

**utilismartTM Customer Agreement**

utilismartTM Contract Number: ETPL01-SMTMT-010210
Contract Period (Initial Term): February 1, 2010 to January 31, 2013

To: Erie Thames Powerlines (hereinafter referred to as the "Customer")
Address: 280 Elm Street
Aylmer, ON N5H 3G3

This utilismartTM Customer Agreement (the "Agreement") sets out the terms and conditions under which Utilismart Corporation, having offices at 201-555 Southdale Road East, London, Ontario, (hereinafter referred to as the "Company"), will make available the Services (as defined below) to the Customer.

1. SCOPE OF SERVICES.

- (a) The Customer will purchase and the Company will perform the Elster EnergyAxis System and Utilismart Smart Meter System (USMS) Application Service Provider (ASP) Services described in Attachments 1 and 2 to this Agreement (the "Services").
- (b) The Company warrants the Services are in compliance with the Ontario Independent Electricity System Operator ("IESO") rules (the "Rules") and Ontario Energy Board Standards (the "Standards") as of the date of this Agreement and will be maintained in such compliance during the term of this Agreement.
- (c) The Company may modify at its discretion, the manner in which the Services are provided to the Customer during the Initial Term or Renewal Term (as each term is defined in Section 18 and sometimes collectively referred to herein as the "Term") provided that such modifications are not Material Alterations and that the Services remain in compliance with the Rules and Standards. The Company shall obtain the written consent of the Customer in the event that such modifications are Material Alterations (said consent will not be unreasonably withheld). The parties agree that for the purposes of this Agreement a Material Alteration will mean a change in the Services that would reasonably be expected to have a significant negative effect on the value or nature of the Services to the Customer or the commercial viability of this Agreement to either party.
- (d) Notwithstanding the terms of Section 1(c) and Section 18, should there be a change in the Rules and Standards which necessitate a Material Alteration in the Services, the Company shall have the option to provide the Customer with no less than 3 months written notice of the Company's decision to terminate this Agreement.

- 2. **THE AGREEMENT.** All Attachments to this Agreement shall be deemed to be part of this Agreement. In the event of a conflict between Attachment 1 and Attachment 2, Attachment 1 shall be read in priority to Attachment 2.
- 3. **PAYMENT.** To purchase the Services, the Customer shall pay the Company the fees as set out in and in accordance with Attachment 1. The Customer shall pay all sales and goods and services taxes, duties and levies, any related interest and penalties and all similar charges, however designated, imposed or based upon the provision or use of the Services provided under this Agreement (excluding taxes based on the Company's net income), and any additional amounts necessary to ensure that the net amounts received by the Company after all withholdings or payments equal the amount to which the Company otherwise would have been entitled to, absent such charges or taxes. Such charges or taxes shall be separately itemized on the Customer's bill. Monthly invoices shall be sent to the Customer while the Services are being provided, unless a different payment schedule is agreed to and set forth in the Schedule of Charges. Invoices are payable to the Company within thirty (30) days from the date of invoice. Interest charges will be added to any past due amounts at the rate of 1.5% per month.
- 4. **NOTICES.** Any notice, report, request or demand shall be made to the receiving party's designated representative, either by delivery in person or by facsimile followed by a paper copy sent by first-class mail. No notice shall be effective until received by the party to whom it is addressed, to the applicable address set out above. Addresses may be changed by written notice.

