

Appendix: Terms & Conditions

18 JULY 2019

1. DEFINITIONS

“Supplied Lights” – means the lighting to be installed in the Premises as set out in the Energy Savings Proposal accompanying this Agreement;

“Intellectual Property Rights” – means all vested contingent and future intellectual property rights including but not limited to copyright, trademarks, service marks, design rights, patents, know-how, trade secrets, inventions, database rights and any applications for the protection or registration of these rights (whether registered or unregistered) and all renewals and extensions thereof existing in any part of the world whether now known or in the future created;

“Service Fees” – means the monthly service fees (exclusive of GST) payable by the Client for the Services, the formula for the calculation of which is described on page one under “Monthly Service Fees”.

2. TERM

The provision of the Services shall commence on the date of this Agreement and shall continue for the Initial Term or until this Agreement is terminated.

3. SERVICES

Vista Energy agrees to provide the following services (the “Services”) to the Client during the term of this Agreement (including any extension thereof):

(1) Remove the existing lights at the Premises and install the Supplied Lights in replacement thereof, in which event the Client shall pay an installation fee per Supplied Light, to be specified by Vista Energy at the time of the Client’s request for installation;

(2) Vista Energy shall maintain an insurance policy with a reputable insurer for the benefit of Vista Energy and directly or indirectly the Client throughout the term of this Agreement to insure against all liability to third party for death, personal injury and damage to or loss of property arising directly out of the use, possession, installation or operation of the Supplier Lights (and any spare lights, as the case may be). The total amount covered by such insurance policy shall be up to AUD\$10,000,000.00 for each incident. Vista Energy shall provide a copy of such insurance policy to the Client upon request by the Client.

4. OBLIGATIONS OF THE CLIENT

(1) The Client agrees that it shall:

- a. Use and/or install the Supplied Lights in strict adherence to the instructions and guidelines given by Vista Energy from time to time;
- b. Keep the Supplied Lights (and any spare lights) in good repair condition and working order;
- c. Maintain all light fittings in the Premises upon which the Supplied Lights are installed or to be installed in good repair condition and working order;
- d. Be responsible for the safekeeping of the Supplied Lights in the Premises against theft or malicious damage;
- e. Be solely responsible for the storage or disposal of any lights removed from the Premises following the installation of the Supplied Lights, unless otherwise mutually agreed between the Parties.
- f. Promptly pay the Service Fees and any other moneys owing under this Agreement (including any GST) in accordance with this Agreement.
- g. Promptly comply with all its other obligations under this Agreement.

(2) In the event that any Supplied Lights in the Premises malfunction, the Client shall inform Vista Energy immediately and keep the malfunctioned Supplied Lights in safe custody at the Premises.

(3) The Client shall return the malfunctioned Supplied Lights to Vista Energy. If the Client fails to return the malfunctioned Supplied Lights to Vista Energy for any reason, or if the Supplied Lights returned are damaged (including where the seal of the Tube returned has been torn off or tampered), the Client shall pay the retail price (or such other amount as Vista Energy may notify the Client from time to time) to Vista Energy for each such lost or damaged Supplied Light within 14 days.

5. PAYMENT AND REVIEW OF SERVICE FEES

(1) Subject to the terms of this Agreement, the monthly Service Fees shall be fixed for the duration of this Agreement from the Commencement Date at the rate referred to under “Monthly Service Fees” and must be paid by the Client (together with any GST) to Vista Energy’s nominated bank account within 7 days of the end of each calendar month, unless otherwise agreed in writing by the Parties.

(2) The data will be refined during the installation of the Supplied Lights, by Vista Energy using a power analyser to measure the exact consumption of electricity of the Client’s existing lights and Vista Energy’s Supplied Lights.

(3) As soon as practicable after the installation of the Supplied Lights, Vista Energy will provide the Client with revised versions of the Energy Savings Proposal and Calculation Details that accompany this Agreement, to be based on the new energy consumption data obtained during the installation. At this time, Vista Energy will advise the Client in writing of the revised monthly Service Fees based on the collected data.

(4) The Client may at any time within one calendar month from the date of installation and after receipt of the revised monthly Service Fees, terminate this Agreement on the basis of dissatisfaction with the revised monthly Service Fee. If no notice of termination is given by the Client within the said one-month period, then the Agreement will continue as provided herein.

6. TERMINATION

(1) This Agreement will automatically be renewed upon expiry if no written notification of cancellation is given by either party to the other, and no new agreement is required. In this case, either Party may terminate any automatically renewed Agreement by the giving of 3 month’s written notice.

(2) Vista Energy shall be entitled to terminate this Agreement forthwith by giving notice in writing to the Client in the event of:

- a. the Service Fees or other sum of money due and payable to Vista Energy under this Agreement remain unpaid for over 60 days; or
- b. the Client’s doing or allowing to be done any act or thing that may prejudice or endanger Vista Energy’s property or rights in the Supplied Lights (and the spare Lights) or
- c. the Client breaching any term or condition of this Agreement and such breach continuing for a period of 60 days after Vista Energy having provided a written notice to the Client specifying the breach.

(3) The Client shall only be entitled to terminate this Agreement:

- a. Three (3) months before the expiry of the Initial Term by giving not less than three (3) months prior notice in writing; or
- b. at any time before the expiry of the Initial Term if and only if the Client serves to Vista Energy not less than three months’ prior notice in writing and effects payment of the total amount of Service Fees that would be due payable up to the expiration of this Agreement; or
- c. At any time before the expiry of the Initial Term if and only if the Client provides three (3) months’ written notice of the Client’s intention to permanently cease to operate the business and the Client pays a final Service Fee equal to thirty (30) months’ worth of Service Fees less the total of all Monthly Service Fees payable between the Commencement Date and the date of the termination notice; or
- d. At any time before the expiry of the Initial Term upon payment of any prior agreed outright purchase price specified in writing.

