

Terms and Conditions - SmartEnergy™ Enhanced Energy Reporting Services - formally SmartviewPlus

Eutility Pty Ltd ABN 56 090 407 346 ('Eutility' or 'we') will supply You (or 'your') with energy and carbon dioxide reporting in relation to your usage, demand and overlays in respect thereto ('Service/s') on the terms and conditions as follows:

1. Provision of Services

We will supply Services to You at Your request upon the terms and conditions described:

- (a) in these Terms and Conditions;
 - (b) in the New Business Application Form;
 - (c) on the Website; and
 - (d) Any document annexed hereto,
- (together described as the Contract Documents).

2. Information

We will rely upon the accuracy of any information, documents, advice, records or data You provide to Us.

3. Payment

You will pay without deduction such fees and other amounts as are described in the Contract Documents. Our terms of trade are 30 days from the invoice date. All payments made using either American Express will be subject to a 2.75% surcharge. All payments made using a Visa or Mastercard will be subject to a 1.65% surcharge. If the Price is included in an invoice from your energy retailer pursuant to an agreement between such energy retailer and Us, the You will pay the Price in accordance with said invoice. Notwithstanding the foregoing, if the Price in relation to any period is not included in an invoice from your energy retailer, You agree to pay the Price in relation to each month or part thereof within 30 days from the end of such month to Us.

4. Term

This agreement shall be for an Initial Term of five years. It shall be thereafter extended for consecutive periods of one year unless You advise Us in writing at least 60 days before the expiration of the then current one-year Term that You wish to terminate this agreement, whereupon the agreement shall be terminated 60 days after receipt by Us of your notice of termination.

5. Early Termination Fees

Should you cancel this Agreement or move to an alternate supplier within the Initial Term then an Early Termination Fee equivalent to the charges that would have applied during the balance of the Initial Term will become due and payable immediately.

6. No Warranty for Services

We take care to ensure the accuracy of any information, advice or recommendations that we provide ("the Information"). To the maximum extent permitted by law, neither we nor our servants or agents:-

- (a) give any warranty as to the accuracy of any of the Information; nor
- (b) shall be liable for any loss suffered by any person or other entity or reliance on any of the Information.

7. GST

Unless expressly stated otherwise, the charges payable for the Services under this agreement are exclusive of GST. You must pay to Us in addition to the charges for the Services an amount equal to any GST payable on the supply of the Services. That additional amount is payable at the same time any part of the charges for the Services is payable. We will issue a tax invoice to you for the supply of those Services at or before that time.

8. Privacy

- 8.1 We comply with the *Privacy Act 1988*. Our privacy policy on the Website sets out the way in which we collect, use and disclose information about You.
- 8.2 You authorise Us to disclose to third parties (including third party carriers) such information as may be reasonably required by them to enable Us and such third parties to provide the services to You.

9. No Liability

To the fullest extent permitted by law, We accept no liability for any Loss or Damage arising from our agreement or dealings with You including (without limitation), the act or omissions of any third party carrier or of any of our employees, officers, agents, contractors or subcontractors or the failure of, fault or defect, in any contractors or subcontractors or the failure of, or default or neglect, in any service, network, facilities, equipment or service used contracted, recommended or procured by You and Us in supplying the services.

10. Exclusion of Implied Terms

- 10.1 Any guarantee, condition or warranty which would otherwise be implied in this Agreement is hereby excluded.
- 10.2 To the extent any legislation implies any guarantee, condition or warranty, Our liability for breach of such guarantee, condition or warranty shall be limited at Our option to:
 - (a) if the breach relates to goods;
 - (i) the replacement of the goods or the supply of equivalent goods; and
 - (b) if the breach relates to services;
 - (i) the supplying of the services again or the cost of having the services supplied again.
- 10.3 You acknowledge that you have not entered into this agreement in reliance upon any statement (written or verbal) made by Us, other than expressly contained in the Contract Documents.

