



Terms & Conditions

1. Term of this Agreement

1.1 This Agreement commences on the Start Date set out in item 2 of the Project Order Form and will continue until the following has occurred:

- (a) the date a binding energy supply agreement(s) ("ESA") is entered into between the Client and the Client's chosen licensed energy retailer ("Retailer"); and
- (b) the earlier of,
 - (i) the date that is one (1) month after the date of written notification from the Client to Energy Action advising that the Client wishes to terminate the services provided by Energy Action under this Agreement; or
 - (ii) the date that is six (6) months after the date an ESA is entered into between the Client and the Retailer.

(the "Term").

2. Exclusive services

- 2.1 The Client acknowledges that Energy Action will expend time and effort in providing the Services.
- 2.2 The Client agrees to engage Energy Action on an exclusive basis to provide the Services during the Term. The Client acknowledges and agrees that the exclusivity period is fair and reasonable having regards to the interests of each of the parties.
- 2.3 During the Term, the Client must not solicit or initiate, enter into any agreement, arrangements or understanding, from or with any person other than Energy Action in relation to services similar or comparable to Services.

3. Fees and Payment

- 3.1 A registration fee in the amount set out in item 3 of the Project Order Form is payable by the Client to Energy Action upon execution of this Agreement.
- 3.2 The Client acknowledges and agrees that:
 - (a) where the Client enters into an ESA 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 NMI or MIRN (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 ESA from time to time as set out in item 4 of the Project Order Form; and
 - (b) where the Client does not enter into an ESA 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 below within fourteen (14) days of the date the Client enters into a contract for supply of energy with any energy retailer:

$$\text{Amount} = M \times N \times P$$

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 amount set out in item 4 of the Project Order Form.

(c) If the Client is in default of payment under clause 3.2(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 3.2 **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.

3.3 Each party acknowledges that the payment obligations in clause 3.2(b) are reasonable in light of the anticipated harm and the difficulty of estimation or calculation of actual damages. The Client waives the right to contest those payments as an unreasonable penalty.

3.4 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.

3.5 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. Please refer to the *Energy Action Retail Transfer Consent Form* for further information.

3.6 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.

4. Authorities and Acknowledgements

4.1 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



Terms & Conditions

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 ESA (the "Intent Agreement").

4.2 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;
- (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) information provided to Energy Action and bid upon by the Retailer meets the Client's needs and requirements for the Services.

5. Confidential Information

5.1 Each party must ensure that the terms of this Agreement and all commercially sensitive information exchanged between the parties or otherwise becomes known by a party pursuant to this Agreement remains confidential, including advice, reports and documentation prepared by Energy Action for the Client under the terms of this Agreement.

5.2 Either party may disclose such information with the consent of the other party if required by law or a stock exchange or to its officers, employees, contractors and advisers to the extent that disclosure is necessary for the administration of this Agreement.

6. Intellectual Property Rights

6.1 Energy Action retains all intellectual property rights in any material created by Energy Action and supplied to the Client in providing the Services.

6.2 The ownership in and to materials furnished by the Client for use by Energy Action including, but not limited to, the Client's consumption data, reports and documentation remains the sole property of the Client.

7. Limitation of Liability

7.1 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 payment of the cost of having the Services supplied again.

7.2 To the extent permitted by law under no circumstances is Energy Action liable to the Client (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 the Services, their performance, or the use of the Services, before or after the date of this Agreement.

8. Notices

8.1 All notices or other communication to be given under this Agreement must be in writing and may be delivered by hand, sent by registered post or transmitted by facsimile or email to the address or transmission address of the party specified in the Project Order Form (or as varied in any subsequent notice).

9. Dispute Resolution

9.1 Any dispute arising under this Agreement which has not been resolved between the parties within sixty (60) days must be referred to a mediator appointed by the parties before any legal proceedings (other than proceedings of an interlocutory nature) are instituted in respect to such disputes. The parties shall bear their own costs of any mediation and equally share the costs of the mediator.

10. Relationship of the Parties

10.1 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.

11. No Authority to Bind

11.1 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.

12. Data Access

12.1 In this clause 12

- (a) **Data** means consumption and invoice data in relation to electricity, gas or other utilities, as applicable; and
- (b) **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

12.2 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.



Terms & Conditions

12.3 The licence under clause 12.1 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.

12.4 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 6.2, 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.

12.5 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.

13. General

13.1 This Agreement is governed by the laws of the State of New South Wales and the parties irrevocably submit to the jurisdiction of the Courts of that State.

13.2 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.

13.3 The provisions of this Agreement will not be varied, except by agreement in writing signed by Energy Action and the Client.

13.4 Clauses 3, 4, 5, 7 and 13.4 of this Agreement survive the termination or expiration of this Agreement.

14. Fixed Fee RFP

14.1 If this Agreement is for the provision of a Fixed Fee RFP, the following clauses apply and are deemed to be incorporated into this Agreement.

- (a) Clause 1 of this Agreement is deleted in its entirety and replaced with:

- i. This Agreement commences on the Start Date set out in item 2 of the Project Order Form and will continue until the expiry of 3 months beyond the Start Date unless otherwise extended by written agreement between the parties.

- (b) Clause 2 of this Agreement is deleted in its entirety and replaced with:

2 Not used

- (c) Clause 3.1 of this Agreement is deleted in its entirety and replaced with:

- i. 2.1 Fees for the Services supplied under this Agreement will be invoiced as set out in the Project Order Form.

- (d) Clause 3.2 of this Agreement is deleted in its entirety and replaced with:

- i. 2.2 The Client must pay the full amount owing (including any GST amount) without regard to any set-off, claim or deduction within the time specified in the Project Order Form (“Due Date”).

- (e) Clause 3.3 of this Agreement is deleted in its entirety.