

M2M Milk Calculator – End User Licence Agreement

1 Definitions

Application means the software application offering a wholesale milk price calculator service that allows End User to compare its End User Data against Market Data available for download and / or access at www.milk2market.com.au or a designated brand URL.

Delegate means an employee, contractor or other representative of an End User who accesses or uses the Application on behalf of, and as agent for, the relevant End User.

End User Data means any production or pricing data uploaded or created by an End User when interacting with the Application.

End User means any User, legal personality or entity which enters into this EULA with M2M and accesses or uses the Application.

EULA means this End User Licence Agreement.

Fees has the meaning given in clause 6.

Intellectual Property Rights means all industrial and intellectual property rights of any kind including but not limited to copyright (including rights in computer software), trade mark, service mark, design, patent, trade secret, semiconductor or circuit layout rights, trade, business, domain or company names, moral rights, rights in confidential information, know how or other proprietary rights (whether or not any of these are registered and including any application, or right to apply, for registration) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which subsist or may hereafter subsist anywhere in the world.

Laws means any applicable law, statute, regulation, by-law, ordinance or subordinate legislation in force from time to time, whether made by a State, Territory, Commonwealth, or a local government, and includes common law and the principles of equity as applicable from time to time, and any applicable legally binding industry codes of conduct.

M2M Data means any new data created by M2M including pursuant to the licence under clause 10(d)(ii) and which may then be used by M2M to inform and incorporate into Market Data.

M2M means Milk2Market Pty Ltd (ACN 158 450 401).

Market Data means:

- (a) any market data procured by M2M from the public domain; and
 - (b) any market data disclosed to M2M by third parties,
- uploaded to the Application and made available by M2M.

Permitted Purpose means an End User's legitimate business purposes.

Privacy Act means the *Privacy Act 1988* (Cth).

Related Bodies Corporate has the meaning given to that term in the *Corporations Act 2001* (Cth).

Term has the meaning given to that term in clause 5(a).

Uploaded Personal Information means any *personal information* (as that term is defined in the Privacy Act) uploaded or made available by an End User through use of the Application.

User means an End User who is an individual who enters into this EULA with M2M, and interacts on or with the Application, in a personal legal capacity.

2 General

- (a) This EULA is a binding agreement between End User and M2M.
- (b) By accessing and / or using the Application, End User agrees to be bound by this EULA. If End User does not agree to any part of this EULA, it must not access or use the Application.
- (c) End User may access and use the Application only as permitted by this EULA and any M2M policies made available on the Application (for example, privacy policies).
- (d) Where End User accesses and uses the Application through its Delegate(s), End User agrees that:
 - (i) it will ensure that all of its Delegates have been properly authorised by End User to access or use the Application on behalf of End User;
 - (ii) it will ensure that all of its Delegates comply with the terms of this EULA, all policies incorporated into it by reference, and all policies on the Application; and
 - (iii) it is fully responsible for any access or use of the Application by its Delegates (with any acts or omissions of its Delegates being deemed to be the acts or omissions of End User).
- (e) All Delegates, and all Users, must be at least 18 years of age.

3 Amendment to EULA

- (a) M2M may in its sole discretion modify or replace any part of this EULA. M2M will give End User seven days' notice of any change by notifying End User at the contact details supplied and publishing a notice and the amended EULA on the Application. End User is responsible for checking the Application for changes to this EULA.
- (b) End User's continued access to or use of the Application following the effective date of any changes to this EULA constitutes acceptance of those changes.

4 Grant of licence

- (a) M2M grants to End User for the Term a non-exclusive, non-transferable, non-sub-licensable licence to use and access (and permits its Delegates to use and access on its behalf) the Application and Market Data in accordance with the terms of this EULA and solely for the Permitted Purpose.
- (b) All other use, reproduction or redistribution of the Application or Market Data or any part of it is prohibited (except to the extent permitted by law) and may result in civil and criminal penalties. End User must not copy any Market Data to any other server, location or support for publication, reproduction or distribution.
- (c) End User may only use the Application and Market Data for the Permitted Purpose. If End User wants to use the Application and / or Market Data for any other purpose, it will seek the prior written consent of M2M. If such consent is granted, End User may be required to enter into separate agreement(s) with M2M.

