

**Grouply**

GROUPLY ABN 74 602 774 121

## TERMS OF SERVICE

## INTRODUCTION

Grouply is a retail energy comparison service provided by 4<sup>th</sup> Party Australia Pty Ltd (**Service**).

4th Party offers the Service via whitelabel distribution partners as a courtesy to help you make better decisions when choosing between the terms of market retail contracts (**Energy Plans**) offered by energy retailers. Wherever you see “*Powered by Grouply*” or words to similar effect, it means that you are using the Service subject to these Terms of Service.

You will need to provide the Service with your post code and current information on your energy usage, or information from which energy usage can be derived which will allow the Service to compare the generally available Energy Plans available and relevant to you.

Under these Terms of Service, you will give your consent to the Company obtaining this information.

The Company takes privacy and confidentiality very seriously, and as such voluntarily complies with the Australian Privacy Principles set out in the Privacy Act. The Company will keep all of your information securely and will only ever use your information to enable you to complete an application to purchase an Energy Plan from the energy retailer of your choice, or to provide your details to Partners with your consent.

The Service is independent of all Energy Retailers. Energy Retailers may pay license fees for access to the Service or commissions for sales completed via the Service. However the presence or absence of fees or commissions does not impact the ranking of the Energy Plans compared by the Service. Where the Service is eligible to receive commissions from an Energy Retailer, the Service will make you aware of this before assisting you to apply for an Energy Plan.

## 1 DEFINITIONS

1.1 The following terms are used regularly throughout these Terms of Service and have a particular meaning:

- (a) **ABN** means Australian Business Number.
- (b) **Agreement** means these Terms of Service, accessible at <https://grouply.co/energy/terms>.
- (c) **Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Melbourne, Australia.
- (d) **Company** means 4th Party Australia Pty Ltd ABN 74 602 774 121 trading as Grouply.
- (e) **Contract** means a “*Market Retail Contract*” as that term is defined in s33 of the National Energy Retail Law.
- (f) **Energy Plan** means the tariffs, other fees and terms of supply offered to a consumer for the provision of electricity and/or gas by an Energy Retailer subject to a Contract, and generally referred to as an energy market retail offer.
- (g) **Energy Retailer** means a business that offers Energy Contracts.

- (h) **General Conditions** means the terms and conditions set out in the section of this Agreement entitled “General Conditions”.
- (i) **Intellectual Property** means all copyright, patents, inventions, trade secrets, know-how, product formulations, designs, circuit layouts, databases, registered or unregistered trademarks, brand names, business names, domain names and other forms of intellectual property.
- (j) **National Energy Retail Law** means the *National Energy Retail Law (South Australia) Act 2011*.
- (k) **Service** means the “Grouply” Energy Plan comparison service provided by the Company on behalf of whitelabel distribution partners, as well any similar service provided by the Company accessible at <https://grouply.co> or other URLs operated by the Company from time-to-time.
- (l) **Privacy Policy** means the Company’s privacy policy as updated from time-to-time, which can be found at <https://grouply.co/energy/privacy>.
- (m) **Privacy Act** means the *Privacy Act 1989 (Cth)*.
- (n) **User** means any user of the Service.

## 2 USING THE SERVICE

### 2.1 General Use

- (a) All use of the Service is subject to this Agreement. If you do not accept the terms of this Agreement, you must immediately cease using the Service. By using the Service you will be deemed to have acknowledged and accepted the terms of this Agreement.
- (b) The Service may be used by any person over the age of 18, subject to the Company’s ongoing right under these Terms of Service to limit or restrict access to the Service in its absolute discretion. Persons under the age of 18 must not use the Service.
- (c) To use the Service, a User will generally:
  - i Provide the post code of the property for which they are comparing Energy Plans. This is required to determine which energy distribution zone the property is in.
  - ii Complete a questionnaire designed to assess their current energy usage;
  - iii View and compare details on the Energy Plans presented by the Service;
  - iv Select an Energy Plan of their choice; and
  - v Complete an application for their selected Energy Plan via the Service (where the Service is capable of doing so).