5. **CHANGES.** The Customer may request changes in the Services at any time or a change may be required due to changes in the Rules or Standards that is not a Material Alteration. In such case a change order must be confirmed in writing, approved by the Company and signed by both parties. Once executed, such change orders will form part of this Agreement. A reasonable adjustment to the due date and/or Schedule of Charges shall be made if any such change affects the time of performance or the cost of the Services to be provided under this Agreement.
6. **LIMITATION OF WARRANTIES.** The provision of Services under this Agreement shall proceed with diligence and shall be executed with ordinarily acceptable practices in the field to which the Services pertain, as well as any standards set forth in Attachments 1 and 2. Except as set forth in this Section, the Company and its affiliates, subcontractors and agents make no warranties with respect to the services, express or implied, and specifically disclaim any warranty of merchant ability or fitness for a particular purpose. Whereas the Company must rely on the accuracy of third party metering devices and data provided to it by third parties in order to provide the Services, the Company does not warranty the accuracy, completeness or currency of any data collected on behalf of the Customer and stored in the Company's database.
7. **CONFIDENTIAL INFORMATION.** Each party agrees that it shall not disclose, either during the Term or after the expiration or termination of this Agreement, to any unaffiliated third party any proprietary information of the other party, including, without limitation, information concerning trade secrets, methods, processes or procedures or any other confidential business or technical information or customer data ("Confidential Information"), which it learns during the course of its performance of this Agreement, without the prior written consent of the other party, except to the extent that any such Confidential Information: (i) is in the public domain; (ii) is independently developed by the receiving party; (iii) is already in the possession of such party prior to disclosure by the other party; (iv) is rightfully received from a third party not under a confidentiality obligation to the other party; or (v) is legally required to be disclosed by the receiving party. Either party may disclose Confidential Information to its sub-contractors, agents or advisors on a need-to-know basis, provided it first obtains an appropriate non-disclosure agreement therefrom.
8. **INTELLECTUAL PROPERTY RIGHTS.**
- (a) **Customer Proprietary Information.** The Company acknowledges and agrees that it shall have no right, title, claim, interest, security interest or lien ("Interest") in any specifications, designs, plans, drawings, data, software, computer systems, prototypes or other technical or business information ("Proprietary Information") and disclosed to the Company by or on behalf of the Customer in connection with this Agreement ("Customer Proprietary Information"), regardless of whether any such information constitutes a trade secret or is competitively sensitive, or in any Proprietary Rights (as defined below) with respect thereto, and disclaims any such Interest in any of the Customer Proprietary Information or such Proprietary Rights. The Customer hereby grants or shall grant to The Company a personal, non-exclusive, non-transferable, royalty-free license (without the right to sublicense, except to affiliates) during the Term, to use, execute, reproduce, display, perform and copy such Customer Proprietary Information (including the right to provide such information to subcontractors) for the sole purpose of performing the Services and only to the extent necessary to do so. As used in this Agreement, "Proprietary Rights" means, with respect to any item, all trade secret, copyright, patent, trademark, service mark, certification mark, trade dress or other intellectual property or proprietary rights in all countries related to such item or any part thereof, any extensions or renewals of the foregoing, and any registrations, patents or applications with respect to the foregoing.
- (b) **The Company Proprietary Information.** The Customer acknowledges and agrees that it shall have no Interests in any Proprietary Information disclosed to the Customer by or on behalf of the Company in connection with this Agreement ("The Company Proprietary Information"), regardless of whether any such information constitutes a trade secret or is competitively sensitive, or in any Proprietary Rights with respect thereto, and disclaims any such Interest that it might otherwise have in any of the Company Proprietary Information or such Proprietary Rights. Where necessary for the proper performance of the Services under this Agreement, the Company will grant to the Customer a personal, non-exclusive, non-transferable, royalty-free license (without the right to sublicense, except to affiliates)

during the Term, to use, execute, display, perform and copy any such Company Proprietary Information for use solely in connection with Customer's receipt of the Services.

- (c) Restrictions. Notwithstanding the terms of the preceding section, the Customer shall not reproduce, copy, amend, modify, merge or reverse engineer all or any portion of any software resident on the Host System (as defined below), or attempt to do any of the foregoing. In this Agreement, "Host System" means the hardware, main processing modules of the utilismart™ database and/or other related software licensed, leased or owned and operated by the Company and/or the Company's approved agents, subcontractors and suppliers, to provide Services to the Customer.

9. **TRADE NAMES.** Neither party shall use the other party's trade name, trade-marks or logos, in any way, without the prior written consent of the other party, which consent may be withheld within such party's reasonable discretion, except that the Company may include the Customer's name in the Company's customer lists.