5 Term and termination

- (a) This EULA commences upon End User's first use of or access to the Application and will continue in full force and effect until:

- (i) End User terminates End User's access to the Application by unsubscribing from the Application or deactivating / deleting End User's account by providing notice to M2M; or
 - (ii) M2M terminates End User's access to the Application in accordance with this clause 5,
- (Term).**
- (b) If End User (including through a Delegate) breaches any term of this EULA, M2M may (without notice to End User):
 - (i) terminate this EULA or suspend End User's access to the Application; and
 - (ii) prevent End User's further access to the Application.
 - (c) Upon termination, End User will cease all use of the Application, and Market Data and M2M reserves the right to delete the End User's account and all End User Data (in its sole discretion).
 - (d) In the event of termination described above, End User acknowledges and agrees that by virtue of the licence granted below at clause 10(d), M2M may continue to use End User Data for any purpose including (but not limited to) running analytics on End User Data and / or using End User Data to inform the Application.
 - (e) To the full extent permitted by law, M2M will not be responsible for any loss, cost, damage or liability that may arise as a result of M2M exercising its rights under this clause 5, including, without limitation, any loss, cost, damage or liability that may arise in relation to M2M's deletion of End User Data under clause 5(c).
 - (f) Notwithstanding this clause 5, we reserve the right to discontinue provision of the Application at any time in our sole and absolute discretion. We will provide you with reasonable notice of such discontinuance by publication on the Application.

6 Fees

M2M may charge the End User fees which could be an annual fee or monthly fee, as determined from time to time (**Fees**). Access to the Application as at the date of this EULA is free of charge but is subject to change at M2M's sole discretion.

7 Conditions of Access

End User agrees:

- (a) to comply with all applicable Laws (including any applicable privacy laws);
- (b) not to copy, modify, merge, alter, adapt, translate, de-compile, disassemble or reverse-engineer any aspect of the Application or to otherwise attempt to derive the source code relating to any aspect of the Application, or to merge any software or any part of any software with any aspect of the Application unless expressly permitted by this EULA or after obtaining M2M's prior written consent;
- (c) not to interfere in any manner with the Application or its source code (except as permitted by this EULA);
- (d) not to sell or license, offer for sale or license, dispose of, pledge, encumber, underlet, lend or part with possession of its access credentials to the Application, nor to allow any person to use or have the benefit of the Application or any part or parts of the software, in any circumstances, other than as permitted by this EULA;

- (e) not to remove, modify or obscure any copyright, trade mark, service mark, tagline or other notices that appear during use of the Application;
- (f) not to use any data mining, gathering or extraction tools (excluding tools provided by M2M for End User's use); and
- (g) that M2M cannot guarantee and does not promise:
 - (i) any specific results from the use of the Application;
 - (ii) the quality, completeness, accuracy or currency of any Market Data uploaded to the Application.

8 Access credentials and site access

- (a) M2M will use its reasonable endeavours to implement industry standard safeguards with respect to the Application, however security is a joint responsibility and End User is solely responsible for maintaining the security of its ICT environment and any access credentials associated with its account and is fully responsible for all activities that occur under its account (whether or not authorised by End User).
- (b) End User is not permitted to allow any third party to use its access credentials to log in to the Application. To avoid any doubt, this does not restrict End User allowing its Delegates to use the Application on its behalf (such Delegates must use their own personal access credentials). End User must immediately notify M2M of any unauthorised uses of its account or any other breaches of security.
- (c) M2M and its Related Bodies Corporate, contractors, suppliers, and licensors will not be liable for any acts and omissions by or on behalf of End User, including any damages of any kind arising from such acts or omissions.

9 Intellectual Property Rights

- (a) The Application is intended to facilitate the sharing of Market Data in a number of ways, including by making the Application available to all End Users.
- (b) M2M owns (or licenses from third parties) all Intellectual Property Rights in the Application.
- (c) To the maximum extent permitted by law, including the Australian Consumer Law, End User agrees that:
 - (i) M2M makes no warranties or representations (including as to non-infringement) as to any Market Data; and
 - (ii) it will not bring any claims against M2M in connection with any Market Data including as to its reliability, accuracy or completeness.

