

**Last Updated: April 2, 2021**

## **AGENT TERMS OF SERVICE**

This Agent Terms of Service (“**Agent TOS**”) is between the agent clicking and agreeing to this Agent TOS (“**Agent, “you” and “your**”) and NRG Kiosk LLC dba Power Kiosk (collectively, “**Power Kiosk, “we,” “our,” and “us**”) and governs your access to and/or use of Power Kiosk’s software-as-a-service platform that allows Agent to request pricing from electricity and natural gas suppliers (“**Suppliers**”) for residential and/or commercial customers with the intent to refer such residential and commercial customers to Supplier for the provision of electricity or natural gas, as the case may be, track and manage its relationships related thereto and request related reports (the “**Platform**”) and Power Kiosk’s website at <https://broker.powerkiosk.com> (“**Website**”). The Platform and Website shall collectively be referred to herein as the “**Services**”. You also agree to Power Kiosk’s Privacy Policy, located at <https://powerkiosk.com/privacy-policy/> (“**Privacy Policy**”) and consent to any personal information we may obtain about you being collected, stored and/or otherwise processed in accordance with the Privacy Policy and this Agent TOS.

By clicking the checkbox and agreeing to this Agent TOS and/or by accessing and/or using the Services, you acknowledge and agree that you have read, understand and agree to be bound by all of the terms and conditions of this Agent TOS, Privacy Policy as well as all other applicable rules or policies, terms and conditions and/or agreements that are and/or may be established by Power Kiosk from time to time and the foregoing shall be incorporated herein by reference. If you do not accept this Agent TOS, now or in the future, please stop your use of the Services immediately, in which case any continuing access and/or use of the Services is unauthorized.

### **1. Setting up an Account.**

Agent shall market and promote the Supplier’s services and request pricing on the Platform from Suppliers and use the Platform as described herein. You are required to establish an account on the Services. You agree to provide true, accurate and current information in connection with your account and you are responsible for updating and correcting information you have submitted to create and/or maintain your account. Any usernames and passwords used for the Services are for your use only and you are solely responsible for maintaining the security and confidentiality of the password you use to access your account. By registering for an account, you authorize Power Kiosk or our agents to obtain your credit report from one or more credit reporting agencies for any lawful purpose. Power Kiosk will assume that anyone using the Services and/or transacting through your account is you. You agree to immediately notify Power Kiosk of any unauthorized use of your password and/or account and/or any other breach of security. When using the Services, you are solely responsible for your use and for any acts and/or omissions occurring under your account. You may only create and hold one (1) account that you are solely responsible for managing and are prohibited from using other disguised identities when using the Services. We may refuse to grant you an account with a name that impersonates someone else, if it may be illegal, vulgar, offensive, and/or if it may be protected by trademark and/or other proprietary rights, as determined by Power Kiosk in its sole and absolute discretion. Your account is non-transferrable and may not be sold, combined and/or otherwise shared with any other person.

### **2. Plans.**

Power Kiosk offers the following subscription plans to access and/or use the Services: a business lite plan (“**Business Lite**”) and a business full plan (“**Business Full**”). Agent will elect either a Business Lite or Business Full when Agent signs up for an account on the Services. The term of the Business Lite or the Business Full, as the case may be, shall commence on the date you click and agree to this Agent TOS (“**Effective Date**”) and shall continue until either (a) you upgrade or downgrade your plan, as the case may be, or (b) you or Power Kiosk terminate your account in accordance with the terms and conditions set forth herein. If you upgrade or downgrade your plan, you will be prompted to review and agree to the then-current version of the Agent TOS and Privacy Policy and, as such, the Effective Date of the newly elected plan shall be deemed to be the date you elected to make such upgrade or downgrade and shall continue thereafter until you or Power Kiosk terminate your account in accordance with the terms and conditions set forth herein or you elect to upgrade or downgrade your plan again.

### **3. Subscription Fee, Commission & Payment Terms.**

#### **a. Subscription Fee & Payment Terms.**

**i.** In consideration of Power Kiosk providing the Services to Agent as described herein, Agent agrees to pay Power Kiosk a monthly subscription fee in the amount set forth on <https://powerkiosk.com> for the product(s) selected.