- (d) Where the Service is not able to assist the User to sign up to a Contract for a new Energy Plan, the Service will provide the User with contact details of the Energy Retailer in order to sign-up themselves.
- (e) In order to sign-up to a Contract for an Energy Plan via the Service, the User must supply all information requested by the Service necessary to complete an application with the relevant Energy Retailer.
- (f) The Service updates its database of Energy Plan pricing frequently (not less than monthly) to offer Users currently available deals. Where the Company has a commission arrangement with an Energy Retailer, the Company collects Energy Plan information directly from the Energy Retailer. The Company obtains all other Energy Plan information via reputable third-party service providers. Despite this however:
  - i The Company makes no representation that a particular Energy Plan or pricing will be available at the time that a User uses the Service or wishes to sign-up to an Energy Plan; or
  - ii That an Energy Retailer will accept the User's application to sign-up for an account with an Energy Retailer.

## 2.2 **Whitelabel Distribution Partners (Partners)**

- (a) The Company provides access to the Service to Users on behalf of whitelabel distribution partners (Partners).
- (b) Access to the Service may be restricted to customers or members of Partners at Partner's discretion.
- (c) By Using the Service you may opt-into/consent to the Company providing the information you enter into the Service to Partner for the purposes of (without limitation):
  - i Updating its administrative records, in accordance with our Privacy Policy;
  - ii Creating an account or becoming a customer with Partner
  - iii Receiving any discount, rebate or other benefit subject to a promotion offered by Partners.
- (d) The Company will not provide your information to Partners without your consent.
- (e) For the avoidance of doubt, the Company is responsible to the User only in relation to provision of the Service. Nothing in this agreement shall be interpreted so as to make:
  - i The Company liable to the User for the acts or omissions of Partners under any other arrangement between the User and Partners; or
  - ii Partners liable to the User for the acts or omissions of The Company subject to this Agreement.

## 2.3 Consent

- (a) The User authorises the Company to:
  - i Use the information provided by the User as the basis on which the Service compares and presents Energy Plans;
  - ii Act as the User's agent for the purpose of completing an application to enter a Contract on the terms of the Energy Plan offered by the third-party Energy Retailer, as selected by the User;
  - iii Inform energy providers that the Company acts as the User's agent in accordance with this Agreement.
  - iv Provide such information that the User has entered into the Service as may be necessary to complete an application for the User to enter a Contract with the relevant Energy Retailer on the terms of the User's selected Energy Plan, including personal information;
  - v The User warrants that they are authorised to enter into a Contract for the premises that they wish to sign-up.

## 2.4 Energy Plans and Calculated Pricing

- (a) The User agrees that:
  - i The Service can only assess the energy information it is provided, and present Energy Plans ranked by price according to the consumption level provided by, or derived from information provided by the User;
  - ii The Service only assesses energy usage and pricing, and does not guarantee that an Energy Retailer will supply the User with energy or that any calculated energy costs will match the User's actual energy cost (as determined by an invoice) if the User switches Energy Plan;
  - iii The Company cannot guarantee that an Energy Plan will remain available for any particular period of time, or that the User will be eligible to sign-up for it;
  - iv The Company is not liable to the User if any of the information supplied by the User is incorrect, not up to date, or the User's energy usage changes. The User is solely responsible for ensuring that such information is accurate and complete;
  - v The User is responsible for assessing the summary of Energy Plans provided by the Service for its own purposes. If the User holds any doubt as to the suitability, adequacy or appropriateness of an Energy Plan, the Company recommends the User seek professional advice from an independent third-party;
  - vi The Energy Plans presented to the User by the Service are to be used by the User only, and must not be used by any third-party for the

- purposes of assessing Energy Plans for that third-party's own purposes;
- vii The Company is not liable to the User if the User does not achieve the estimated cost of energy after signing-up to an Energy Plan presented by the Service;
  - viii Energy Plans are offered by Energy Retailers, and the Company has no control over Energy Plans and does not warrant that the information relied upon is accurate and complete; and
  - ix Energy Plans and Contracts may be subject to terms and conditions, which may change from time to time (including pricing), and may also render the User ineligible to use such Energy Plan.

