

Master Services Agreement

Thanks for using our services (“Services”). The Services are provided by Energy Action (Australia) Pty Ltd (ACN 103 365 199/ ABN 23 103 365 199) located at Suite 1, Level 5, 56 Station St, Parramatta NSW 2150 (“Energy Action”).

You (your, “Client”) agree to this Master Services Agreement (“Agreement”) by clicking on a box indicating acceptance, or (2) executing an Order Form that references this agreement, or (3) using free services, or using our Services. Please read this Agreement carefully.

Energy Action’s Services include energy: data management, procurement, market analysis, invoice management, reporting, and energy advisory services. Additional terms may be available with the relevant Services, and those additional terms become part of your agreement with us if you use those Services.

Energy Action’s direct competitors are prohibited from accessing the Services, except with Energy Action’s prior written consent.

This Agreement is effective between you and Energy Action as of the date of your accepting this Agreement.

1. Definitions and interpretation

1.1 Definitions

In this Agreement the following expressions have the following meanings:

Adapted Data means Data which has been modified, improved or enhanced, adapted, duplicated or otherwise dealt with by Energy Action (or a third party), and includes any derivative works of Data;

Agreement means this Master Services Agreement including any schedules, annexures and attachments, as varied by the parties from time to time.

Confidential Information means in relation to each party and its Related Bodies Corporate, all information relating to that party’s business, employees, suppliers, contractors, finances, clients, customers, products and services, strategies and plans, technical information, know-how and other information of a proprietary nature in relation to its business whether or not marked as being confidential.

However, **Confidential Information** does not include any information that:

- (a) is already known to the recipient;
- (b) comes into the public domain otherwise than through any default of the recipient party or any person acquiring the same from the recipient party;
- (c) is disclosed to the recipient by a third party without involving any breach of confidence; or
- (d) is independently developed by the recipient.

Data means consumption and invoice data in relation to electricity, gas or other utilities as applicable;

Data Provider means the person with whom the Client contracts to collect and transmit Data to Energy Action, electronically or otherwise, in a form acceptable to Energy Action as required;

Energy Action IP means all ideas, concepts, know-how, data processing techniques, data compilations, software, documentation, trade secrets and inventions comprising the Services, or utilised by Energy Action in providing the Services, and any software used to provide or access the Services which are owned by or licensed to Energy Action or any Related Body Corporate of Energy Action;

Energy Management means the data, analysis, reporting services and related services to be performed by Energy Action in respect to a Supply Point as described in the Order Form;

Energy Supply Agreement means a contract for energy supply between an energy supplier and the client

Fees means all fees specified in the Order Form applicable to the Services accepted by the Client under this Agreement;

GreenPower Agreement is a contract for a government-accredited scheme for individuals and businesses to support renewable energy generation where individuals and businesses pay for electricity produced by renewable power sources (under a strict set of criteria for accreditation). Renewable energy is added to the grid on your behalf;

GST means Goods and Services Tax imposed pursuant to the GST Law;

GST Law means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

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Intellectual Property Rights means all registered and unregistered rights in respect of patents, copyright, designs, circuit layouts, trademarks, trade secrets, methodologies, inventions, concepts, know-how, techniques confidential information and all other intellectual property;

Meter means a device for the measurement of electricity or gas installed at a Supply Point which is identified a unique identification number, or any other form of meter identification determined by Energy Action;

Related Bodies Corporate has the meaning given to that term in section 50 of the *Corporations Act 2001 (Cth)*;

Retailer of Choice means any retailer of electricity, gas or fuel with whom the Client contracts from time to time to supply electricity, gas or fuel to any of the Supply Points;

Renewable Backed Energy Supply Agreement is a contract under which electricity supplied to a business is sourced from a portfolio of renewable energy developments.

Renewal Date has the meaning given in clause 2.1;

Service or **Services** means the services to be supplied by Energy Action under this Master Services Agreement as described in the Order Form;

Start Date has the meaning given in clause 2.1;

Supply points means the unique identifier for a premise at which one or more Meters are located. In Australia this could be an NMI (electricity National Meter Identifier) or a MIRN (gas Metering Identification Reference Number);

Voluntary Certificate Management Agreement is where voluntary certificate surrender occurs where a consumer elects to surrender environmental certificates on a voluntarily basis to satisfy their environmental strategy. This is different to a non-voluntary certificate surrenders, which would occur to satisfy the RET (renewable energy target) Scheme, which is a mandatory requirement. Voluntary renewable certificates include LGC's (large generation certificates) which would be surrender to the Clean Energy Regulator (CER) via a customer's REC (Renewable Energy Certificate) registry account.