10. **LIMITATIONS OF LIABILITY.**

- (a) The Company shall not be liable to the Customer for any special, indirect, incidental, consequential or punitive damages of any character, including but not limited to loss of use, loss of profit, past and future, additional out-of-pocket expenses incurred by the Customer, or other claims resulting from, arising out of, in connection with or in anyway incidental to any act or omission of the Company related to the provisions of this Agreement, including without limitation, claims of third parties.
- (b) TO THE EXTENT PERMITTED BY LAW, THE LIABILITY OF THE COMPANY TO THE CUSTOMER FOR ANY REASON AND UPON ANY CAUSE OF ACTION WHATSOEVER, WHETHER IN CONTRACT OR TORT, SHALL BE LIMITED TO FEES PAYABLE BY THE CUSTOMER UNDER THIS AGREEMENT IN RESPECT OF THE SERVICES IN THE MONTH IN WHICH THE CAUSE OF ACTION AROSE.
- (c) The Company shall not be liable for any costs, losses, damages, legal costs and expenses, liability, claims and demands resulting from or arising in connection with any use of the Customer's

usernames or passwords. The Customer is solely responsible for ensuring that the usernames and passwords are kept confidential. The Customer agrees that under no circumstances shall the company be held responsible or liable for situations where the data stored or communicated through the Company's website interface are accessed by third parties through illegal or illicit means, including situations where such data is accessed through the exploitation of security gaps, weaknesses or flaws, if unknown to the Company at the time, which may exist in the Host System (as defined herein). The Company simply stores and facilitates the transmission of private electronic communications. Electronic communications on the Company's Host System are private, and only under situations where explicitly required or allowed by law will such communications be accessed, intercepted, disclosed, or used without the consent of at least one of the parties to the communication.

11. **INDEMNIFICATION.** The Company and the Customer shall indemnify each other and their respective Affiliates as defined in Section 14, employees, subcontractors and agents against all losses resulting from injury or death of any person (including their respective employees, subcontractors or agents) or loss or damage to any tangible, real or personal property to the extent that such loss was proximately caused by gross negligence or willful misconduct of any person for whose conduct the indemnitor is responsible and which arises from the provision or receipt of the Services. The Customer shall indemnify the Company against all other claims from any third party, relating to the Company's provision of Services.

12. **FORCE MAJEURE.** Neither party shall be liable to the other party for any loss, damage, delay or failure of performance resulting directly or indirectly from any cause which is beyond its reasonable control, including (without limitation) acts of God, riots, civil disturbances, wars, states of belligerency, acts of the public enemy, strikes, work stoppages, power or utility failures, extraordinary traffic conditions, changes in laws or regulations, or the acts or omissions of any governmental authority. Under such circumstances, the parties shall engage in good faith negotiations to arrange achievement of this Agreement's purposes through alternative methods.