The applicable subscription fee shall be due and payable monthly in advance and as such the subscription fee for the initial month shall be due and payable on the Effective Date. If the Effective Date falls on a date other than the first of the calendar month, then the subscription fee for the initial month shall be prorated from the Effective Date through the last day of the calendar month. Thereafter, the monthly subscription fee shall be due and payable in advance on or before the first of the month. All fees are stated in United States Dollars and must be paid in United States Dollars. If Agent’s payment account on file is closed or the account information is changed, or if, for any reason, a charge is rejected by Agent’s payment account, Agent shall immediately update Agent’s payment account or supply a new payment account, as appropriate, and Agent shall be liable for any fees related thereto. If Agent is unable to update its payment account with appropriate information, then Power Kiosk will suspend access and/or use of the Services, without liability, until past due amounts are paid in full and a valid account is provided.

**ii.** Power Kiosk uses a third-party payment platform to process payments. Your credit card information or other payment method will be processed and stored by our third-party payment processor, ‘Stripe’. You expressly understand and agree that all payments and monetary transactions are handled by such third-party and the use of such platform is governed by the third-party’s terms and conditions and Power Kiosk shall have no liability related thereto.

**iii.** In the event Agent elects to pay the subscription fees due hereunder via ‘ACH’, Agent authorizes Power Kiosk to automatically charge the payment account for the subscription fees due and owing hereunder. Agent acknowledges and agrees that any account information provided is the Agent’s account information.

**iv.** The subscription fees are exclusive of taxes, which will be added at the prevailing rate from time to time. All subscription fees due and payable by you to Power Kiosk hereunder must be paid in full without any deduction, set-off, counterclaim or withholding of any kind unless required by law. Notwithstanding anything herein to the contrary, subscription fees are non-refundable.

v. In the event subscription fees are not paid to Power Kiosk by Agent in accordance with the terms and conditions set forth herein, Power Kiosk may immediately suspend access to and/or use of the Services, without liability, until all past due payments are made.

**b. Commission.**

**i. Commission Percentages.**

During the term of this Agent TOS, Agent shall be eligible to earn the commissions associated with their respective plan (Business Lite, Business Full, or other plan mutually agreed upon by the parties in writing), subject to the terms and conditions described herein. The commission percentages displayed on the Services at the time the Supplier's services are confirmed ("**Time of Confirmation**") shall be the prevailing commission percentage for the applicable confirmed Referred Customer. Your commission percentage can be viewed in the dashboard on the Platform, and such commissions are subject to adjustments as described herein. Business Full plan grants the Agent access into the Frequent Broker Program ("**FBP**") which is a benefit for Agents to receive more commission percentage based on (a) booked future Agent commissions that have yet to be Earned and (b) a Business Full subscription, in good standing, at the time of confirmation. Power Kiosk may modify or remove the FBP any time without liability.

**ii. Commission Calculations.**

Supplier shall pay Power Kiosk certain commissions in relation to the Referred Customer(s) through the applicable term of each respective agreement between the Referred Customer and Supplier ("**Supplier Commission**"). "**Referred Customer**" means the residential or commercial customer that enters into an agreement with the Supplier as a result of Agent obtaining Supplier pricing on the Services and providing it to such residential or commercial customer. The Supplier Commission is determined on a per Referred Customer basis and is displayed on the Platform at the Time of Confirmation.

Supplier Commission shall be calculated as follows:

*Actual usage for the Referred Customer <multiplied by> the margin percentage displayed on the Services at the Time of Confirmation*

The Agent's commission shall be calculated as follows:

*Supplier Commission <multiplied by> the applicable commission percentage of the Agent depending on the plan Agent elects or as otherwise displayed at the Time of Confirmation as described herein*

**iii. "Earned/Unearned" Commission Conditions.**

Notwithstanding anything herein to the contrary, commission shall be considered "Earned" only if each of the following conditions are met: (a) the Referred Customer has entered into the applicable agreements with the Supplier in a form acceptable to the Supplier as a result of Agent's quote request on the Services, (b) Supplier (or the applicable utility company) receives payment from such Referred Customer for the services

contracted for and in accordance with the terms and conditions of the agreement between Supplier and such Referred Customer, (c) Supplier pays Power Kiosk the applicable Supplier Commission amounts related to the Referred Customer and (d) Agent is not in breach of this Agent TOS. For the avoidance of doubt, payment of any Up Front Payments do not imply that the commission conditions have been met or commissions have been earned, unless the criteria set forth herein is met.