1.2 Interpretation

- (a) A reference to a person includes any other entity recognised by law.
- (b) Headings and underlining are only included for ease of reference and do not affect interpretation.
- (c) A reference to any legislation or legislative provision includes any modifying, consolidating or replacing legislation or legislative provisions from time to time, and includes all regulations, rules and other statutory instruments issued under the legislation.
- (d) A reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time.
- (e) References to parties, clauses, schedules, annexures or exhibits are references to parties, clauses, schedules, annexures or exhibits to this Agreement unless otherwise stated.
- (f) Words denoting the singular number include the plural, and vice versa.
- (g) Where any word or phrase is given a defined meaning any other grammatical form of that word or phrase has a corresponding meaning.
- (h) No rule of construction or interpretation applies to the disadvantage of a party because that party prepared this Agreement.

2. Term of this Agreement

- 2.1 Term of Agreement. This Agreement commences on the date Client first accepts it and continues until all Services hereunder have expired or have been terminated.
- 2.2 The term of each Service shall be as specified in the applicable Order Form. Except as otherwise specified in an Order Form, Services will automatically renew for additional periods equal to the expiring Services' order term or one year (whichever is shorter), unless either party gives the other written notice (email acceptable) at least 30 days before the end of the relevant Service order term. Except as expressly provided in the applicable Order Form, renewal of promotional or one-time priced offers will be at Energy Action's applicable list price in effect at the time of the applicable renewal. Notwithstanding anything to the

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contrary, any renewal in which Supply Point, or Meter, count or order length for any Services represents a decrease in quantity from the Services supplied during the prior term will result in re-pricing at renewal without regard to the prior term's per-unit pricing.

3. Client's Obligations

- 3.1 The Client must provide to Energy Action, or ensure Energy Action is provided with, accurate and complete information and Data reasonably required by Energy Action to provide the Services.
- 3.2 The Client authorises Energy Action to utilise such information in connection with providing the Services subject to the confidentiality undertakings set out in this Agreement.
- 3.3 The Client must provide Energy Action with reasonable assistance and the information reasonably required by Energy Action to provide the Services.
- 3.4 The Client is responsible for, and must pay any costs associated with, the provision of Data to Energy Action.
- 3.5 The Client grants (and must procure the grant by any third parties, to the extent necessary to enable Energy Action to make use of the Data) to Energy Action, its Related Bodies Corporate and third-party suppliers, a non-exclusive, worldwide, royalty-free, perpetual, irrevocable, transferable, sub-licensable licence to use the Data (including any copyright, database rights or other proprietary rights to the extent any may be in the Data). Energy Action will pseudonymise or anonymise the Data, which may include combining or aggregating the Data with other information.
- 3.6 The licence under clause 3.5 includes the right to:
- (a) use, copy, modify, enhance or improve, or create further derivative works (and to allow third parties to do the same) of Data;
 - (b) reproduce, distribute, communicate and disclose Data, in whole or in part; and
 - (c) produce, use, reproduce, distribute, communicate and disclose Adapted Data.
- 3.7 Any and all rights, title and interest (including intellectual property rights) in:
- (a) any materials arising out of any modification, manipulation or derivation of Data by Energy Action, its Related Bodies Corporate and third-party suppliers; and
 - (b) Adapted Data,
- vests in Energy Action immediately on creation. Subject to clause 6.4, the Client assigns to Energy Action all rights, title and interest (including intellectual property rights) in all wholly or partially created materials and Adapted Data. This assignment will be effective immediately on creation (including as a present assignment of future copyright) without the need for further assurance.