11. Provision of Information

To enable Us to perform the Services, We may require additional information from You. To the maximum extent permitted by law, You must provide such information, which may include names and contact details of the people to which reports and quotations are to be supplied, billing information, output information, equipment and calibration details, competing or related quotes for any energy related services which may be related to the Services provided by Us.

12. Safety

You must advise all Our relevant staff or contractors of any requisite safety protocols or appropriate procedures that apply to visitors of Your premises on or prior to arrival at your premises. You must ensure that your premises are safe in all respects for all purposes upon any visit by Our staff or contractors. You must advise us immediately upon any concerns that you have in relation to safety on, in or around your premises for the purposes of this clause. If Our staff or relevant contractor determines that the site is unsafe in any respect, such staff member or contractor may immediately terminate their attendance at your premises, and such termination will not constitute a breach of any agreement with You.

13. Disputes

- 13.1 If a dispute arises in connection with this Agreement, a disputant may give the other disputant a notice specifying the dispute.
- 13.2 Within 5 business days after that notice is given, the disputants (each represented by its Chief Executive Officer or other person authorised by the disputant to bind it in connection with the dispute) must confer to resolve the dispute or to decide the method of resolving the dispute.
- 13.3 Unless the disputants otherwise agree, the dispute must be referred to mediation if not resolved within 15 business days after the notice is given. The disputants must appoint a mediator within 20 business days after the notice is given. If they fail to agree, the mediator must be nominated by the then current President of the Institute of Arbitrators and Mediators Australia or his nominee. Mediation must be conducted in accordance with the Institute of Arbitrators and Mediators Australian Mediation Rules.
- 13.4 The mediation ends if the dispute is not resolved within 20 business days after the mediator's appointment.
- 13.5 The mediation must be kept entirely confidential unless disclosure is required by law.
- 13.6 Neither disputant may commence Court proceedings in respect of the dispute until the mediation period ends. This does not affect a disputant's right to seek injunctive or urgent declaratory relief.
- 13.7 Each disputant must pay its own costs in respect of the dispute resolution process. The mediator's costs will be equally shared between the disputants.

14. Confidentiality

You will keep confidential information supplied by You to Us or by Us to You.

15. Whole Agreement

- 15.1 These terms and conditions and the Contract Documents contain the whole of the agreement between You and Us.
- 15.2 Any illegal or invalid provision of our agreement will be severable to the extent required to make this agreement enforceable and all other provisions will remain in full force and effect.

16. Notices

Any notice required to be given by either party must be delivered personally, or sent by pre-paid mail or by facsimile to the address of the other as last notified.

17. Governing Law

This agreement shall be governed and construed in accordance with the laws of New South Wales and the parties hereby submit to the jurisdiction of the Courts of that state.

18. Defined Terms

"**Loss or Damage**" includes (without limit) direct loss or loss of profits or indirect, consequential, incidental, special, exemplary or punitive loss or damage howsoever caused (including through the negligence of You or others).

"**New Business Application Form**" means the new business application form prepared by Us and executed by You.

"**Price**" means, in relation to a given period, the amount calculating the number of days in that period by the "total daily metering charge" specified on the front page hereof.

"**Quarter**" means each 3 month period commencing on 1 January, 1 April, 1 July and 1 October during the Term, and such shorter period commencing on the date hereof and ending on the first to occur of 31 March, 30 June, 30 September, and such shorter period as commences on 1 January, 1 April, 1 July or 1 October during the Term and ending on the date that this agreement terminates or expires.

"**Services**" means energy and carbon dioxide reporting in relation to your usage, demand and overlays in respect thereto.

"**Term**" means the term of any contract procured by Us for the provision of services by a third party carrier for You.

"**We**" and "**Us**" means Eutility Pty Ltd ABN 56 090 407 346, its employees and agents.

"**Website**" means www.eutility.com.au.

"**You**" means you, your employees and agents.