13. **ASSIGNMENT.** Neither party may assign this Agreement without the other's written consent (which shall not be unreasonably withheld); provided, however, that the Company may without consent assign this Agreement in whole or in part to a Company Affiliate or Related Company. Affiliate means any partnership, corporation or other form of enterprise Controlled (as the term is defined in the following sentence) by, Controlling, and/or under common Control with, one of the parties. "Control" means the ownership, directly or indirectly, of greater than fifty percent (50%) of the voting securities of the entity in respect of which such determination is being made and the power to direct or cause the direction of the management and operating policies of such entity. A Related Company is a partnership or corporation in which the Company or an Affiliate directly owns not less than thirty percent (30%) of the voting securities of such entity.
14. **SUBCONTRACTING.** The Company may subcontract all or any portion of the Services to be performed by it under this Agreement, but shall retain responsibility for the Services subcontracted.
15. **INDEPENDENT CONTRACTOR.** Other than as expressly set forth herein, the Company and its subcontractors are independent contractors for all purposes and at all times for the work performed under this Agreement.
16. **THIRD PARTY BENEFICIARY RIGHTS.** No provision of this Agreement shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person a third-party beneficiary of the Agreement or any of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto except to the extent as may be provided for in this Agreement.
- 17. TERM AND TERMINATION.**
- (a) The term of this Agreement shall be 36 months, commencing on the Renewal Date hereof indicated (the "Initial Term") and may be renewed for successive 1 year terms (each a subsequent "Renewal Term"), unless terminated prior to the end of this Initial Term.
- (b) If there has been a breach or default by either party (the "Defaulting Party"), then the other party may terminate this Agreement after giving the Defaulting Party notice, in accordance with the provisions of this Agreement, of the breach or default and 30 business days to remedy the same, or in the case of any breach or default which cannot be reasonably remedied within 30 business days, such period as may reasonably be required to expeditiously remedy the breach or default. If the Customer is in default, a Termination Payment will be due and payable to the Company within 30 days of the termination of this Agreement. The Termination Payment will equal 50% of the remaining Agreement fees, based on the then current Monthly Fees as calculated in accordance with the terms outlined in Attachment 1.
- (c) If neither party is in default, this Agreement may be terminated by the Company or the Customer upon providing 180 days prior written Notice to the other party. If this Agreement is terminated by the Customer more than 180 days prior to the end of the Initial Term or Renewal Term, as the case may be, then the Termination Payment will be due within 30 days of termination by the Customer. If this agreement is terminated by the Company and neither party is in default, the Company will provide the Customer with service until the end of the 180 day period and the Customer shall remain liable for any fees incurred according to the terms of Attachment 1 of this Customer Agreement.
- (d) For the purposes of this Agreement a breach or default will include the following:
- (i) A violation of any term of this Agreement;
 - (ii) The failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within 10 business days after written notice is provided
18. **DISPUTE RESOLUTION.** If any dispute, difference or question shall arise between the parties concerning the construction, meaning or effect of this Agreement or anything herein contained or the rights or liabilities of any of them that cannot be mutually resolved between the parties within 30 days, then every such dispute, difference or question shall be referred to a single arbitrator, chosen unanimously by the parties. In the event that the parties cannot agree on a person to act as a single arbitrator, a single arbitrator shall be appointed in accordance with the provisions of the

Arbitration Act Ontario. The determination made by the arbitrator shall be binding upon the parties hereto, and their administrators, successors and assigns, as the case may be. The cost of the arbitration, excluding a party's legal fees and disbursements, shall, unless otherwise ordered by the arbitrator, be borne equally by the parties.

19. GENERAL.

- (a) Any change to this Agreement (including its attachments) must be in writing and signed by both parties.
- (b) Failure to enforce any right or remedy available under this Agreement will not be construed to be a waiver of the right or remedy.
- (c) Any arbitration or legal action either party brings against the other party with respect to this Agreement must begin within one (1) year after the cause of action arises.
- (d) Should any provision of this Agreement be held to be void or unenforceable, the remaining provisions shall remain in full force and effect, to be read and construed as if the void or unenforceable provisions were originally deleted.
- (e) This Agreement shall be construed in accordance with and governed by the laws of the Province of Ontario and the laws of Canada applicable therein, without regard to conflicts of laws. The parties shall attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario.
- (f) This is the entire agreement between the parties with respect to the Services provided hereunder and supersedes all prior agreements, proposals, communications and understandings, whether written or oral.
- (g) Unless otherwise expressly stated, all amounts in this Agreement are in the lawful currency of Canada.
- (h) Sections 3, 6, 7, 8, 9, 10, 11, 12, 13, 16, 17, and 18 shall survive the expiration or termination of this Agreement.
- (i) This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. A photocopy or facsimile copy of this Agreement bearing the signature of each party, in a single document or as counterparts, thereof, shall be deemed an original execution version of this Agreement.

- (j) The Customer hereby jointly and severally agrees to indemnify and save the Company harmless from and against any and all claims, demands, actions, causes of action, damages, losses, deficiencies, costs, liabilities and expenses which may be made or brought against the Company or which the Company may suffer or incur as a result of, in respect of or arising out of any non-performance or non-fulfillment of any obligation of the Customer as set out in the Agreement.

- (k) The Customer hereby authorizes Utilismart Corporation to use the Customer's company information as required for the services as described in this contract and in Utilismart Corporation's Client Privacy Policy, a copy of which is available upon request.