4. Fees & Payment Terms

- 4.1 Fees for the Services supplied under this Agreement as set out in the Order Form will be invoiced to the Client at the end of each month:
- (a) directly by Energy Action under this Agreement; or
 - (b) (i) by the Data Provider; or
(ii) by the Retailer of Choice,
- where either of those persons under clause 4.1(b) (as applicable), have arranged with and have the consent of Energy Action to issue invoices and collect payments on Energy Action's behalf.
- 4.2 The Client consents to the invoicing of the Fees by any of Energy Action, Data Provider or Retailer of Choice under clause 4.1 and agrees to pay those fees (including any GST amount) issued pursuant to:
- (a) clause 4.1(a), within the time specified in the Order Form or
 - (b) clause 4.1(b), within the payment terms of the Data Provider or Retailer of Choice, as applicable.
- 4.3 Where the Client makes a payment pursuant to clause 4.1(b), that payment will be deemed to have been received by Energy Action at the time that payment is received by the Data Provider or Retailer of Choice, as applicable.
- 4.4 The parties agree that all Fees, costs and expenses agreed to be paid under this Agreement are expressed exclusive of GST.

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- 4.5 Energy Action may suspend the provision of Services if any invoice remains unpaid by the Client for more than 30 days after the due date for payment of the invoice.
- 4.6 The Client acknowledges and agrees that:
- (a) where the Client enters into an Energy Supply Agreement and/or a Renewable Backed Energy Supply Agreement, a GreenPower Agreement or a Voluntary Certificate Management Agreement pursuant to this Agreement, the Retailer will:
 - (i) (if the client is a Tariff customer) depending on retailer, jurisdiction, volume and Tariff, pay to Energy Action an amount, (based on a maximum 3 year period) of \$200 per supply point (as the case may be), or
 - (ii) (if the client is not a Tariff customer) pay to Energy Action amounts equal to the percentage of fees payable for energy consumed by the Client under the Energy Supply Agreement from time to time as set out in the Order Form; and
 - (b) where the Client does not enter into an Energy Services Agreement and/or a Renewable Backed Energy Supply Agreement, a GreenPower Agreement or a Voluntary Certificate Management Agreement pursuant to this Agreement and the Client enters into a contract during the Term with any energy retailer for supply of energy, the Client must pay to Energy Action an amount equal to the amount determined in accordance with the formula set out in (i), (ii) and (iii) within fourteen (14) days of the date the Client enters into a contract for supply of energy with any energy retailer:

C&I Electricity and/or Gas Amount = $M \times N \times P$

where:

M = average annualised monthly energy spend for the relevant site in the year prior to the date of this Agreement;

N = the number of months in the term of a contract with any energy retailer for supply of energy; and

P = the percentage or monetary amount set out in the Order Form or;

 - (i) $SME\ Amount = M \times N \times S$

where:

M = average annualised monthly energy spend for the relevant site in the year prior to the date of this Agreement;

N = the number of months in the term of a contract with any energy retailer for supply of energy; and

S = the amount set out in the Order Form
 - (ii) $Agreed\ Amount = A$

where:

A = the amount set out in the Order Form
 - (c) If the Client is in default of payment under clause 4.6 (b), the Client agrees to pay all reasonable costs including but not limited to legal costs and disbursements, service and accounting fees, collection charges, commissions, mercantile costs and any other administration fees and charges that may be incurred by Energy Action in relation to recovery of monies due.
 - (d) In this clause 4.6 Tariff means the pricing structure a retailer charges a customer for energy consumption and may comprise a fixed charge and variable charge. Tariffs vary depending on your energy distributor.
- 4.7 Each party acknowledges that the payment obligations in clause 4.6 are reasonable and a genuine pre-estimation of loss, considering the anticipated harm and the difficulty of calculating actual damages. The Client waives the right to contest those payments as an unreasonable penalty.
- 4.8 Overdue Charges. If any invoiced amount is not received by Energy Action by the due date, then without limiting Energy Action's rights or remedies, (a) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and/or (b) Energy Action may condition future subscription renewals and Order Forms on payment terms shorter than those specified in the "Invoicing and Payment" section above.

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- 4.9 In some circumstances Energy Action will recommend or refer the Client to a third-party provider for the Client's specific metering requirements. In these circumstances Energy Action may receive a referral fee or commission from that third party if the Client acquires their products, works or services. This commission will be paid to Energy Action out of the amount that the Client pays to the third party.
- 4.10 In these circumstances, Energy Action will not be party to the arrangements between the Client and the third party. All such arrangements will be subject to the third party's own terms and conditions. No responsibility is accepted by Energy Action or its employees for any loss or damage arising from any products, works or services provided by the third party to the Client.

