

BUSINESS ENERGY MARKETPLACE
Customer Terms and Conditions of Use

between the Parties:

Digital Energy Exchange Australia Pty Ltd, trading as Business Energy Marketplace ACN 614 276 603 ("**us**", "**we**" or "**our**"); and

The Enterprise registered on the customer portal of the Platform ("**the Enterprise**" or "**you**").

ABOUT THIS AGREEMENT

This Agreement governs your use of the Platform and is available at www.businessenergymarketplace.com

This Agreement sets out the terms on which we agree to give you access to use of the Platform to obtain quotes from energy retailers. Other terms and conditions contained in the Privacy Policy, the Platform and our websites also form part of our agreement with you. Please read them carefully before proceeding.

Your use of the Platform is conditional to, and constitutes, your agreement to be bound by this Agreement.

1. Services

- (a) We provide an energy comparator service through the Platform, allowing Enterprises to obtain quotes and compare energy plans on the basis of certain information the Enterprise provides in a Quote Request and retailers provide for the quotes.
- (b) The Platform comprises a web-based application through which:
 - (i) in the retailer portal, retailers may upload and update their pricing information, terms and conditions and other relevant information, to be used to provide quotes to Enterprises; and
 - (ii) in the customer portal, the following **Services** are available:
 - (A) an Enterprise may register and sign-in to receive certain high-level, aggregated information regarding energy prices and provide feedback on its previous retailer;
 - (B) the Enterprise may make a Quote Request by entering more detailed information including their entity details, site address(es), nature of operation, energy usage, operating hours, contract duration and contact information; and
 - (C) if the Enterprise pays the Subscription Fee, the Platform uses information provided by the Enterprise and retailers to calculate prices, charges and other retailer offerings, then provides the Enterprise with a comparison of retailer quotes.
- (c) If you decide to buy an energy product or service from one of our participating retailers as a result of the Platform, we may receive a commission of approximately AU\$260 from that retailer, which amount is subject to change. We are required to act independently and impartially in the provision of Services and not favour any retailer over another or discriminate against any retailer.
- (d) The energy plans quoted and compared on the Platform are not representative of all the energy products, services and plans available in the market (including from our participating retailers). At certain times, not all retailers and retailer offers may be available for the comparison.

- (e) The Platform does not provide comparisons of energy plans involving feed-in tariffs, buy-back or other schemes for solar energy generation. You should consult a retailer directly if you are interested to receive quotes for those energy plans.

2. Accessing and using the Platform

- (a) In the customer portal, you may register an email address of a person authorised to access and use the Platform (**Authorised User**) on behalf of the Enterprise. You must ensure that each Authorised User reads, understands and complies with this Agreement.
- (b) You may only register your Enterprise on the Platform and make a Quote Request if the Enterprise is a company, organisation, partnership or business (excluding a trust or trustee of any trust or settlement) that is a bona fide consumer or potential consumer of electricity or gas or other products sold by an energy retailer, and is a commercial or industrial customer (and is not a small customer or residential customer under the Laws) (**Qualifying Enterprise**).
- (c) By registering an Enterprise on the Platform:
 - (i) you agree to the terms and conditions of this Agreement; and
 - (ii) you represent and warrant that the Enterprise is for and on behalf of a Qualifying Enterprise.
- (d) You acknowledge that we have entered into this Agreement and agreed to provide the Services in reliance on the representation and warranties made by you under this Agreement.
- (e) In order to access the customer portal of the Platform, each Authorised User will require a unique user name and password, to be kept confidential.
- (f) Your access and use of the Platform is provided to the extent necessary for you to receive the Services available to the Enterprise at your own risk. You must comply with all applicable Laws in accessing and using the Platform.
- (g) You acknowledge and agree that:
- (h) any software or hardware (including computers, computer systems or other communications devices) that your Enterprise uses to access the Platform or use the Services is in your sole responsibility and control, must be properly functioning, free from viruses, bugs, malicious codes or

other threats that may result in disruption and connected to the Internet in order for the Services to be provided; and

- (i) we are not responsible in any way for your Internet network, including its set-up, maintenance and cost (including data usage costs) associated with your use of the Services.
- (j) The operation and availability of the Platform is dependent on the availability and functioning of certain services including telecommunication and web-based chat services. We do not control these services and is not responsible for these services or the effect on the Platform.
- (k) We may be required to test or maintain the Platform and associated equipment, hardware and software used to provide the Services from time to time, which may result in downtime or suspension of the Services. We have no liability for any Loss whatsoever arising from or in connection with such testing or maintenance actions.

