

INTRODUCTION

Blue NRG is an energy retailer that sells electricity to businesses. Blue NRG offers Customers of Blue NRG commissions by way of credits toward their electricity account for referring new customers to Blue NRG on the terms of these Referral Program Terms and Conditions.

1 DEFINITIONS

1.1 The following definitions apply in this document:

- (a) **ABN** means Australian Business Number.
- (b) **Agreement** means these Referral Program Terms and Conditions.
- (c) **Blue NRG** means Blue NRG Pty Ltd, ABN 30 151 014 658.
- (d) **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.
- (e) **Commissions** means the commissions payable from Blue NRG to the Partner for Referred Customers set out in the Particulars of this Agreement.
- (f) **Commission Rate** means the rate of Commissions described within Blue NRG as updated by Blue NRG from time-to-time, or as otherwise agreed between Blue NRG and the Partner, which in default shall be \$150 including GST.
- (g) **Customer** means a registered customer of Blue NRG.
- (h) **Customer Terms** means any agreement between Blue NRG and a Customers for the provision of electricity including:
 - i Small Customer Terms and Conditions;
 - ii Customer Terms and Conditions; or
 - iii Standard Retail Terms and Conditions;
- (i) **GST** has the same meaning as in A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- (j) **Intellectual Property** means all copyright, patents, inventions, trade secrets, know-how, product formulations, designs, circuit layouts, databases, registered or unregistered trade marks, brand names, business names, domain names and other forms of intellectual property.
- (k) **Intellectual Property Rights** means, for the duration of the rights in any part of the world, any industrial or intellectual property rights, whether registrable or not, including in respect of Intellectual Property, applications for the registration of any Intellectual Property and any improvements, enhancements or modifications to any Intellectual Property registrations.
- (l) **Partner** means a Customer that qualifies for receiving Commissions on the terms of these Referral Program Terms and Conditions.
- (m) **Privacy Act** means the *Privacy Act 1988* (Cth);

- (n) **Privacy Policy** means Blue NRG's Privacy Policy accessible at <https://www.bluenrg.com.au/privacy-policy>.
- (o) **Prospect** means any potential Customer introduced to Blue NRG by the Partner.
- (p) **Referred Customers** means any Prospect introduced by the Partner that becomes a paying Customer of Blue NRG.
- (q) **Sales Materials** means sales and marketing material prepared by Blue NRG in respect of Blue NRG and approved by Blue NRG for use by Partner, as notified by Blue NRG to Partner from time to time.
- (r) **Special Conditions** means the provisions set out in, attached to or made by reference to this Agreement entitled "Special Conditions".
- (s) **Use of Materials Guidelines** means Blue NRG's guideline for the use by Partner of Sales Materials and Blue NRG's trade marks, branding and logos, as notified by Blue NRG to the Partner from time to time.

2 REFERRAL PROGRAM TERMS AND CONDITIONS

- 2.1 Blue NRG agrees to provide the Commissions to the Partner on the terms of this Agreement.
- 2.2 The Partner agrees and accepts the terms of these Referral Program Terms and Conditions.
- 2.3 Blue NRG may amend, replace or discontinue these Referral Program Terms and Conditions at any time at its sole discretion. Blue NRG shall notify the Partner of any changes or discontinuation of these Referral Program Terms and Conditions by providing 14 days written notice.

3 AUTHORISATION.

- 3.1 **Becoming a Partner.** A Customer must meet the following criteria in order to qualify as a Partner:
 - (a) Be a registered Customer of Blue NRG with an active account;
 - (b) Accept the terms of these Referral Program Terms and Conditions.
 - (c) Not be in breach of their Customer Terms, including all invoices being fully paid when due; and
 - (d) Comply with any additional requirements set by Blue NRG to be eligible for Commissions from time-to-time, including any registration process.
- 3.2 **Authorisation.**
 - (a) Blue NRG authorises the Partner to promote Blue NRG and refer Prospects to subscribe to Blue NRG on the terms set out in these Referral Program Terms and Conditions (**Authorisation**).
 - (b) Blue NRG agrees to pay the Partner the Commissions in return for any Prospects that become paying Customers of Blue NRG.

- (c) The Authorisation shall be on an ongoing basis until the earlier of:
 - i The Partner ceases being a Customer of Blue NRG;
 - ii The Partner's Blue NRG account is in debt;
 - iii The Partner is disqualified by Blue NRG from being a Partner;
 - iv The agreement between the Partner and Blue NRG under the Customer Terms is terminated; or
 - v The Authorisation is terminated in accordance with this Agreement.

3.3 Referral Process. The Partner must follow any referral process notified by Blue NRG from-time-to-time in order to be eligible for Commissions. Such referral process shall be additional to the following terms:

- (a) The Customer is responsible for ensuring it is authorised by each Prospect to provide the Prospect's contact details to Blue NRG;
- (b) Blue NRG shall be responsible for all sales of Blue NRG electricity accounts to a Prospect;
- (c) Blue NRG shall have a direct agreement with each Referred Customer for their purchase of electricity from Blue NRG in accordance with the Customer Terms;
- (d) The Referred Customer shall be directly liable to Blue NRG for all fees and charges payable to Blue NRG related to the purchase of electricity;
- (e) If the relationship between the Referred Customer and the Partner ceases for any reason (if they do so), it shall not affect the relationship between Blue NRG and the Referred Customer, nor the ongoing payment of the Commissions to the Partner for that Referred Customer; and
- (f) The Authorisation is non-exclusive.