5. Confidential Information

- 5.1 Each party must:
- (a) keep the Confidential Information of the other party confidential and will not disclose it or make it available directly or indirectly to any third party except if required to do so by law or any legally binding order or rule of any court, tribunal, authority, administrative body, judicial body, regulator or stock exchange;
 - (b) use the Confidential Information solely for the purpose of performing its obligations under this Agreement;
 - (c) only disclose the Confidential Information of the other party to its officers, employees, professional advisers and permitted subcontractors who have a need to know the Confidential Information for the purposes of this Agreement (and only to the extent that disclosure is necessary for the administration of this Agreement or the providing or receiving of the Service pursuant to this Agreement), have undertaken to maintain the confidentiality of the Confidential Information and, if required by a party, execute an appropriate confidentiality undertaking in favour of that other party;
 - (d) notify the other party immediately if it becomes aware of any actual or potential breach of confidentiality disclosure or unauthorised use of the other party's Confidential Information; and
 - (e) take all steps to prevent or stop a suspected or actual breach of this clause.
- 5.2 Upon demand or upon termination or expiry of this Agreement, each party must:
- (a) deliver to the other party all of the other party's Confidential Information in its possession which is capable of being delivered; and
 - (b) delete, erase or otherwise destroy any of the other party's Confidential Information in its possession which is not capable of being delivered.

6. Intellectual Property Rights

- 6.1 Ownership of the Energy Action IP, including all Intellectual Property Rights therein, remain the sole property of Energy Action and its licensors.
- 6.2 "Energy Action" including all related names, logos, product and service names, designs and slogans are Energy Action trademarks or the trademarks of our affiliates or licensors. The Client must not use such trademarks without Energy Action's written permission. Other names, logos, product and service names, designs and slogans on the Energy Action website are the trademarks of their respective owners and are used by Energy Action under licence.
- 6.3 Notwithstanding clause 6.4 of this Agreement, Energy Action grants to the Client a royalty free, non-exclusive, non-transferable, right to access and use the materials provided under this Agreement to the extent necessary and for the sole purpose of allowing the Client to lawfully make use of the Services.
- 6.4 The Client must not copy, reproduce, alter, modify, reverse engineer or create derivative works from the Energy Action IP.
- 6.5 The ownership in and to materials furnished by the Client for use by Energy Action as part of the Services including, but not limited to, the Client's consumption data, reports and documentation remains the sole property of the Client.
- 6.6 All Intellectual Property Rights not expressly granted to the Client are reserved by Energy Action.

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6.7 The Client agrees to notify Energy Action promptly of any infringement, or suspected or threatened infringement, of the Energy Action IP.

7. Termination

7.1 Either party (by notice in writing to the other) may terminate this Agreement immediately if:

- (a) the other party breaches (other than in a trivial or inconsequential way) any provision of this Agreement and that breach cannot be remedied; or
- (b) the other party breaches (other than in a trivial or inconsequential way) any provision of this Agreement that is capable of remedy and that other party does not remedy that breach within 30 days of receipt of a notice from the non-defaulting party specifying the breach.

7.2 In the event that either party (the "**Insolvent Party**"):

- (a) becomes insolvent, or institutes or has instituted against it a petition for bankruptcy or is adjudicated bankrupt, or becomes subject to a presumption of insolvency under any laws; or
- (b) executes a bill of sale, deed of trust, a deed of company arrangement, or a general assignment for the benefit of creditors; or
- (c) is dissolved or transfers a substantial portion of its assets to a third party; or
- (d) a receiver is appointed to any part of its property or for the benefit of its creditors, or a receiver is appointed on account of insolvency;

then the Insolvent Party will immediately notify the other party of such event and such other party will be entitled to:

- (e) terminate this Agreement for cause immediately upon written notice to the Insolvent Party; or
- (f) request that the Insolvent Party or its successor provide adequate assurances of continued and future performance in a form and substance acceptable to such other party, which will be provided by the Insolvent Party within ten (10) calendar days of such request, and the other party may terminate this Agreement for cause immediately upon written notice to the Insolvent Party in the event that the Insolvent Party fails to provide such assurances acceptable to the other party within such ten (10) day period.