## 2.5 Switching Energy Plans

- (a) When providing the User with a comparison of Energy Plans, the Service may provide the User with an option to initiate a switch by applying for an Energy Plan.
- (b) The Service will include the information available to it, for the User to make an informed decision regarding an Energy Plan when it provides the User with comparisons, including any links relative to:
  - i The Energy Plan or the Energy Retailer offering it; and
  - ii Any energy supply agreement, Contract, terms or conditions that apply to the Energy Plan.
- (c) By electing to sign-up to an Energy Plan via the Service the User authorises the Company to act as its agent (in accordance with clause 2.3) for the purposes of:
  - i Creating a customer account with the new Energy Retailer on behalf of the User; and
  - ii Switch the User's energy supply to the new Energy Plan.
- (d) By electing to sign-up to an Energy Plan via the Service the User agrees to become a customer of the Energy Retailer offering the selected Energy Plan, and to be bound by any energy supply agreement, terms or conditions relative that apply to the Energy Plan.
- (e) The User will have a direct ongoing relationship with the Energy Retailer independent of the Company or Partners, and neither the Company nor Partners shall be responsible for the acts or omissions of any third-party Energy Retailer, nor be a party to any dispute that may arise between the User and the Energy Retailer.
- (f) Despite the User's consent and authority contained in this Agreement, the Company makes no guarantee that an application to switch the User to a particular Energy Plan will be successful.

- (g) The Service may request further information from the User in order to complete an application to create a customer account with the Energy Retailer, which the User must supply in order to complete the switch to the new Energy Plan.
- (h) The Service will notify the User when its application to switch Energy Plan has been accepted by the relevant Energy Retailer.

## 2.6 Cooling Off

- (a) The Service cannot cancel the switch of an Energy Plan once the user has elected to sign-up to an Energy Plan, however the User may cancel the switch within 10 days from the date the User elected to sign-up by contacting the Energy Retailer directly.
- (b) The Service may provide information on how to contact the Energy Retailer to cancel the switch, and the Company shall provide such information on request.

## 2.7 Fees.

- (a) Neither the Company nor Partners charge Users for the use of the Service.
- (b) The Company and/or Partners may receive a commission from an Energy Retailer when a User elects to sign-up to an Energy Plan via the Service. The Service will make you aware of this before signing to the user up to such an Energy Plan.

## 3 GENERAL CONDITIONS

### 3.1 Licence

- (a) By accepting the terms and conditions of this Agreement, the User is granted a limited, non-exclusive and revocable licence to use the Service for the duration of this Agreement, in accordance with the terms and conditions of this Agreement.
- (b) The Company may revoke or suspend the User's licence(s) in its absolute discretion for any reason that it sees fit, including for breach of the terms and conditions in this Agreement by the User or any of its users.

### 3.2 Software-as-a-Service

- (a) The User agrees and accepts that the Service is:
  - i Hosted by the Company and shall only be installed, accessed and maintained by the Company, accessed using the internet or other connection to the Company servers and is not available 'locally' from the User's systems; and
  - ii Managed and supported exclusively by the Company from the Company servers and that no 'back-end' access to the Service is available to the User unless expressly agreed in writing.

- (b) As a hosted and managed service, the Company reserves the right to upgrade, maintain, tune, backup, amend, add or remove features, redesign, improve or otherwise alter the Service.

### 3.3 Use & Availability

- (a) The User agrees that it shall only use the Service for legal purposes and shall not use it to engage any conduct that is unlawful, immoral, threatening, abusive or in a way that is deemed unreasonable by the Company in its discretion.
- (b) The User is solely responsible for the security of its username and password for access to the Service (if any).
- (c) The User agrees that the Company shall provide access to the Service to the best of its abilities, however:
  - i Access to the Service may be prevented by issues outside of its control; and
  - ii It accepts no responsibility for ongoing access to the Service.

### 3.4 Support and Complaints

- (a) The Company provides user support for the Service via:
  - i Email: [hello@grouply.co](mailto:hello@grouply.co).
  - ii Telephone: 1300 420 182
- (b) If the User wishes to log a complaint for any reason, the Company can be contacted via:
  - i Email: [complaints@grouply.co](mailto:complaints@grouply.co); or
  - ii Telephone: 1300 293 225.
- (c) The Company shall endeavour to respond to all support requests and complaints within 1 Business Day.

### 3.5 Privacy

- (a) The Company maintains the Privacy Policy in compliance with the provisions of the Privacy Act for data that it collects about the User and users.
- (b) The Privacy Policy does not apply to how Partners handles personal information. It is Partners' responsibility to meet the obligations of the Privacy Act by implementing their own privacy policies in accordance with law.
- (c) The Company makes no warranty as to the suitability of the Service in regards to the User's privacy obligations at law or contract, and it is the User's responsibility to determine whether the Service is appropriate for the User's circumstances.