- (l) Time is of the essence of this Agreement.

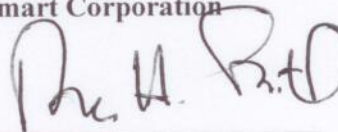
Date

January 26, 2010

For

Utilismart Corporation

By:



Name: Bruce H. Smith

Title: President & CEO

By:

Name: Greg Hall

Title: Director of Strategic Business Development

For

Erie Thames Powerlines

By:



Name:

CHRIS WHITE

Title:

PRESIDENT

By:

Name:

Title:

Attachment 1 – Purchased Services/Schedule of Charges**Contract Number: ETPL01-SMTMT-010210****GENERAL**

This Attachment 1, Purchased Services / Schedule of Charges, is an attachment to the utilismart™ Customer Agreement, (the "Agreement") between **Erie Thames Powerlines** (hereinafter referred to as the "Customer") and **Utilismart Corporation** (hereinafter referred to as the "Company").

The ASP service provided by the Company consists of operating a data collection, data storage and data delivery system using the Elster EnergyAxis Metering Automation Server (MAS) and includes services provided by the Utilismart Smart Meter System (USMS). All services are provided via an Application Service Provider (ASP) model.

A schedule of services purchased and charges to be paid is detailed below, any additional meter points added to the service will be included at the fees listed below. Fees for new metering points will be charged based upon this schedule and will commence on the date the data collection begins on a daily basis and will extend for the duration of this contract.

SCHEDULE OF SERVICES PURCHASED AND CHARGES

Pricing				Service Description
Less Than 5,000 Meters	5,001 to 10,000 Meters	10,001 To 50,000 Meters	Greater than 50,000 Meters	<ul style="list-style-type: none"> ❖ Ongoing maintenance of all Elster Energy Axis collectors, A3 Nodes, and REX/REX2 residential smart meters on the Utilismart MAS system ❖ Daily data collection of Elster Energy Axis collector and REX/REX 2 residential smart meter data ❖ Ad hoc and on demand data collection as required by the Customer ❖ Meter communication troubleshooting as required by the Customer ❖ Transfer of meter data to the Customer and/or the MDM/R as required in the Elster MAS xml file format or Utilismart file format ❖ Local storage of all historical meter data in native Elster MAS xml file format ❖ Processing and storage of all meter data in the Utilismart Smart Meter System (USMS) data base –Data includes Load Profile Data, Register Read Data, Alerts, Events, Statuses, Instrumentation Values ❖ Delivery of reports and database information out of USMS as per the Customer's requirements, including billing ready CIS data. Reports may include Network Communication Health, Power Quality, Outage/Restoration information etc. ❖ Access to USMS Web GUI interface
\$0.37 per meter per month	\$0.36 per meter per month	\$0.35 per meter per month	\$0.32 per meter per month	

*One time set up fee of \$0.20 per meter
 **Monthly administration fee of \$500
 ***For End Customer web presentment add \$0.03 per meter per month

Note – Utilismart has the capability to collect meter data using any communications technologies supported by the Elster MAS system, including cellular, land line, TCP/IP etc.

Initial Set-up Services and Charges

utilismart™ One Time Charges* (See Notes)			Total
Set-Up Fees			
One Time Initial Set-up	\$3,000		\$3,000
Set Up fee includes: Set up of all Elster EnergyAxis collectors and residential smart meters on the Utilismart MAS and USMS systems			

***Notes:** The following terms and conditions shall apply to this Agreement in addition to those already specified and to all additional meters added to the service.

1. All prices are in Canadian dollars.
2. Applicable taxes are not included and are payable by the Customer in accordance with the Agreement.
3. Data collection fees do not include the cost of telephone line installation or monthly telephone line or communications fees incurred by the Customer. Data collection does include any applicable long distance charges incurred by the Company in the collection of meter data.
4. All payments are net 30 days.
5. The service includes twenty-four (24) months of online data storage and data archiving of all meter data.
6. A single meter point is defined as:
 - up to two (2) channels of a meter data from a physical meter
 - the third or fourth additional channel of meter data from a physical meter
 - the aggregation of two or more meter points into a virtual point

Attachment 2 – utilismart™ Service Description**Contract Number: ETPL01-SMTMT-010210****GENERAL**

This Attachment 2, utilismart™ Service Description, is an attachment to the utilismart™ Customer Agreement, (the "Agreement") between **Erie Thames Powerlines** (hereinafter referred to as the "Customer") and **Utilismart Corporation** (hereinafter referred to as the "Company").