3. Quote Requests

- (a) After you have paid us the Subscription Fee, you are entitled to submit up to three Quote Requests via the Platform during the Subscription Period.
- (b) If you have submitted less than three Quote Requests during the Subscription Period, you will lose your rights to submit the remaining Quote Requests once the Subscription Period ends. You will need to pay the Subscription Fee again for further Quote Requests after the Subscription Period.
- (c) The fields to be completed for each Quote Request are determined by us in our absolute discretion. In order to enable the Platform to generate comparable quotes, you must complete all of the fields for a Quote Request.
- (d) The content of Quote Requests and other information you provide on the customer portal are the sole responsibility of, and are controlled by, you. You must upload information to the customer portal that is true, accurate, complete and up-to-date. We may terminate this Agreement immediately under clause 12 if you breach your obligations to upload information in accordance with this clause 3(d).
- (e) We, our employees, contractors and retailers who use the Platform may access, view, use or rely on the information provided by you on the Platform. You represent and warrant that all information you upload to the Platform complies with clause 3(d), including information that will be provided to retailers and used to enter into a Contract with a retailer. Depending on the terms and conditions agreed between You and a retailer, your Contract may be terminated by a retailer if you provide false or misleading information to the retailer, via the Platform or otherwise.

4. Quotes from retailers

- (a) In response to a Quote Request, the Platform will display a comparison of quotes from retailers, showing the estimated:
 - (i) Comparable Charges, which are those charges for energy which may be compared across participating retailers, based on the information you have provided and information provided to us by our participating retailers; and
 - (ii) Pass Through Charges, which reflect third party costs (eg network operator charges) which are passed through to Enterprises and are less variable than the comparable energy charges of each retailer, and based on the information you have provided and

assumptions we make about how those third party costs are likely to be calculated.

- (b) All prices displayed in a quote are inclusive of GST, but exclusive of CPI escalation or any price adjustment event under the relevant Contract with a retailer.
- (c) On the Platform, you may browse, test different scenarios and compare the energy products presented to you in accordance with the functions available on the customer portal. You may also review the terms and conditions of retailers offering quotes to you.

5. Accepting a Contract

Once you have selected a preferred retailer, you may request to proceed with that retailer's terms and conditions. You acknowledge and agree that:

- (a) by choosing to proceed with a retailer via the customer portal, you are providing your written, informed consent to enter into a Contract with that retailer based on the retailer's pricing offer and terms and conditions provided; and
- (b) the Platform will notify that retailer of your choice for processing through the retailer portal. The retailer may view your details and contact you directly (if necessary) to finalise your Contract and transfer to the retailer.

6. Information disclaimer

- (a) The Platform provides an online, live chat service for our agents to answer queries regarding the functionality of the Platform and provide service support to users. These services are provided to assist and enhance the user experience on the Platform only. We do not take any responsibility for the information exchanged and communications of our agents on these service support mediums.
- (b) The Platform uses information provided by third parties which may change frequently. We make no representation as to the truth, accuracy, completeness or reliability of the information available on the Platform, including the information provided by retailers or any reports or notifications to you. You acknowledge that the information you provide on the Platform, including in a making a Quote Request, may or may not have an impact on the quotes, terms and conditions or other information regarding retailers being presented on the Platform. You must make and rely on your own enquiries and investigations regarding the assumptions, uncertainties and contingencies which may affect your energy consumption, energy prices or contracts and the quotes, terms and conditions or other information provided by retailers.
- (c) To the extent permitted by Law, we accept no liability for:
 - (i) any errors in, or omissions from, any information referred to or made available on the Platform; and
 - (ii) any liability for any Loss suffered or incurred by you or any person arising from or in connection with you or that person placing any reliance on the information or its accuracy, completeness, currency or reliability.
- (d) The Platform provides you with factual information, advertisements and links to other websites. It does not contain any personal recommendations, suggestions or advice about the suitability of a product or service for you and your needs, and does not take into account your Enterprise's specific circumstances.
- (e) Before acting on any information provided on the Platform, you should evaluate your own Enterprise needs, objectives

and situation and which products are suitable for you, and if necessary seek independent advice.