- (d) The Service website may use cookies (a small tracking code in your browser) to improve a User's experience while browsing, while also sending browsing information back to the Company. The User may manage how it handles cookies in its own browser settings.
- (e) The Service website includes usage tracking analytics instrumentation from reputable external providers of usage analytics platforms.

### 3.6 Data

- (a) **Security.** The Company takes the security of the Service and the privacy of its Users very seriously. The User agrees that the User shall not do anything to prejudice the security or privacy of the Company's systems or the information on them.
- (b) **Transmission.** The Company shall do all things reasonable to ensure that the transmission of data occurs according to accepted industry standards. It is up to the User to ensure that any transmission standards meet the User's operating and legal requirements.
- (c) **Storage.** Data that is stored by the Company shall be stored according to accepted industry standards.
- (d) **Backup.** The Company shall perform backups of its entire systems in as reasonable manner at such times and intervals as is reasonable for its business purposes. The Company does not warrant that it is able to backup or recover specific Review Data from any period of time unless so stated in writing by the Company.

### 3.7 Intellectual Property

- (a) **Trademarks.** The Company has moral, unregistered and registered rights in its trade marks and the User shall not copy, alter, use or otherwise deal in the marks without the prior written consent of the Company.
- (b) **Proprietary Information.** The Company may use software and other proprietary systems and Intellectual Property for which the Company has appropriate authority to use, and the User agrees that such is protected by copyright, trademarks, patents, proprietary rights and other laws, both domestically and internationally. The User warrants that it shall not infringe on any third-party rights through the use of the Service.
- (c) **The Grouply Application.** The User agrees and accepts that the Service is the Intellectual Property of 4<sup>th</sup> Party Pty Ltd and licensed to the Company for the purposes of operating the Service. The User further warrants that by using the Service the User will not:
  - i Copy the Service or the services that it provides for the User's own commercial purposes;
  - ii Directly or indirectly copy, recreate, decompile, reverse engineer or otherwise obtain, modify or use any source or object code, architecture, algorithms contained in the Service or any documentation associated with it; and

- iii Directly or indirectly copy or scrape any content or information from the Service.
- (d) **Content.** All content (with the exception of personal or customer account information) remains the Intellectual Property of the Company, including (without limitation) any source code, analytics, insights, aggregations, ideas, enhancements, feature requests, suggestions or other information provided by the User or any other party with respect to the Service.

### 3.8 Disclaimer of Third Party Services & Information

- (a) The User acknowledges that the Service has dependencies on third-party services, including but not limited to:
  - i Energy Retailers and distributors;
  - ii Banks, credit card providers and/or Bpay;
  - iii Telecommunications services;
  - iv Hosting infrastructure services;
  - v Email services; and
  - vi Analytics services.
- (b) The User agrees that the Company shall not be responsible or liable in any way for:
  - i Interruptions to the availability of the Service due to third-party services;  
or
  - ii Information contained on any linked third party website.

### 3.9 Liability & Indemnity

- (a) The User agrees that it uses the Service at its own risk.
- (b) The User acknowledges that the Company is not responsible for the conduct or activities of any user and that the Company is not liable for such under any circumstances.
- (c) The User agrees to indemnify the Company for any loss, damage, cost or expense that the Company may suffer or incur as a result of or in connection with the User's use of or conduct in connection with the Service, including any breach by the User of these Terms.
- (d) In no circumstances will the Company be liable for any direct, incidental, consequential or indirect damages, personal injury, death, damage to property, loss of property, loss or corruption of data, loss of profits, goodwill, bargain or opportunity, loss of anticipated savings or any other similar or analogous loss resulting from the User's access to, or use of, or inability to use the Service, whether based on warranty, contract, tort, negligence, in equity or any other

legal theory, and whether or not the Company knew or should have known of the possibility of such damage, loss, personal injury or death, or business interruption of any type, whether in tort, contract or otherwise.

- (e) Certain rights and remedies may be available under the *Competition and Consumer Act 2010* (Cth) or similar legislation of other States or Territories and may not be permitted to be excluded, restricted or modified. Apart from those that cannot be excluded, the Company and the Company's related entities exclude all conditions and warranties that may be implied by law. To the extent permitted by law, the Company's liability for breach of any implied warranty or condition that cannot be excluded is restricted, at the Company's option to:
  - i The re-supply of services or payment of the cost of re-supply of services; or
  - ii The replacement or repair of goods or payment of the cost of replacement or repair.