7.3 Upon termination of this Agreement:

- (a) any Fees paid or payable (before notice of termination is given) in respect of the Services are not refundable provided termination did not occur as a consequence of a breach by Energy Action of its obligations under this Agreement; but
- (b) in the event that termination is due to a breach of this Agreement by Energy Action, the amount of Fees that are refundable will be limited to the proportion of Fees, if any, that remain paid in advance beyond the date of termination.

7.4 Termination of this Agreement does not affect a party's accrued rights and obligations under this Agreement.

8. Insurance

8.1 Energy Action will affect and maintain at all times during the term of this Agreement the following insurances, which must in all circumstances fully cover the term of this Agreement (whether or not a claim is made during or after that term):

- (a) Public liability insurance in an amount of not less than \$20M;
- (b) Professional indemnity insurance in an amount of not less than \$10M; and
- (c) Any relevant workers or accident compensation insurance (against such liability which may arise under the general law or legislation) with respect to any of the personnel of Energy Action and its Related Bodies and their personnel who may participate in the performance of the Services.

8.2 Energy Action will produce evidence of the insurances by way of certificates of currency from its insurance brokers upon the Client's request.

9. Warranties and Indemnity

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- 9.1 Energy Action warrants that:
- (a) it will provide the Services with due care and skill using that standard of diligence that would reasonably be expected from a prudent and experienced provider of services which are similar to the Services in Australia; and
 - (b) the provision of the Services by Energy Action, and the use and taking the benefit of the Services by the Client, will not infringe the Intellectual Property Rights of any third party.
- 9.2 The Client warrants to the best of the Client's knowledge that any materials and information provided by the Client or on the Client's behalf to Energy Action for the purposes of providing the Services:
- (a) are true, complete and current;
 - (b) do not infringe the rights of any third party;
 - (c) are able to be legally provided to Energy Action and its disclosure does not breach any law or any obligation (whether of confidence or otherwise) owed to any person; and
 - (d) the Client has all necessary right, power and authority to enter into this Agreement and to perform the acts required of the Client under this Agreement.
- 9.3 The Client represents and warrants to Energy Action that:
- (a) the Client has all necessary rights and permissions to supply, and licence the use of, Data to Energy Action; and
 - (b) no Data, nor any use of Data, will infringe or result in any authorised use of the rights (including intellectual property rights) of any person.
- 9.4 Apart from any guarantee implied by law which may not be excluded, restricted or modified, and any express representation or warranty in this Agreement, Energy Action makes no representations or warranties in relation to the Services provided under this Agreement and, to the full extent permitted by law, excludes any condition or warranty implied into this Agreement by law.
- 9.5 The Client indemnifies and keeps indemnified Energy Action and its officers, employees, agents, subsidiaries and affiliates against all claims (including third party claims), demands, damages, costs (including legal costs), penalties or suits arising out of or consequential upon the Client's use of the Services (including the use of the Service by the Client's employees, agents and contractors) and any breach of any warranty or other term of this Agreement or the Client's arrangements (whether contractual or otherwise) with the Data Provider or the Retailer of Choice except to the extent that Energy Action has contributed to any loss, damages or claims.

10. Limitation of Liability

- 10.1 Where any legislation implies into this Agreement any guarantees and that legislation voids or prohibits conditions in a contract excluding the application of the guarantee, the liability of Energy Action for any breach of the guarantee is limited, at Energy Action's option, to either of the following:
- (a) the resupply of the Services; or
 - (b) the cost of having the Services resupplied.
- 10.2 Notwithstanding clause 10.1, Energy Action's total aggregate liability under or in relation to this Agreement whether arising in contract, tort (including negligence), indemnity, breach of a statutory requirement or any other common law or equitable cause of action is limited to the amount of the Fees paid to Energy Action in the 12 months prior to the event which gives rise to the liability arising.
- 10.3 To the extent permitted by law under no circumstances is either party liable to the other party (or any other person) for:
- (a) damages for loss of profits or revenue, loss of goodwill or failure to realise anticipated benefits or savings, costs or expenses incurred by a party in managing or conducting claims against the other party under this Agreement or loss arising from business interruption; and
 - (b) any other category of damages described as special, incidental, consequential, or indirect damages, relating to this Agreement, the Services, their performance, or the use of the Services, before or after the date of this Agreement even where the possibility that the party may incur such losses, damages, costs and/or expenses was known or ought to have been known by the party against which the claim for damages

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might otherwise be made.