**iv. “Up Front Payment” and “Power Score.”**

**“Up Front Payment(s)”** are commission payments made by Power Kiosk to Agent in advance, from time to time, for the applicable Referred Customer and subject to clawbacks, reconciliation and other restrictions as described herein. In the event Power Kiosk agrees to an Up Front Payment to Agent for an applicable Referred Customer, Power Kiosk will remit the applicable portion of the Up Front Payment to the Agent based on Agent’s commission split and their unique Power Kiosk **“Power Score.”** An Agent’s Power Score factors in credit and risk factors, Agent tenure, customer drop rates, prior Up Front payments, anticipated unearned future payments, and other factors. Agent acknowledges and agrees that Up Front Payments are made in the discretion of Power Kiosk and Power Kiosk may modify or remove the right to receive Up Front Payment(s) at any time without liability.

**v. Payment Frequency.**

Power Kiosk shall pay Agent the Earned commission and any Up Front Payments for the applicable Referred Customer, if any, twice per calendar month. Power Kiosk shall calculate the Agent’s payments for Earned commission and Up Front Payments, if any, on or around the 1<sup>st</sup> and 15<sup>th</sup> of the month for the Referred Customer and then make payment to Agent within three (3) business days thereafter via ‘ACH’ or check.

**vi. Reconciliation of Commission and Clawback.**

Notwithstanding anything herein to the contrary, Power Kiosk reserves the right to deduct and clawback the amount of any commission or payments paid to Agent in the event that (a) a Referred Customer agreement is cancelled or terminated prior to its contract end date and any commission or Up Front Payment was paid in advance to the Agent, (b) when a commission or payment is paid based on the Referred Customer’s usage (estimated or actual usage) and the usage amount is adjusted, for any reason, resulting in overpayment of a commission and/or Up Front Payment, (c) Agent is in breach of this Agent TOS, in breach of any implied warranty of good faith and fair dealing, engages in misconduct, or engages in any potentially fraudulent activity, or (d) overpayment of a commission or Up Front Payment is made to Agent (for any reason). Each event described in (a)-(d) is termed an **“Event of Clawback”**. In an Event of Clawback concerning a specific Referred Customer agreement, Agent acknowledges and agrees that Power Kiosk will deduct and clawback amounts overpaid or owed from commissions or Up Front Payments owed to Agent hereunder and/or generated from the Agent’s other Referred Customer agreements. In the event that there is not a sufficient amount of monies to deduct or clawback from at the time Agent is notified of the overpayment by Power Kiosk, Agent agrees to promptly

reimburse Power Kiosk for the amount at issue. Agent acknowledges and agrees that (i) the pricing quote provided by the Supplier is estimated based on the Referred Customers' anticipated use, as solely determined by the Supplier, (ii) the actual fees incurred by the Referred Customer may vary if such Referred Customers' use is more or less than the anticipated use, and (iii) as a result of the foregoing, the amount of commissions that Agent earns may be subject to change and will be reconciled as described herein.

**vii. Compliance, Contract Verification and End of Term Policies.**

Power Kiosk conducts audits on all residential contracts, contracts that generate Early Termination Fees (“ETF”), and contracts above a certain financial threshold. Agent grants Power Kiosk the right to contact the potential customer to validate the details of its contract which includes, but is not limited to verifying signer's signature, authority, time of execution, and understanding of disclosures (such as ETF). Notwithstanding anything herein to the contrary, Agent acknowledges and agrees that Suppliers have different terms and conditions around paying commissions and Up Front Payments, if any, with respect to renewals, hold-over rates and extensions and the foregoing may impact the commission and Up Front Payments due and owing to Agent hereunder. Upon Agent's request, Power Kiosk will provide a copy of the applicable Supplier contract to Agent; provided that Power Kiosk will not be in breach of the terms and conditions of the agreement with such Supplier.