### 3.10 Termination

- (a) A party may terminate this Agreement by giving the other party written notice.
- (b) Termination of this agreement is without prejudice to and does not affect the accrued rights or remedies of any of the parties arising in any way out of this agreement up to the date of expiry or termination, including the Company's right to Fees.
- (c) Termination does not affect any of the rights accrued by a party prior to termination, and the rights and obligations under clauses 3.7, 3.10 and 3.11 survive termination of this Agreement.

### 3.11 Dispute Resolution

- (a) If any dispute arises between the parties in connection with this Agreement (**Dispute**), then either party may notify the other of the Dispute with a notice (**Dispute Notice**) which:
  - i Includes or is accompanied by full and detailed particulars of the Dispute; and
  - ii Is delivered within 10 Business Days of the circumstances giving rise to the Dispute first occurring.
- (b) Within 10 Business Days after a Dispute Notice is given, a representative (with the authority to resolve the dispute) parties must meet (virtually or otherwise) and seek to resolve the Dispute.
- (c) Subject to clause (d), a party must not bring court proceedings in respect of any Dispute unless it first complies with the requirements of the dispute resolution mechanism outlined in this clause.
- (d) Nothing in this clause prevents either party from instituting court proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.

- (e) Despite the existence of a Dispute, the parties must continue to perform their respective obligations under this document and any related agreements.

### 3.12 **Electronic Communication, Amendment & Assignment**

- (a) The words in this clause that are defined in the *Electronic Transactions Act 1999 (Cth)* have the same meaning.
- (b) The User can direct notices, enquiries, complaints and so forth to the Company as set out in this Agreement. the Company will notify the User of a change of details from time-to-time.
- (c) The Company will send the User notices and other correspondence to the details that the User submits to the Company, or that the User notifies the Company of from time-to-time. It is the User's responsibility to update its contact details as they change.
- (d) A consent, notice or communication under this Agreement is effective if it is sent as an electronic communication unless required to be physically delivered under law.
- (e) Notices must be sent to the parties' most recent known contact details.
- (f) The User may not assign or otherwise create an interest in this Agreement.
- (g) The Company may assign or otherwise create an interest in its rights under this Agreement by giving written notice to the User.

### 3.13 **General**

- (a) **Special Conditions.** The parties may agree to any special conditions to this Agreement in writing.
- (b) **Prevalence.** To the extent this Agreement is in conflict with, or inconsistent with, the terms of any other Agreement between the Company and the User, or any special conditions made under this Agreement, as relevant, the terms of those other agreements or special conditions shall prevail.
- (c) **Disclaimer.** Each party acknowledges that it has not relied on any representation, warranty or statement made by any other party, other than as set out in this Agreement.
- (d) **Relationship.** The relationship of the parties to this Agreement does not form a joint venture or partnership.
- (e) **Waiver.** No clause of this Agreement will be deemed waived and no breach excused unless such waiver or consent is provided in writing.
- (f) **Further Assurances.** Each party must do anything necessary (including executing agreements and documents) to give full effect to this Agreement and the transaction facilitated by it.
- (g) **Governing Law.** This Agreement is governed by the laws of Victoria, Australia. Each of the parties hereby submits to the non-exclusive jurisdiction of courts with jurisdiction there.

- (h) **Severability.** Any clause of this Agreement, which is invalid or unenforceable, is ineffective to the extent of the invalidity or unenforceability without affecting the remaining clauses of this Agreement.
  
- (i) **Interpretation.** The following rules apply unless the context requires otherwise:
  - i Headings are only for convenience and do not affect interpretation.
  - ii The singular includes the plural and the opposite also applies.
  - iii If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
  - iv A reference to a clause refers to clauses in this Agreement.
  - v A reference to legislation is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it.
  - vi Mentioning anything after includes, including, or similar expressions, does not limit anything else that might be included.
  - vii A reference to a party to this Agreement or another agreement or document includes that party's successors and permitted substitutes and assigns (and, where applicable, the party's legal personal representatives).
  - viii A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
  - ix A reference to information is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.