4 RESPONSIBILITIES

4.1 Blue NRG Responsibilities. During the Term, Blue NRG shall (without limitation):

- (a) Promptly attend to any referral of a Prospect made by the Partner;
- (b) Handle all personal information in accordance with Blue NRG's Privacy Policy;
- (c) Notify the Partner each time a Prospect referred by the Customer becomes a Referred Customer, within 21 days of the end of each month; and
- (d) Pay the Partner the Commissions.

4.2 Partner Responsibilities. During the Term, the Partner shall (without limitation):

- (a) Refrain from making any representations on behalf of Blue NRG about Blue NRG, including pricing information, without the prior written approval of Blue NRG;
- (b) Deal with Prospects in a professional manner;

- (c) Not use any Sales Materials or Blue NRG's Intellectual Property otherwise than in accordance with this Agreement, Use of Materials Guidelines or any direction of Blue NRG;
- (d) At all times comply with the:
 - vi Customer Terms; and
 - vii Any Use of Materials Guidelines.

5 COMMISSIONS.

5.1 Commission.

- (a) Blue NRG agrees to credit the Partner's Blue NRG account the Commission Rate for each Referred Customer introduced by the Partner (**Commission**). For clarity, no Commissions are credited unless and until payment is received from the Referred Customer.
- (b) For each Referred Customer introduced by the Partner, a Commission shall be credited to the Partner's Blue NRG account in the month following the date that the Referred Customer pays their first invoice from Blue NRG.
- (c) The Rate of Commission shall be reviewed by Blue NRG from time-to-time, which if changed shall apply to all future Referred Customers without affecting existing Commissions on Referred Customers.

5.2 Calculation and Payment of Commission.

- (a) Commissions are credited within 30 days of the end of each calendar month to the Partner's Blue NRG account. Commissions cannot be exchanged for cash.

5.3 Reservations.

- (a) Commissions shall not be credited for any Prospect which already has a bona fide relationship with Blue NRG (whether as a prospect, customer or former customer).
- (b) Where this Agreement becomes terminable, or terminated, due to breach by the Partner then the Partner agrees that no further Commissions shall be payable to the Partner and Blue NRG shall be released from all of its obligations under this Agreement.

6 INTELLECTUAL PROPERTY

6.1 Other than any rights specifically granted to the Partner under this Agreement, Blue NRG and the Partner respectively reserve all of its Intellectual Property Rights.

6.2 Nothing in this Agreement shall grant or convey any interest in or transfer any of Blue NRG's Intellectual Property Rights in Blue NRG or Blue NRG's businesses as whole to the Partner.

7 PRIVACY

- 7.1** Blue NRG maintains the Privacy Policy in compliance with the provisions of the Privacy Act for data that it collects about the Partner, Prospects and other Referred Customers.
- 7.2** The Privacy Policy does not apply to how the Partner handles personal information. If necessary under the Privacy Act, it is the Partner's responsibility to meet the obligations of the Privacy Act by implementing a privacy policy in accordance with law.

8 TERMINATION

- 8.1** This Agreement shall be ongoing until validly terminated.
- 8.2** Blue NRG may terminate this Agreement:
- (a)** By providing the Partner with 14 days written notice to terminate for convenience; or
 - (b)** Immediately by providing the Partner with written notice if the Partner is in breach of this Agreement.
- 8.3** The Partner may withdraw from the Agreement, and terminate its participation in it, by providing Blue NRG with 14 days written notice.

9 INDEMNITY

- 9.1** The Partner agrees to indemnify Blue NRG for any loss, damage, cost or expense that Blue NRG may suffer or incur as a result of or in connection with the Partner's conduct in connection with the Referral Program Terms and Conditions, including any breach by the Partner of this Agreement.
- 9.2** This clause shall survive the expiry or early termination of this Agreement.

10 AMENDMENT AND ASSIGNMENT

- 10.1** The Partner may not assign or otherwise create an interest in its rights under this Agreement.
- 10.2** Blue NRG may assign or otherwise create an interest in its rights under this Agreement by giving the Partner written notice.

11 ELECTRONIC COMMUNICATION & NOTICES

- 11.1** The words in this clause that are defined in the *Electronic Transactions Act 1999 (Cth)* have the same meaning.
- 11.2** The parties acknowledge and agree that this Agreement is binding upon each party if executed digitally and conveyed by electronic communication.
- 11.3** 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.

11.4 Notices to the Partner must be sent to the contact details as notified and updated by the Partner from time-to-time, which in default shall be the contact details connected with their Blue NRG account.

11.5 Notices to Blue NRG must be sent to:

Blue NRG Pty Ltd

Suite 3, 109 Union Road

SURREY HILLS, VIC 3127

info@bluenrg.com.au

12 GENERAL

12.1 Special Conditions. The parties may agree to any Special Conditions to this Agreement in writing.

12.2 Prevalence. To the extent that the Special Conditions are inconsistent with this Agreement, the Special Conditions will prevail.

12.3 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.

12.4 Waiver. No clause of this Agreement will be deemed waived and no breach excused unless such waiver or consent is provided in writing.

12.5 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.

12.6 Governing Law. The laws of the state of Victoria, Australia govern this Agreement. Each of the parties hereby submits to the non-exclusive jurisdiction of the courts with jurisdiction there.

12.7 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.

12.8 Interpretation. Headings are only for convenience and do not affect interpretation. The following rules apply unless the context requires otherwise:

- (a) The singular includes the plural and the opposite also applies.
- (b) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (c) A reference to a clause refers to clauses in this Agreement.
- (d) A reference to legislation is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it.
- (e) Mentioning anything after *includes*, *including*, or similar expressions, does not limit anything else that might be included.

- (f) 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).
- (g) A reference to a *person, corporation, trust, partnership, unincorporated body* or other entity includes any of them.
- (h) 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.
- (i) A reference to *dollars* or \$ is to an amount in Australian currency.