**4. Supplier Pricing.**

**a.** Agent may view or request Supplier pricing via the Services as follows:

**i. Matrix Pricing.** When Agent logs into its account on the Services, the Agent will have the ability to view a matrix listing of Supplier's pricing for electricity and natural gas. Such pricing is subject to change at any time in Supplier's sole and absolute discretion and without any liability.

**ii. Custom Pricing.** Agent may request custom pricing from Supplier(s) on the Services. Once the pricing is provided to the Agent, such pricing shall remain valid until 4:00pm (cst) on the same day it is provided to Agent, unless otherwise indicated by the Supplier. In the event the Agent has a letter of exclusivity from the potential customer, Agent shall provide such letter of exclusivity to Power Kiosk and the Supplier via the Platform.

**b.** During the use of the Services, Agent may provide potential customer information such as name, address and account information and in such event Agent represents and warrants that it has the necessary rights to provide such information to Power Kiosk and the Suppliers. Agent agrees to provide potential customers with the relevant tariffs, terms and conditions from the applicable Suppliers. Agent shall inform potential customers that (i) any contract entered into between the potential customer and the Supplier shall be subject to the Supplier's terms and conditions and (ii) customer is under no obligation to accept any offer made by a Supplier. Agent shall not, directly or indirectly, advise any Referred Customer or existing customer of Supplier to breach any agreement. Agent shall not make or give any promises, warranties, guarantees or representations, whether express or implied, concerning the Services, the supply of electricity and/or gas and/or Supplier's services. Unless otherwise agreed by the Supplier in writing, Agent shall not offer discounts or pledge the Supplier's credit or receive or collect money on the Supplier's behalf. If a potential customer enters into a new agreement with Supplier while on an

existing third party supplier plan, the Referred Customer may be liable for an ETF pursuant to its contract with such third party supplier when the change to Supplier takes place. Agent will inform potential customers of the ETF when requesting the potential customer's approval to enter into a new agreement with the Supplier. Under no circumstances will Power Kiosk be liable to any third party or Agent for any ETF a Referred Customer incurs as a result of terminating its pre-existing agreement.

c. Agent acknowledges and agrees that once Agent requests custom pricing from a Supplier via the Platform for a potential customer, Agent shall not contact Supplier directly outside of the Platform as it relates to providing services to such potential customer for a period of six (6) months following the date of the quote provided by the Supplier. For the avoidance of doubt, reviewing matrix pricing from our Services for a potential customer does not trigger this provision.

## **5. Right to Market & Promote, Use of the Services & Restrictions, License Grants & Ownership.**

a. **Right to Market & Promote.** Subject to Agent's compliance with the terms and conditions set forth herein, Power Kiosk hereby grants to Agent and Agent hereby accepts a non-exclusive, non-transferable, non-assignable right to market and promote the Platform and the services of Suppliers on the Platform to potential customers. Agent shall limit its descriptions to the marketing information provided by the Supplier and shall not state and/or imply Agent is a Supplier.

b. **Use of the Platform & Restrictions.** Subject to Agent's compliance with the terms and conditions set forth herein, Power Kiosk hereby grants to Agent the right to access and/or use the Services solely as it relates to obtaining information from Suppliers to provide to potential customers, track and manage its potential customers, Referred Customers, related contracts and any renewals thereof, and request certain reports made generally available via the Services. Power Kiosk grants you the rights set forth herein subject to the terms and conditions set forth herein, including without limitation, Agent shall not, directly or indirectly, without the express, prior written consent of Power Kiosk: (i) use or permit the use of, reproduce or otherwise duplicate, disclose, distribute, modify, encumber, time-share, license, sublicense, rent, lease, or transfer the Services or any portion thereof, or any of Power Kiosk's rights thereto; (ii) merge any Services or any portion thereof with any other program or materials; (iii) reverse engineer, decompile, disassemble, extract, or otherwise derive or attempt to derive the source code of any Services or any other compiled software provided or made available by Power Kiosk hereunder; (iv) adapt, translate, localize, port, or otherwise modify any Services or any other compiled software provided or made available by Power Kiosk hereunder; (v) remove, obliterate, or cancel from view any copyright, trademark, or other proprietary or confidentiality notice or legend appearing on or in any materials provided or made available by Power Kiosk hereunder, or fail to reproduce any such notice or legend on any copy made of any such materials; (vi) take any action that materially interrupts or interferes with, or that might reasonably have been expected to materially interrupt or interfere with, the Services, Power Kiosk's or Supplier's business operations; (vii) copy or imitate part or all of the design, layout, and/or look-and-feel of the Services and/or individual sections of it, in any form or media; (viii) access all or any part of the Services in order to build a product and/or service which competes with the Services or to create derivative works or