10 End User Data

- (a) End User Data may be accessed and viewed by:
 - (i) M2M;
 - (ii) the End User which made it available (and its Delegates).
- (b) End User Data will not be accessible in the form uploaded by an End User by any other End User. End User Data may be made available to other End Users as aggregated data to inform Market Data.
- (c) By submitting, posting, uploading or otherwise allowing access to End User Data (or allowing Delegates to do so), End User represents and warrants that End User has rights

to and is legally entitled to distribute such content to M2M and other third parties as contemplated by this EULA.

- (d) M2M does not claim ownership over any End User Data. End User agrees that by using the Application, End User grants M2M a royalty-free, perpetual, irrevocable, sub-licensable right to:
 - (i) use End User Data to provide (and make offers to provide) products and services to End User via the Application or through any other means of communication (such as email) in accordance with the M2M privacy policy available at www.milk2market.com.au/privacy; and
 - (ii) create and commercially exploit derivative, aggregated and anonymised works (for example, data products) from such End User Data (including feeding that End User Data back into the Application in the form of Market Data), but only to the extent:
 - (A) permitted by law; and
 - (B) such derivative works do not reveal End User's raw data or any Uploaded Personal Information.
- (e) End User warrants that it has all rights necessary to grant the licence set out at sub-clause 10(d) above, including in relation to End User Data generated by its Delegates.
- (f) End User acknowledges that despite M2M's commercially reasonable efforts to secure and store safely all End User Data on the Application, M2M cannot guarantee that third parties will not succeed in penetrating its systems by nefarious actions.
- (g) M2M has the right (but not the obligation) in its sole discretion (and without notice) to refuse or remove or direct the removal of any End User Data that it reasonably considers violates any of the terms of this EULA or any applicable law.]

11 Acceptable use

- (a) End User must use the Application for lawful conduct only.
- (b) End User must not access or use the Application, or post, provide or transmit End User Data in any way that:
 - (i) violates or infringes the rights of others including, without limitation, Intellectual Property Rights;
 - (ii) is unlawful, offensive, indecent, objectionable, harassing, threatening, abusive, defamatory, fraudulent, tortious, or invasive of another's privacy;
 - (iii) impersonates any person, business or entity, including M2M and its affiliates, employees and agents;
 - (iv) includes personal or identifying information about another person without that person's consent to the use and handling of that person's information as contemplated by this EULA and as set out in the M2M privacy policy available at www.milk2market.com.au/privacy and any other policy posted on the Application;
 - (v) is false, misleading, or deceptive;
 - (vi) violates this EULA or any policy posted on the Application;
 - (vii) contains viruses or any other computer code, files or programs that interrupt, destroy or limit the functionality of any computer software or hardware or

- telecommunications equipment, or otherwise permit the unauthorised use of a computer or computer network;
- (viii) interferes with the use of the Application by other End Users or potential End Users;
- (ix) could damage, disable or impair the servers or networks used by the Application or End Users; or
- (x) advertises products or services.

12 Privacy

- (a) M2M will handle all Uploaded Personal Information in accordance with the M2M privacy policy available at www.milk2market.com.au/privacy.
- (b) Where End User is a User and makes his or her personal information available to M2M through use of the Application, End User consents to the collection, use, storage and disclosure of that information as described in this EULA, the M2M privacy policy and any other policy posted on the Application. For the avoidance of doubt, M2M will use Uploaded Personal Information to the extent:
 - (i) required to provide its services as described in this EULA; or
 - (ii) described in the M2M privacy policy.
- (c) Where End User is not a User, End User must procure from each of its Delegates the Delegate's consent to the collection, use, storage and disclosure of his or her personal information as described in this EULA, the M2M privacy policy and any other policy posted on the Application.
- (d) M2M will not disclose any Uploaded Personal Information to third parties except to the extent:
 - (i) required to provide its services as described in this EULA; or
 - (ii) described in the M2M privacy policy.
- (e) End User warrants that:
 - (i) any Uploaded Personal Information was lawfully collected and made available to M2M (and other third parties as contemplated by this EULA); and
 - (ii) it has complied and will comply with the Privacy Act (whether or not actually bound by that Act) in relation to that Uploaded Personal Information including by:
 - (A) obtaining and maintaining any necessary consents from the individuals to whom the Uploaded Personal Information relates;
 - (B) providing necessary notifications to the relevant individual that his or her personal information will be disclosed to M2M; and
 - (C) directing the relevant individuals to M2M's privacy policy available at www.milk2market.com.au/privacy.