7. EFFECTS OF TERMINATION

(1) Upon the termination of this Agreement for any reason other than the outright sale of the Supplier Lights by Vista Energy to the Client:

- a. Vista Energy shall be entitled to remove and re-possess the Supplied Lights installed at the Premises (including any spares) with reasonable assistance from the Client;
- b. the Client shall pay all outstanding Service Fees or other fees and costs payable to Vista Energy under this Agreement; and

(2) Subject to Clause 11, the termination of this Agreement shall be without prejudice to any claim for any breach of this Agreement and to the right of

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either Party to recover damages, costs and expenses, including reasonable legal fees and all other sums payable under this Agreement.

8. MOVE OF CLIENT'S PREMISES DURING INITIAL TERM

(1) If the Client wishes to vacate the Premises prior to the end of the Initial Term, then the Client shall give 3 months' prior notice in writing to Vista Energy regarding the location and specifications of the new premises and any requirements for new Lights, whereupon the Parties shall negotiate in good faith a new agreement for the new premises and the termination of this Agreement.

(2) If Vista Energy was the sole installer appointed by the Client during the initial installation at the Premises, Vista Energy will offer relocation and installation of the same quantities of the Supplied Lights at the new Premises, at the cost of the Client.

9. TITLE OF THE SUPPLIED LIGHTS

(1) The Client acknowledges that Vista Energy shall at all times during the Initial Term retain the ownership of the Supplied Lights. The Client will have possession of the Supplied Lights as a mere bailee and the Client shall not do or permit anything to be done whereby the Client may be held out as the owner of the Supplied Lights and any implied consent of Vista Energy in that regard is hereby expressly excluded.

(2) The Client shall not and shall not attempt to dispose of or deal with, transfer, mortgage, or create any lien over or part with possession of the Supplied Lights to any third party.

(3) Upon final payment of lease fees payable under this Agreement, ownership of the Supplied Lights shall automatically transfer to the Client.

10. WARRANTIES AND REPRESENTATIONS

Vista Energy warrants and represents to the Client that:

(1) It is the owner of the Supplied Lights and has a right to commercially exploit the Intellectual Property Rights of the Supplied Lights and it is entitled to and has the necessary authorities and capacities to perform the obligations and to provide the Services in the manner as stipulated in this Agreement; and

2. It will use reasonable care in the provision of the Services up to a standard which conforms to generally accepted industry standards and practices.

11. LIMITATION AND EXCLUSION OF LIABILITIES

(1) The liability of Vista Energy under or in connection with this Agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise howsoever, shall not exceed the sums paid by the Client to Vista Energy under this Agreement.

(2) Vista Energy shall not be liable to the Client in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by the Client of an indirect or consequential nature, including without limitation any economic loss or other loss of turnover, profits, business or goodwill.

(3) Each of the Parties acknowledges that, in entering into this Agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this Agreement, and any conditions, warranties or other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law.

(4) Vista Energy shall in any event not be liable to the Client for any loss or damage incurred or sustained by the Client in consequence of Vista Energy terminating this Agreement or in installing, removing or re-possessing the Supplied Lights in accordance with the terms of this Agreement. 2. It will use reasonable care in the provision of the Services up to a standard which conforms to generally accepted industry standards and practices.

12. FORCE MAJEURE

Neither Party shall have any liability under or be deemed to be in breach of this Agreement for any delay or failure in performance of this Agreement which result from circumstances beyond the reasonable control of that Party. The Party affected by such circumstances shall promptly notify the

other party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than 2 months, either Party may terminate this Agreement by written notice to the other Party. 2. It will use reasonable care in the provision of the Services up to a standard which conforms to generally accepted industry standards and practices.

13. SEVERABILITY

If any provisions of this Agreement shall be construed to be illegal or invalid, it shall not affect the legality, validity and enforceability of the other provisions of the Agreement. Any illegal or invalid provision shall be deemed to have been deleted from this Agreement and no longer incorporated herein but all other provisions of this Agreement shall continue to have full force and effect. 2. It will use reasonable care in the provision of the Services up to a standard which conforms to generally accepted industry standards and practices.

14. ASSIGNMENT

The Client must not assign, transfer, sub-contract or otherwise part with this Agreement or any right or obligation hereunder unless with the prior written consent of Vista Energy. For the purpose of this clause, any change of control in the Client (as defined in section 50AA of the *Corporations Act 2001* (Cth)) is deemed to be an assignment or transfer.

15. ENTIRE AGREEMENT AND AMENDMENT

This Agreement embodies the entire agreement and understanding between the Parties in relation to the subject matter hereof and there are no promises, terms, conditions or obligations, oral or written, expressed or implied, other than those contained herein. No amendment or variation of this Agreement shall be effective unless it is in writing and signed by all the Parties.

16. NOTICE

(1) All notices under this Agreement shall be in writing.

(2) Notices shall be deemed to have been duly given:

- when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
- when sent by e-mail to an address provided by the recipient.

17. WAIVERS

No failure or delay on the part of Vista Energy to exercise any right, power or remedy under this Agreement or the acceptance of the Service Fees by Vista Energy shall operate as a waiver thereof, nor shall any single or partial exercise by Vista Energy of any right, power or remedy preclude its further exercise or the exercise of any other right, power or remedy. The rights, powers and remedies provided herein are cumulative and are exclusive of any rights, powers or remedies at law.

18. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of Western Australia and each Party hereby irrevocably submits to the non-exclusive jurisdiction of the Courts of Western Australia.

19. GST

For the purposes of this Agreement, GST means any tax imposed on the supply of goods or services which is imposed or assessed under GST Law.

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