- 10.4 In all cases where a party (*the first party*) is found to be liable to the other party for damages, such liability shall be reduced proportionately to the extent that the other party has contributed to any loss, damages or claims.
- 10.5 It is expressly understood and agreed that each provision of this Agreement which provides for a limitation of liability, disclaimer of warranties, or exclusion of damages is intended by the parties to be severable and independent of any other provision and to be enforced as such.

11. Notices

- 11.1 A notice or other communication connected with this Agreement (**Notice**) has no legal effect unless in writing.
- 11.2 The address for service Notices of the Client is as set out in the Order Form. Energy Action's address for service of Notices is the company's registered address.
- 11.3 Any notices under this Agreement shall be deemed given when delivered to the other party at its address:
- (a) if hand delivered, on delivery;
 - (b) if sent by prepaid post, 3 days after the date of posting;
 - (c) if sent by electronic mail, upon the sender receiving a system generated message confirming successful delivery, otherwise 4 hours after sending; and
 - (d) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice.
- 11.4 A party may change its address for service by giving Notice of that change to the other party.

12. Dispute Resolution

- 12.1 In the event of a dispute arising under or in connection with this Agreement (*Dispute*) then the party asserting that a Dispute has arisen is entitled to give a notice to the other party (*Dispute Notice*). A party is not required to resolve a dispute until a Dispute Notice is given.
- 12.2 Any Dispute will be referred initially to the personnel of each party who are responsible for the management of this Agreement who will meet and use all reasonable commercial efforts to resolve the Dispute within seven days of the Dispute Notice being given.
- 12.3 If the Dispute is not so resolved the Dispute will be referred to the Chief Executive Officers of each party who will use all reasonable commercial efforts to resolve the subject of the Dispute within 60 days of the Dispute Notice being given or such longer period as may be mutually agreed by the parties.
- 12.4 A party is not entitled to commence litigation in relation to the subject of the Dispute Notice unless the litigation is commenced for urgent interlocutory relief, or it has complied with its obligations under this clause.
- 12.5 Notwithstanding the existence of a Dispute (including the referral of the Dispute to mediation or arbitration), each party must continue to perform its obligations under this Agreement to the extent reasonably practical having regard to the nature of the Dispute.
- 12.6 The parties must hold confidential, unless otherwise required by law or at the direction of a court of competent jurisdiction, all information relating to the subject matter of the Dispute that is disclosed during or for the purposes of dispute resolution. The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this procedure is to attempt to settle the Dispute between the parties. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle a Dispute between the parties.

13. Relationship of the Parties

- 13.1 Nothing in this Agreement will be construed to create an employment relationship or any agency or joint venture relationship between Energy Action and the Client.
- 13.2 Before acting or relying on any information or recommendation provided by Energy Action, the Client should consider its appropriateness having regard to its own objectives, financial situation or needs. Energy

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Action provides no warranty as to the accuracy or appropriateness of any information or recommendation provided by it.