improvements to the Services; (ix) hinder or harm the trade or reputation or Power Kiosk or Supplier; (x) misrepresent Power Kiosk, Supplier, related contracts and/or anything related to the Services; (xi) engage in fraudulent activity and (xii) permit any other user, person or entity to engage in any of the foregoing conduct. In the event Agent breaches the foregoing, Agent acknowledges that a breach of this Section 5b and/or any other terms and conditions related to Power Kiosk's intellectual property may result in irreparable and continuing damage to Power Kiosk for which monetary damages may not be sufficient, and agrees that Power Kiosk will be entitled to seek, in addition to its other rights and remedies hereunder or at law, injunctive or all other equitable relief, and such further relief as may be proper from a court of competent jurisdiction. Agent shall not make any representations with respect to the Supplier, Power Kiosk and/or its Services that are inconsistent with the terms, marketing materials and/or other literature distributed by Power Kiosk and/or provided by the Supplier. Agent agrees not to circumvent, avoid, bypass, or obviate Power Kiosk, directly or indirectly, to avoid payments or fees, commissions, or any other form of compensation to Power Kiosk in any relevant transaction. The terms and conditions of this Section shall survive the expiration or termination of this Agent TOS.

**c. Power Kiosk Trademark.** Power Kiosk does not grant Agent any right or authorization to reproduce or use the Power Kiosk logo and/or trademarks (“**Trademarks**”). Agent shall never use the Power Kiosk Trademarks to solicit business or represent themselves as a Power Kiosk employee.

**d. Ownership.** Power Kiosk owns all right, title and interest in and to the Services, Trademarks and/or Materials and related developments, enhancements and revisions, trademarks, and all patents, copyrights and/or other proprietary rights therein and related thereto. Notwithstanding anything herein to the contrary, Power Kiosk may collect aggregated, anonymized data that cannot identify any person and that is derived from or created through the use of the Services in order to learn about its users generally and improve its product and Services and Power Kiosk shall own all right, title and interest therein and related thereto.

**e. Agent Information.** Agent is responsible for providing all Agent Information and is responsible for the accuracy, quality, integrity and legality of such Agent Information. “**Agent Information**” means any elements of text, graphics, images, photos, designs, artwork, logos, trademarks, service marks, data, information and other materials, content and potential customer and Referred Customer information which Agent provides to Power Kiosk via the Services or otherwise. During the term of this Agent TOS, Agent hereby grants Power Kiosk a worldwide, perpetual, non-exclusive right and license to reproduce, distribute, use, create derivative works and display the Agent Information as it relates to Agent's access to and/or use of the Services. Agent represents and warrants that Agent owns all Agent Information or that Agent has permission from the rightful owner to use each of the elements of Agent Information; and that Agent has all rights necessary for Power Kiosk to use the Agent Information in connection with the Services and will indemnify, defend and hold Power Kiosk harmless in the event Agent does not comply with the foregoing. Agent and its licensors retain title, all ownership rights, and all intellectual property, in and to the Agent Information and reserve all rights not expressly granted to Power Kiosk hereunder. Agent is responsible for taking appropriate steps to maintain security, protection and backup of

all Agent Information. Agent Information excludes any content available in the public domain; and any content owned or licensed by Power Kiosk, whether in connection with providing Services or otherwise.