7. Data and consents

- (a) You agree and acknowledge that in providing the Services, the Platform may collect data and information related to your energy consumption and the Enterprise (**Data**) and provide this data to us, our employees and contractors, retailers and other users of the Platform.
- (b) By using the Platform, you consent to:
 - (i) the provision of Data to us, our employees and contractors;
 - (ii) our ownership of this Data;
 - (iii) us contacting you regarding Data in order to alert you of issues or problems associated with any Data, the Services or the Platform, including to recommend products or services to address these issues; and
 - (iv) our use and sharing this Data with third parties, including our contractors, Government Agencies, retailers and other users of the Platform. For example, any feedback you provide on the Platform being disclosed by us to the relevant retailer.
- (c) You agree that:
 - (i) your above consents regarding Data continue even if we cease to provide the Services or the Subscription Period lapses; and
 - (ii) we may notify third parties of your consent to allow us to receive, use and share Data as necessary to operate the Platform and you agree to complete or sign documents provided to you confirming your consent.
- (d) You may withdraw any consents in this clause 7 at any time by notifying us, but this may prevent us from providing the Services (and by withdrawing consent you agree to suspend our obligations to provide Services that rely on the consent).
- (e) You agree to keep all information made available on the Platform confidential and only use that information for the purposes of the Enterprise's business and receiving Services provided by us. You must not disclose any confidential information to a third party without our consent.
- (f) You must use all reasonable endeavours to ensure that information you provide on the Platform is free from, and protected against, any viruses, bugs, malicious codes or other threats that may result in disruption to software or hardware. You must procure that your representatives and Authorised Users submit to any other reasonable security regulations and procedures required by us to use the Platform.

8. Privacy

We may:

- (a) use your Personal Information to promote and market services to you on an ongoing basis, including by telephone and electronic means, unless you opt out;
 - (i) disclose your Personal Information to third parties outside Australia as set out in the Privacy Policy, and you acknowledge that while these third parties will often be subject to privacy and confidentiality obligations:

- (ii) they may not always comply with those obligations or those obligations may differ from Australian privacy laws;
 - (iii) we will not be accountable for the third party and you may not be able to seek redress under the Privacy Act 1988 (Cth); and
 - (iv) the third party may be subject to foreign laws which might compel further disclosures of Personal Information (e.g. to Government Agencies); and
- (b) otherwise collect, use and disclose your Personal Information in accordance with our Privacy Policy, which is available on the our website or on request.

9. Intellectual Property

- (a) Intellectual Property owned by a Party at the commencement of the Agreement remains the property of that Party. Any Intellectual Property developed or created during the performance of the Agreement vests in us immediately upon its creation and you assign all right, title and interest in such Intellectual Property to us and will do any further acts or execute any documents required by us to effect such assignment.
- (b) You must not, and must ensure that your personnel, contractors and representatives do not, breach an obligation to another person in respect of Intellectual Property Rights or infringe any Intellectual Property Rights of another person.

10. Our liability

- (a) To the extent permitted by Law:
 - (i) all guarantees, conditions and warranties, express or implied, by law, custom or otherwise are excluded and our liability for any Loss arising from a breach of such guarantees, conditions and warranties, or this Agreement, is limited to the supply of Services again or the payment of the cost of having such Services supplied again; and
 - (ii) we will not be liable for any Loss which you pay, suffer, incur or are liable for any reason, including as a result of delay, negligence or any act, advice, matter or thing done or permitted or omitted to be done by us, our employees, contractors or agents in any way connected with or arising out of this Agreement, except to the extent that the Loss is caused or contributed to by the Gross Negligence, Wilful Misconduct or fraudulent acts or omissions of us, our employees, contractors or agents;
 - (iii) you will be liable for and you indemnify us against any Loss which we pay, suffer, incur or are liable for in connection with any breach of this Agreement, or negligence, by you or as a result of us exercising our rights under this Agreement, except to the extent that the Loss is caused or contributed to by the Gross Negligence, Wilful Misconduct or fraudulent acts or omissions of us, our employees, contractors or agents; and
 - (iv) notwithstanding any other provision of this Agreement, neither Party will be liable to the other Party for any Consequential Loss in any way connected with or arising out of this Agreement.
- (b) Without limiting clause 10(a), we have no liability and makes no representations to you in respect of:

- (i) any retailer (including the number, reliability or accuracy of retailer quotes or information, the quality, type, suitability, behaviour, acts or omissions of any retailer or any feedback you provide regarding a retailer) or failure by a retailer to provide quotes or enter into a Contract with you;
- (ii) any matters arising from or in connection with any Contract or arrangements that a retailer pursues or has with you (including any marketing activities, information requirements, claims, default, breach or failure to provide energy services); and
- (iii) any disruption or damage which may be caused to any software or hardware (including computers, computer systems or other communications devices) or any information stored on any such software or hardware, arising from or in connection with the use of the Platform or any virus, bug, malicious code or other security threat.

11. Amendments and variations

- (a) We may modify, upgrade or make other changes to the Platform and the Services from time to time in our absolute discretion.
- (b) We may amend this Agreement from time to time by notice to you on the Platform or otherwise. If you do not agree to the amendments, we are not obliged to provide the Services to you and you may terminate the Agreement by 14 days' notice to us. If you terminate under this clause 11(b), then we will refund your Subscription Fee on a pro-rata basis for any remaining unused Quote Requests.

12. Termination

- (a) You may terminate this Agreement at any time by at least 1 month notice to us.
- (b) If in our opinion, you engage in any unlawful activity, dishonest activity (including if you breach your obligation under clause 3(d)), fraud or other misconduct, we may terminate this Agreement immediately by notice to you and withhold or suspend our performance of this Agreement, without affecting our accrued rights and obligations.
- (c) Either party may terminate this Agreement at any time by notice in writing to the other Party, if the other Party commits a breach of any material provision of this Agreement and that breach is not capable of remedy or, if able to be remedied, is not remedied within 14 days from the date of receipt of a default notice.
- (d) Clauses 7 (Data), 8 (Privacy and Intellectual Property) and 10 (Our Liability) survive the expiry or termination of this Agreement.

13. Complaint handling and dispute resolution

If you have a query or complaint, you may contact BUSINESS ENERGY MARKETPLACE in writing or by telephone. We will address any complaints in accordance with our complaints handling and dispute resolution procedure available on www.businessenergymarketplace.com or on request.

14. General

- (a) If any part of this Agreement is or becomes illegal, void or unenforceable, this does not invalidate the rest of the Agreement.
- (b) This Agreement is governed by and construed in accordance with the laws of Victoria and each Party

irrevocably submits to the exclusive jurisdiction of the courts of Victoria.

- (c) We may assign or novate this Agreement to any person on written notice to you without any requirement to obtain your prior consent and you agree to provide us with all reasonable assistance requested by us to effect the assignment or novation.
- (d) A communication in connection with this Agreement must be in writing, to a Party's email or postal address available on the Platform and is taken to be received:
 - (i) if delivered by hand, on the day of delivery if delivered by 5pm on a Business Day, otherwise on the next Business Day;
 - (ii) if delivered by ordinary post, three Business Days after posting;
 - (iii) if made by email, on the day shown on the transmission report produced by the machine from which the email was sent which indicates that it was sent in its entirety to the number or email address of the recipient, but if the time of transmission is after 5pm on a Business Day, then the email is to be taken to be received on the following Business Day.

15. Definitions

In this Agreement:

Business Day means a day that is not a Saturday, Sunday or public holiday in Victoria;

Claim means, in respect of a person, any claim, allegation, cause of action, proceeding, liability, suit or demand made against the person concerned however it arises and whether it is present or future, fixed or unascertained, actual or contingent;

Consequential Loss in respect of a person means any:

- (a) loss of (or loss of anticipated) use, generation, contract, goodwill, reputation, opportunity, production, revenue, income, profits, business and savings or business interruption Loss or third party property damage, whether or not it was foreseeable;
- (b) indirect or consequential Loss of any kind;
- (c) special or punitive damages; and any liability to a third party, or any Claim brought against that person by a third party, and any costs or expenses in connection with the Claim,

but excludes any amount that is expressly stated to be payable by one Party to another under this Agreement.