14. General

- 14.1 This Agreement is governed and construed in accordance with the laws for the time being in force in the State of New South Wales and legal proceedings relating to any dispute arising out of this Agreement shall be commenced in New South Wales.
- 14.2 This Agreement and any subsequent variations in writing sets forth the entire agreement between the parties and merges and supersedes all prior discussions, negotiations, correspondence, representations and agreements between them in relation to the subject matter.
- 14.3 Subject to clause 14.4 of this Agreement, neither party may assign any of its rights or obligations under this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld where, in the reasonable opinion of the party providing the consent, the assignment is to a respectable and financially responsible party or person.
- 14.4 In the performance of its obligations hereunder, Energy Action shall have the right, in its sole discretion, to subcontract its rights and responsibilities to any third party, provided that Energy Action shall remain responsible for the performance of any such third party.
- 14.5 We may revise the provisions of this Agreement from time to time and will post the most current version on our website. If a revision may substantially limit your rights, we will notify you in advance (by, for example, sending a message to the email address associated with your account or posting our website). By continuing to use or access the Services after the revised Terms come into effect, you agree to be bound by the revised Terms.
- 14.6 No right under this Agreement will be deemed to be waived except by notice in writing signed by the party granting the waiver.
- 14.7 If any term of this Agreement is or becomes invalid or unenforceable then the other terms will continue to be valid and enforceable, and that term will be severed or modified without affecting the other terms of this Agreement.
- 14.8 Each party must do anything (including execute any document) and must ensure that its employees and agents do anything (including execute any document), that any other party may reasonably require to give full effect to this Agreement.
- 14.9 Clauses 1, 4, 5, 9, 10 and 14.9 and of this Agreement survive the termination or expiration of this Agreement.
- 14.10 Should either party be prevented or delayed from performing an obligation under the provisions of this Agreement by any cause reasonably beyond its control, including (but not limited to): industrial disputes; strikes; lock-outs; riots; insurrections; explosions; fire; civil disturbance; burglary; theft; war; invasion; interference by civil or military authorities; pandemic or epidemic virus, disease or other illness; the operation of any law, regulation or by-law; or act of God, then the time for performance of that obligation will be extended for a period equivalent to the total period during which the cause of such failure or such delay persists or remains in effect.

15. Procurement

- 15.1 If the service is for an AEX - online reverse auction, Energy Action will procure offers from energy retailers for the provision of energy (electricity or gas) based on information provided by the Client (the "Bids"). Energy Action after receiving the Bids from the energy retailers will provide the Bids to the Client and the Client may choose to accept any such Bid based on that energy retailer's standard or negotiated terms and conditions by entering into a legally binding arrangement with the energy retailer, which may be the binding energy supply agreement(s) (the "Intent Agreement").
- 15.2 The Client acknowledges that upon execution of the Intent Agreement, the Client:
- (a) is legally bound to accept the services provided by the Retailer on the standard or negotiated terms and conditions subject only to the Retailer's acceptance of the Client;
 - (b) will execute a legally binding agreement with the Retailer within the Retailer's price validity period;
 - (c) has satisfied themselves as to the Retailer's standard or negotiated terms and conditions;

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- (d) accepts commencement of the supply of either or both electricity and natural gas will be subject to market transfer rules and the Retailer's procedures; and
 - (e) warrants that the information provided to Energy Action and bid upon by the Retailer meets the Client's needs and requirements for the Services.
- 15.3 If the service is for an RFP, the process will be as agreed by the Client.
- 15.4 This Agreement does not provide any basis of authorisation for Energy Action to sign or enter into any agreements or contracts on behalf of the Client.

16. Provision of Energy Management Services

- 16.1 If Energy Management Services are requested by the Client and supplied by Energy Action, the following clauses apply and are deemed to be incorporated into this Agreement:
- (a) The Client acknowledges that for Energy Action to provide and continue to provide the Energy Management Service under this Agreement, Energy Action is dependent on receiving Data on a continuous basis from the Data Providers;
 - (b) The Client will execute an Order Form for additional quantities of the applicable Services or Content promptly upon Energy Action's request, and/or pay any invoice for excess usage in accordance with the "Fees & Payment Terms" section;
 - (c) Notwithstanding any other provision in this Agreement, Energy Action's obligations under this Agreement to provide the Energy Management Service only arise when Data is provided to Energy Action in a form acceptable to Energy Action;
 - (d) If the Client, or Data Provider as the case may be, after having commenced to provide Data in respect to a Supply Point to Energy Action, fails to continue to provide that Data or provides Data in a form that is not reasonably acceptable to Energy Action for any period exceeding 7 consecutive days, (where Data is normally provided daily), or 30 consecutive days (where Data is normally provided for periods longer than 7 days), then the Energy Management Service (or part of that Energy Management Service) may be suspended by Energy Action in respect to that Supply Point until the Energy Management Service to that Supply Point may be resumed;
 - (e) Energy Action may immediately terminate this Agreement by notice in writing to the Client if the computer software licence in respect to the software applied by Energy Action to provide the Energy Management Service is revoked or terminated for any reason; and
 - (f) Energy Action shall have no liability to the Client, whether in contract, tort, statute or otherwise, if termination under clause 16.1(d) resulted through no fault of Energy Action.