## 6. Confidentiality.

**“Confidential Information”** includes any and all confidential and proprietary information relating to the party and, in the case of Power Kiosk, its business including without limitation its operational, legal, and business practices, financial, technical, commercial, marketing, competitive advantage or other information concerning the business and affairs, partnerships and potential partnerships, business model, fee structures, employees, funding opportunities, metrics, know-how, systems, procedures and techniques that has been or may hereafter be provided or shown to the other party, regardless of the form of the communication and the terms and conditions of this Agent TOS. The party disclosing Confidential Information shall be referred to herein as the **“Disclosing Party”** and the party receiving Confidential Information shall be referred to herein as the **“Receiving Party”**. The Receiving Party will keep the Confidential Information confidential, and may disclose the Confidential Information only to its officers, directors, employees, agents and subcontractors (and their employees) (**“Representatives”**) who have a need to know such Confidential Information solely in connection with this Agent TOS. The Receiving Party will cause such Representatives to comply with this Agent TOS and will assume full responsibility for any failure to comply with the terms of this Agent TOS. The Receiving Party will not transfer and/or disclose any Confidential Information to any third party without the Disclosing Party’s prior written permission and without such third party having a contractual obligation (consistent with this Article 6) to keep such Confidential Information confidential. The Receiving Party will not use any Confidential Information for any purpose other than to perform its obligations under this Agent TOS and/or in accordance with the terms and conditions set forth herein. Confidential Information does not include information that: (i) is obtained by the Receiving Party from the public domain without breach of this Agent TOS and independently of the Receiving Party’s knowledge of any Confidential Information; (ii) was lawfully and demonstrably in the possession of the Receiving Party prior to its receipt from Power Kiosk; (iii) is independently developed by the Receiving Party without use of or reference to Power Kiosk’s Confidential Information; or (iv) becomes known by the Receiving Party from a third party independently of the Receiving Party knowledge of the Confidential Information and is not subject to an obligation of confidentiality. If the Receiving Party is requested or required to disclose any of the Disclosing Party’s Confidential Information under a subpoena, court order, statute, law, rule, regulation or other similar requirement (a **“Legal Requirement”**), the Receiving Party will, if lawfully permitted to do so, provide prompt notice of such Legal Requirement to the Disclosing Party so that the Disclosing Party may seek an appropriate protective order or other appropriate remedy or waive compliance with the provisions of this Agent TOS. If the Disclosing Party is not successful in obtaining a protective order or other appropriate remedy and the Receiving Party is legally compelled to disclose such Confidential Information, or if the Disclosing Party waives compliance with the provisions of this Agent TOS in writing, the Receiving Party may disclose, without liability hereunder, such Confidential Information solely to the extent necessary to comply with the Legal Requirement. In the event that the Receiving Party learns or has reason to believe that Confidential Information has been disclosed or accessed by an unauthorized party, the Receiving Party will immediately give notice of such event to the Disclosing Party. Upon termination or expiration of this Agent TOS or upon the Disclosing Party’s

written request, the Receiving Party will return to the Disclosing Party all copies of Confidential Information already in the Receiving Party's possession or within its control. Alternatively, with the Disclosing Party's prior written consent, the Receiving Party may destroy such Confidential Information; provided that the Confidential Information is (a) destroyed in accordance with applicable law, rule or regulation and (b) is rendered unreadable, undecipherable and otherwise incapable of reconstruction, in which case the Receiving Party will certify in writing to the Disclosing Party that all such Confidential Information has been so destroyed. Each party acknowledges that a breach of this Agent TOS by the Receiving Party may result in irreparable and continuing damage to the Disclosing Party for which monetary damages may not be sufficient, and agrees that the Disclosing Party will be entitled to seek, in addition to its other rights and remedies hereunder or at law, injunctive or all other equitable relief, and such further relief as may be proper from a court of competent jurisdiction.

## **7. Termination.**

**a. Termination for Breach.** If a party materially breaches this Agent TOS (the “Defaulting Party”), and the Defaulting Party does not cure such breach within ten (10) business days after its receipt of written notice of material breach, the non-defaulting party may terminate this Agent TOS upon written notice to the Defaulting Party. Termination of this Agent TOS pursuant to this Section 7a will be without prejudice to any other rights and remedies that the non-defaulting party may have under this Agent TOS and/or at law and/or in equity.

**b. Termination for Convenience.** Either party may terminate this Agent TOS immediately upon written notice to the other party. Notwithstanding anything herein to the contrary, if you violate this Agent TOS or Privacy Policy, Power Kiosk may terminate your account immediately, without liability.

**c. Effect of Termination.** Upon termination of this Agent TOS pursuant to Section 7b, Agent will be entitled to all Earned commissions through the respective term of the agreement between the Supplier and any Referred Customer(s) and Power Kiosk shall continue to make any payments due and payable as described herein. Upon any termination of this Agent TOS, Agent will: (i) cease utilizing the Services; and (ii) immediately discontinue holding itself out as a marketer and promoter of the services of Supplier.