The description of ASP services are as follows:

DATA COLLECTION

- Daily collection of meter data directly from each metered site, including:
 - ◆ Initial set up of collectors and meters as per the configuration information submitted by the Customer
 - ◆ Commencement of daily data collection
 - ◆ In instances where the Company is unable to collect meter data from a site, the Company will indicate the data collection problem via email to the Customer. If the data collection problem is due to an error in the Company's system, the Company will attempt to fix it in a timely manner and will indicate when data collection will commence for the affected meter points
 - ◆ If the data collection problem is due to a problem at the meter site, the Company will try to identify the nature of the problem in an email notification to the Customer. It is the responsibility of the Customer to troubleshoot and repair metering and communications issues at the meter site.

CUSTOMER SUPPORT

- The Utilismart Corporation call centre provides product support during normal business hours through trained energy advisors via the following numbers - 1-519-652-0689 or 1-888-652-0689.
- Customer support is provided from 8:00 AM – 5:00 PM, Monday through Friday.
- Limited customer support may be available, but is not guaranteed, during non-business hours from 5:00 PM - 8:00 AM on normal business days and all day on holidays and weekends.
- Observed holidays include New Year's Day, Family Day, Good Friday, Victoria Day, Canada Day, Civic Holiday, Labour Day, Thanksgiving Day, Christmas Day and Boxing Day.

SYSTEM AVAILABILITY

- Product Support – Business Hours - Product support is provided through the Utilismart Corporation call centre from 7:00 AM – 6:00 PM, Monday through Friday. The call centre provides full product support for MAS and USMS. The call centre can be reached by calling 1-519-652-0689 or 1-888-652-0689.
- Product Support – Non-business Hours – Limited product support may be available, but is not guaranteed, during non-business hours from 5:00 PM - 8:00 AM on normal business days and all day on holidays and weekends.
- System Recovery – Every reasonable effort will be made to restore the system within 2 business days when failure is due to individual component failures. Every reasonable effort will be made to restore the system within 14 business days when failure is due to catastrophic and/or multiple component failures.

SYSTEM AND DATABASE BACK-UP

Production System Back-up

- The Utilismart Production System (UPS) is backed up with an offsite system that includes a completely operational hardware platform, software applications, and Oracle database.
- The offsite system's databases are updated weekly with fresh installs of the UPS databases. Copies of the UPS Oracle Transaction Logs are sent to the offsite system using a secure VPN connection.
- In the event of a critical problem with the UPS, the offsite system will be brought up to date and will be available to Utilismart customers within 48 hours.
- The offsite location is 50kms away from the UPS main location in London and is connected to a separate power distribution network. This provides additional protection as should there be a major power interruption in the London area, the back-up system would still be available from the separate power network location.
- Within the UPS, should any piece of hardware malfunction beyond recovery, appropriate arrangements are in place hardware suppliers to provide emergency hardware replacements.

Database Back-up

- The UPS Oracle database is backed up twice a week to a hard drive at the main location and all Oracle Transaction Logs are also backed up locally.
- In the event of a disk failure, the locally backed up database will be recovered and brought up to date using the Transaction Logs. The system hard drives are mirrored and hot swappable. Should a hard drive fail that drive will be replaced with minor system down time and disruption.
- In addition, the complete Utilismart systems (including databases) are backed up to tapes once a week, which are stored offsite at a secure location. To augment these complete tape back-ups, nightly incremental tape back-ups are done to capture all system changes that have occurred following the prior complete back-up. The incremental tape back-ups are stored offsite. The tape back-up can be used to restore part or all of the Utilismart system at either Utilismart location.