



# Terms and Conditions Version 4.0 – updated February 2011

Eutility Pty Ltd ABN 56 090 407 346 ('Eutility' or 'we') will supply You (or 'your') with energy and telecommunications analytical and price management services ('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) in our Cost Management Report; and
- (d) on the Website

(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 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.

## 4. Term

This agreement shall be for an initial term of three 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. Price

We will use our best endeavours to procure for You the best available Price for the services. You recognise and acknowledge that, due to the volatility of the energy and telecommunications industry:

- (a) prices for the services fluctuate considerably;
- (b) we cannot control such fluctuations; and
- (c) we cannot guarantee that any Price which we procure for You will be the lowest price obtainable for the services, or part thereof, for the duration of the Term.

You further acknowledge that you understand we may receive commissions from third party carriers and suppliers.

## 6. No Warranty for Services

Due to the nature of our business, and in particular due to the fact We procure an agreement for services between You and a third party carrier, We cannot represent or warrant that the services will be uninterrupted or error-free or defect-free or that errors or defects in the services will be corrected.

## 7. Responsibility for Contract

Responsibility for the terms and conditions of the services contract which We procure between You and a third party carrier lies with You. Accordingly, before entering into such a contract, you must satisfy yourself as to its terms and conditions. You hold Us harmless against any Loss or Damage which You or others suffer as a result of such contract.

## 8. 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.

## 9. Privacy

- 9.1 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.
- 9.2 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.

## 10. 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 telecommunications service, network, facilities, equipment or service used contracted or procured by You and Us in supplying telecommunication services.

## 11. Exclusion of Implied Terms

- 11.1 Any guarantee, condition or warranty which would otherwise be implied in this Agreement is hereby excluded.

- 11.2 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.

- 11.3 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.

## 12. Disputes

- 12.1 If a dispute arises in connection with this Agreement, a disputant may give the other disputant a notice specifying the dispute.
- 12.2 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.
- 12.3 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.
- 12.4 The mediation ends if the dispute is not resolved within 20 business days after the mediator's appointment.
- 12.5 The mediation must be kept entirely confidential unless disclosure is required by law.
- 12.6 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.
- 12.7 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.

## 13. Confidentiality

You will keep confidential at all times all information supplied by You to Us or by Us to You.

## 14. Whole Agreement

- 14.1 These terms and conditions and the Contract Documents contain the whole of the agreement between You and Us.
- 14.2 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.

## 15. Notice

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.

## 16. 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.

## 17. Defined Terms

"**Cost Management Report**" means a cost management report prepared by Us on your behalf and at Your request.

"**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 the price for the services procured by Us for You at your request.

"**Services**" means analytical and price management services in relation to one or more of the following utilities:

- (a) gas;
- (b) electricity; and
- (c) telecommunications including (without limit) voice, mobiles and data.

"**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](http://www.eutility.com.au).

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