Contract means a contract between you and a retailer for the retail supply of energy by the retailer to you, using the retailer's standard terms and conditions or the terms otherwise required by applicable Laws of the state(s) in which your supply address(es) are located;

Enterprise means your company, organisation, partnership or business (excluding a trust or trustee of a trust) that you register on the Platform;

Government Agency means a government, government department or other body, a governmental, semi-governmental or judicial person including a statutory corporation or a person (whether autonomous or not) who is charged with the administration of a Law;

Gross Negligence means serious negligence amounting to reckless disregard, whether consciously or not, of the consequences of the relevant act or omission.

GST means a goods and services tax or similar value added tax levied or imposed in the Commonwealth of Australia pursuant to the GST Law;

GST Law has the meaning given to such term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or a successor Act;

Intellectual Property means all present and future rights conferred by Law in or in relation to copyright, trademark, patent, design, symbols, logos, business and domain names, semiconductor, confidential information, product information, moral, trade secret and other like rights whether arising by common law or by statute or any right to apply for registration under a statute in respect of those or like rights and whether registrable, registered or patentable. These rights include:

- (a) all rights in all applications to register these rights;
- (b) all renewals and extensions of these rights;
- (c) all rights in the nature of these rights;
- (d) any right to have confidential information kept confidential; or
- (e) any other intellectual or industrial property rights recognised by Law,

and include such rights in relation to all our software, applications, platforms, systems or processes, any information generated by any of them (including reports and notifications) and any other material provided to you by us.

Internet means an available and reliable internet connection capable of allowing access to the Platform the purposes of providing and using the Services;

Laws means all laws (including subordinate or delegated legislation or statutory instruments of any kind), regulations, codes, standards, codes of conduct, codes of practice, guidelines, authorisations, proclamations, judgements, orders, policies, official directives or requests (even if it does not have the force of law) of (or approved by) any Government Agency;

Loss means any loss, Claim, damage, liability, payment, charge, obligation, cost or expense however it arises and whether it is present or future, fixed or unascertained, actual or contingent;

Party means each Party listed at the beginning of this document;

Personal Information means, where collected, accessed or generated by or on our behalf in connection with this Agreement, 'personal information' as defined in the *Privacy Act 1988* (Cth);

Platform means the digital, web-based platform operated by us which includes user functions for customers to provide information and request quotes (via a customer portal) and retailers to upload, update and review information (via a retailer portal), available on www.businessenergymarketplace.com;

Privacy Policy means our Privacy Policy available at www.businessenergymarketplace.com, as updated from time to time;

Qualifying Enterprise has the meaning given in clause 2(b);

Quote Request means a request by an Enterprise using the customer portal of the Platform to receive quotes from retailers based on information provided by the Enterprise in a Quote Request form;

retailer means a retailer of electricity and/or gas that uses the Platform and is capable of, and willing to, provide quotes for electricity and/or gas plans to Enterprises on the Platform;

Services has the meaning given in clause 1(b)(ii);

Subscription Fee means \$150 inc. GST;

Subscription Period means 6 months on and from the date that the Subscription Fee has been paid by you to us in full; and

Wilful Misconduct means any intentional conduct, act or omission undertaken or omitted to be undertaken having had regard to, or with conscious or reckless indifference to, any foreseeable Loss, injury or other harmful or detrimental consequences arising from such conduct, act or omission.

16. Interpretation

This Agreement consists of this document and other terms and conditions contained in the Privacy Policy and on the Platform. To the extent of any inconsistency between those documents, the terms of this document prevail.

In this Agreement, unless the context otherwise requires:

- (a) Words importing the singular include the plural and vice versa.
- (b) A reference to a thing (including, but not limited to, any right) includes a part of that thing but nothing in this clause shall be taken to imply that performance of part of an obligation constitutes performance of the obligation.
- (c) A reference to a person includes any type of entity, whether or not it is incorporated or has a separate legal entity.
- (d) A reference to a party includes that party's successors and permitted assignees.
- (e) A reference to \$ or dollars is to Australian dollars (unless stated otherwise).
- (f) A reference to legislation includes all delegated legislation made under it and amendments, re-enactments, replacements or consolidations of any of them.
- (g) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (h) Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.
- (i) No provision of this Agreement will be construed to the disadvantage of a Party
- (j) because that Party was responsible for the preparation of this Agreement or any part of it.