

Eutility Pty Ltd ABN 56 090 407346 ('Eutility' or 'we' or 'us' or 'our') and you agree to be bound by the following terms and conditions:

## 1. Provision of services

We will supply to you analytical and price management or procurement services for gas and electricity ("SmartProcure™"), metering information and software services ("SmartEnergy™" and/or "SmartEMS") and market report ("SmartMarket") at your request upon the terms and conditions described:

- in these terms and conditions;
- in the specific terms and conditions that apply on the front of this agreement; and
- in any other documentation annexed to or provided with any of the above documents (together described as the 'Contract Documents').

## 2. SmartEnergy™

We will provide you with SmartEnergy™ reports based on the metering information. For your convenience, you may select "N" under the heading marked "Bill Direct" on the front page of our Master Services Agreement. By doing so, our fees for the SmartEnergy™ report will appear as a line on your energy retailer's invoices. Should you cancel this Agreement or move to an alternate supplier within the Initial Term then an Early Termination Fee equivalent to the Fees or charges that would have applied during the balance of the Initial Term will become due and payable immediately.

## 3. Information

We will rely upon the accuracy of any information that you provide to us, be that information in the form of documents, advice, your retailer contract end dates, records or data. We are not liable for any loss or damage (without limit) that may arise as a direct or indirect result of any such information provided by you or by any other entity, whether that loss or damage be direct or indirect 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).

## 4. Payment

You will pay to us 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 or Diners Club credit cards will be subject to a 2.75% surcharge. All payments made using a Visa, Mastercard or Bankcard will be subject to a 1.65% surcharge.

## 5. No warranty for services

We take care to ensure the accuracy of the information, metering data, advice or recommendations that we provide. Neither Eutility nor our servants nor agents:

- gives any warranty as to the accuracy of any of the information; and
- shall not be liable for any loss suffered by any person or any other entity or reliance on any of the information.

## 6. Data Management

You acknowledge that we provide hosting facilities for your data across all entities and services. This data is managed in confidence, but may be used in aggregation for determining industry standards.

## 7. Responsibility for contract

Responsibility for the terms and conditions of the retailers services contract which we produced between you and a third party supplies lies with you. Accordingly, before entering into such a contract, you must satisfy yourself as to its terms and conditions. Further the responsibility of entering into any retail energy contract that we recommend lies solely with you.

## 8. Indemnity

You hereby indemnify us for any Loss or Damage that arises directly or indirectly from any non-compliance by you with any provision of any contract with any energy or other carrier. Your liability to indemnify us under this clause is reduced proportionately to the extent that we have contributed to the Loss or Damage. Your liability under the indemnity provided under this clause is limited in the aggregate to the amount of the total fees payable under this agreement. This limitation of liability does not apply to your liability for any loss or damage in respect of personal injury or death.

## 9. 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, payable at the same time as the charges for the services, in accordance with a tax invoice issued by us.

## 10. Privacy

10.1 We comply with the Privacy Act 1988. The privacy policy on our website sets out the way in which we collect, use and disclose information about you.

10.2 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.

## 11. No Liability

11.1 Our liability for any loss or damage whatsoever, whether under this agreement or otherwise, shall be limited to the amount that we are insured for (as stated in clause 11.2), except to the extent that such loss or damage is caused by or in connection with:

- a negligent or unlawful act or omission or wilful misconduct by us or any of our officers, agents, contractors or subcontractors;
- our breach of any of the Contract Documents;
- personal injury or death;
- infringement of intellectual property rights;
- damage or destruction of property owned by a third party; or
- liability that cannot be excluded by law.

## 11.2 Insurance

The minimum level of insurance held by us during the term of this agreement is:

- Public & Products Liability Insurance \$20,000,000 any one loss.
- Professional Indemnity insurance \$4,000,000 any one loss.

## 12. Provision of Information

We may require additional information from you to enable us to perform the services. You must provide such information upon request, 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.

## 13. Disputes

13.1 If a dispute arises in connection with this agreement, a disputant may give the other disputant written notice specifying the dispute.

13.2 Within 5 business days after that notice is given, the disputants must confer to resolve the dispute or to decide the method of resolving the dispute.

13.3 If the dispute is not resolved within 15 days of the original notice, the dispute must be referred to mediation. Neither disputant may commence court proceedings in respect of the dispute unless mediation has been unsuccessful, unless such court proceedings are to seek injunctive or urgent declaratory relief.

13.4 The mediation must be kept entirely confidential unless disclosure is required by law.

13.5 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 at all times all information supplied by you to us or by us to you.

## 15. 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.