13 Updates and enhancements

M2M may (but is not required to):

- (a) provide standard or progressive updates, changes or amendments to the Application as M2M sees fit to ensure proper operation and interaction of all parts of the Application and any general enhancements that may be introduced; and

- (b) offer new services and / or features for the Application (which may incur a different set of Fees at our discretion),

which will be subject to the terms of this EULA.

14 Third party software and content

- (a) End User's use of the Application may or may not require the installation of third party software or products. End User agrees that:
 - (i) this is entirely End User's responsibility; and
 - (ii) M2M is not responsible in any way to make recommendations in that regard nor to supply or install such software or products.
- (b) Third party content (including links to third party websites) may be accessible via the Application. End User acknowledges that M2M has no control over any such third party content, and is not responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with the use of or reliance on such third party applications and content.

15 Warranties and disclaimers

- (a) To the maximum extent permitted by law, including the Australian Consumer Law:
 - (i) the Application and Market Data are made available "as is" and M2M makes no warranties or representations about the Application and Market Data, including but not limited to warranties or representations that they will be complete, accurate or current, that access will be uninterrupted or error-free or free from viruses, that data will be accessible or backed-up, or that the Application will be secure; and
 - (ii) the Market Data is made available to the End User as a pricing guide only and should not be relied upon and M2M makes no warranties or representations that the Market Data is complete, accurate or current.
- (b) All implied terms, conditions, warranties and any other additional obligations are excluded from this EULA, to the maximum extent permitted by law.
- (c) M2M reserves the right to restrict, suspend or terminate without notice End User's or a Delegate's access to the Application at any time without notice where M2M determines, in its sole discretion, that this is necessary or desirable for purposes related to the efficient, proper and lawful operation of the Application. M2M will not be responsible for any loss, cost, damage or liability that may arise as a result.
- (d) M2M cannot and does not guarantee the privacy, security, authenticity or non-corruption of any information transmitted through, or stored in or via the Application.
- (e) Subject to the terms and conditions of this EULA, M2M will use commercially reasonable efforts to make the Application available, subject to the need to conduct scheduled and emergency maintenance from time to time.

16 Indemnity and liability

- (a) End User will defend, indemnify and hold harmless M2M and its Related Bodies Corporate from and against any and all claims, suits, losses, damages, liabilities, costs and expenses brought by third parties resulting from or relating to:
 - (i) a breach by End User (including its Delegate) of this EULA or any representation or warranty given to M2M.; or

- (ii) any claim that the End User Data, as provided by or on behalf of End User, infringes or misappropriates the rights (including Intellectual Property Rights) of any third party.
- (b) To the maximum extent permitted by law, including the Australian Consumer Law:
 - (i) in no event will M2M be liable for any direct or indirect loss, damage or expense – irrespective of the manner in which it occurs – which may be suffered due to End User's (including its Delegate's) use of the Application or as a result of the inaccessibility of the Application and / or the fact that certain information or materials contained on it (including Market Data) are incorrect, incomplete or not current; and
 - (ii) M2M's maximum liability arising out of or in connection with this EULA, the Application, whether in contract, tort, breach of warranty or otherwise, will not exceed AU \$100.

17 Survival of provisions

On termination or expiry of this EULA, clauses 5, 9, 10, 11, 12, 15, 16, 17 and 21 will continue in full force and effect notwithstanding any such termination or expiry.

18 Severability

Any provision of this EULA that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this EULA nor affect the validity or enforceability of that provision in any other jurisdiction.

19 No waiver

A failure to exercise or a delay in exercising any right, power or remedy under this EULA does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

20 Entire agreement

This EULA contains the entire agreement between the parties with respect to its subject matter. It sets out the only conduct, representations, warranties, covenants, conditions, agreements or understandings (collectively **Conduct**) relied on by the parties and supersedes all earlier Conduct by or between the parties in connection with its subject matter. Neither party has relied on or is relying on any other Conduct in entering into this EULA and completing the transactions contemplated by it.

21 Jurisdiction and governing law

This EULA and End User's use of the Application is governed by the laws of Victoria, Australia and End User submits to the non-exclusive jurisdiction of the courts exercising jurisdiction there.