Fax:	
Email:	

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SCHEDULE 2

SUPPORT SERVICES

1. Support Functions

- 1.1 EMS will:
- (a) provide helpdesk-based support for em⁶, including a support analyst;
 - (b) co-ordinate the resolution of reported problems with em⁶; and
 - (c) provide system monitoring for em⁶.

2. Hours of Operation

- 2.1 Helpdesk number: 24 hours, 7 days per week.
- 2.2 Support analyst: Business Hours.
- 2.3 System monitoring: 24 hours, 7 days per week.
- 2.4 Business Hours means 8am-6pm on Business Day.
- 2.5 Business Days means Monday to Friday (excluding public and Wellington regional holidays).

3. Raising Queries

- 3.1 The process for raising queries relating to em⁶ is as follows:
- (a) the Client will notify the helpdesk of the relevant details of the query, including:
 - (i) a description of the query;
 - (ii) the Client's priority contact for matters relating to the query; and
 - (iii) the Client's assessment of the priority of the query (in accordance with clause 4);
 - (b) EMS will record the details of the query and allocate a priority (in accordance with clause 4) and unique reference for the query; and
 - (c) EMS will confirm the details of the query to the Client, including a resolution target determined in accordance with clause 4, within the relevant response time set out in clause 4.
- 3.2 If a query:
- (a) relates to an enhancement of em⁶ rather than the correct operation of em⁶; and
 - (b) will require a significant level of EMS resource (as determined by EMS, acting reasonably) to resolve,

EMS must as soon as practicable notify the Client that the query will be treated as a chargeable service at EMS' standard rates. The Client may, in its absolute discretion, withdraw the query following such notice from EMS.

4. Resolution Targets and Response Times

4.1 EMS will respond promptly to and action all queries received from the Client. Unless the parties agree otherwise for a particular query, the following response times and resolution targets will apply:

PRIORITY	Description	Response Time	Resolution Target
1	High – Query relates to a problem that has severe impact on Client’s use of em ⁶ .	0.5 Business Hours	2 Business Hours
2	Moderate – Query relates to a problem that has significant impact on Client’s use of em ⁶ .	2 Business Hours	8 Business Hours
3	Low – Query relates to a problem with moderate or low impact on Clients use of em ⁶	8 Business Hours	40 Business Hours
4	Very low – Query relates to an enhancement of em ⁶ .	30 Business hours	As Agreed

5. Response to Queries

5.1 Subject to clause 5.2 below, EMS will:

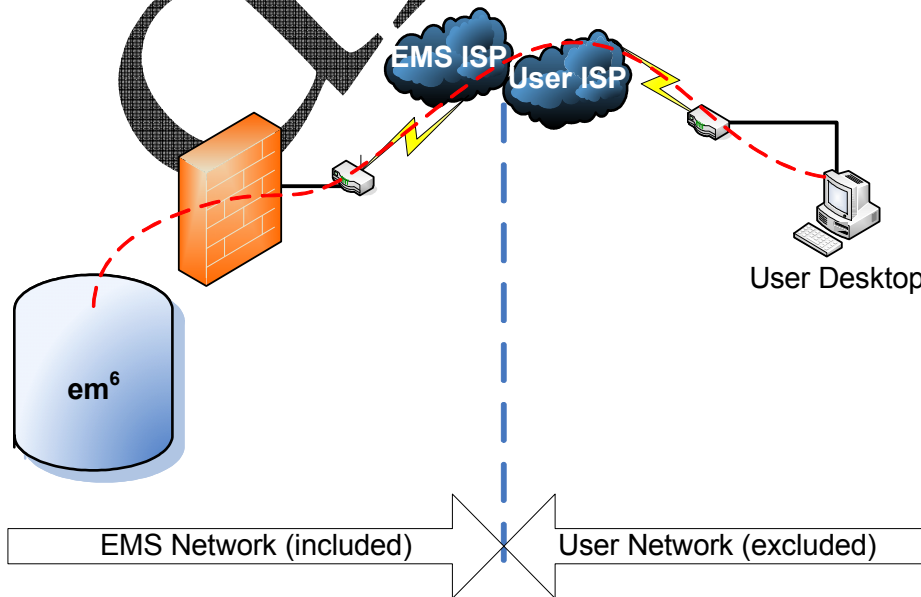
- (a) respond to all queries received from the Client in accordance with clause 3.1(c) and the relevant response time in clause 4; and
- (b) use its best endeavours to resolve all queries received from the Client in accordance with the relevant resolution target in clause 4.

5.2 The Client must provide EMS with reasonable assistance to resolve a query, including by providing EMS with such further information about the query as EMS may reasonably require.

6. System Availability and Outages

6.1 For the purposes of clauses 7, 8, and 10, availability and outages are delineated by the point at which any transaction enters or exits EMS’ subcontracted Internet Services Provider (ISP) (the EMS Network). The EMS Network is shown in Figure 1.

Figure 1 – Service delineation



- 6.2 Availability will be calculated based on the duration of outages in any one month, using the following formula:

$$100 - (\text{minutes outage} / (\text{days in month} * 1440) * 100) = \% \text{ availability per calendar month}$$

- 6.3 Subject to clause 6.4, outages will occur on each occasion when the EMS Network is substantially unavailable due to failure of any component of the EMS Network.
- 6.4 If the actions of any em⁶ customer have contributed materially to the cause of an outage, then the outage will not be taken into account in determining availability. This includes any actions not taken by the customer at the request of EMS where acting on the recommendation would have avoided or minimised the outage.

7. Planned Outages

- 7.1 Planned outages will, wherever possible:
- (a) be scheduled outside Business Hours;
 - (b) be notified via email 5 Business Days in advance;
 - (c) be limited to 2 events per calendar month; and
 - (d) have a maximum duration of 8 hours per outage.

8. System Availability Target

- 8.1 The target availability levels are:
- (a) 99% within Business Hours per month; and
 - (b) 97% outside Business Hours per month.

- 8.2 Availability targets exclude planned outages.

9. Performance Standards

- 9.1 As em⁶ is delivered over the internet, the end-to-end performance of em⁶ will largely be governed by factors outside EMS' control.
- 9.2 EMS may apply a limit to the amount of data that can be retrieved by a single request from em⁶.

10. Monthly Report

- 10.1 EMS will provide a monthly query report to the Client. The report will include:
- (a) the number of outstanding queries for the Client;
 - (b) the resolution timeframes for queries made by the Client in the previous month;
 - (c) any service improvements in the previous month and looking forward;
 - (d) availability statistics for the previous month;
 - (e) planned and un-planned outage information for the previous month and looking forward; and
 - (f) user account management activities for the Client (adds / deletes / permission changes) in the previous month.