## **8. Third-Party Products & Supplier Affiliation.**

There may be third-party products, services and/or software (collectively “Third-Party Products”) integrated into the Services. Please be aware that Power Kiosk is not affiliated with Supplier, any Third-Party Products or the companies or providers that own or control Supplier or such Third-Party Products. Suppliers services and any Third-Party Products that are made available in connection with the Services do not constitute an endorsement or recommendation to use the Supplier's services and/or Third-Party Products. Supplier's services and Third-Party Products are not under the control of Power Kiosk and Power Kiosk shall have no ability to control the availability of or your access to the Supplier's services and any Third-Party Products. You agree to release Power Kiosk from any liability related to your relationship with the Supplier, Referred Customer, potential customers and your use of any Third-Party Products or any costs or charges related to such Third-Party Products. In order to use any Third-Party Products, you may be required to agree to such company's terms and conditions and/or privacy policy. Agent acknowledges and agrees that Power Kiosk utilizes third-party service providers to host and provide the Services and store Agent Information and the protection of such Agent Information

will be in accordance with such third party's safeguards for the protection and the security and confidentiality of Agent Information.

## **9. Linked Sites.**

The Services may provide links to various other independent third-party websites (“**Linked Sites**”) that may be of interest to you and for your convenience only. Power Kiosk does not control and/or endorse such Linked Sites and is not responsible for their content nor is it responsible for accuracy and/or reliability of any information, data, opinions, advice or statements contained within such Linked Sites. You will need to make your own independent judgment regarding your interaction with these Linked Sites at your own risk. We encourage you to be aware when you leave the Services and to read the terms and conditions and privacy policy of each Linked Site that you visit. Power Kiosk reserves the right to terminate any link and/or linking program at any time. Power Kiosk disclaims all warranties, express and implied, as to the accuracy, validity, and legality and/or otherwise of any materials or information contained on such Linked Sites.

## **10. Submissions.**

Power Kiosk and any of its employees do not accept or consider unsolicited ideas, including but not limited to ideas relating to processes, technologies, product enhancements, or product names. Please do not submit any unsolicited ideas, content, artwork, suggestions, or other works (“**Submissions**”) in any form to Power Kiosk. The sole purpose of this policy is to avoid potential misunderstandings or disputes when Power Kiosk's products might seem similar to ideas you submitted to Power Kiosk. If, despite our request not to, you do send us your ideas, you agree to the following (a) your Submissions and their contents will automatically become the property of Power Kiosk, without any compensation to you, (b) Power Kiosk may use or redistribute the Submissions and their contents for any purpose and in any way, (c) there is no obligation for Power Kiosk to review the Submission, and (d) there is no obligation to keep any Submissions confidential.

## **11. Warranties.**

**a. Warranties.** Power Kiosk warrants that Power Kiosk possesses full power and authority to enter into this Agent TOS and has the ability to grant the rights described herein. Agent represents, warrants and covenants that (i) Agent possesses full power and authority to enter into this Agent TOS, (ii) Agent is not breaching any obligations in entering into this Agent TOS, (iii) Agent is not a party to any litigation or any dispute with any Supplier that would preclude a potential customer from entering into an agreement with Supplier, (iv) Agent has the proper skill, training and background to perform the services described herein in a competent, lawful and professional manner; (v) Agent shall use due diligence in safeguarding the interests of Power Kiosk in accordance with this Agent TOS and any policies and procedures provided to Agent by Power Kiosk; and (vi) Agent will comply with all applicable laws, rules, regulations, orders of any governmental (including any regulatory or quasi-regulatory) agency, and will not violate or contravene the terms of any contracts between Agent and third parties.

**b. DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, POWER KIOSK MAKES NO WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH THIS AGENT TOS INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE SERVICES AND MATERIALS ARE PROVIDED BY POWER KIOSK ON AN “AS-IS” AND “AS

AVAILABLE” BASIS. POWER KIOSK DOES NOT REPRESENT, WARRANT, OR COVENANT THAT THE SERVICES AND MATERIALS PROVIDED BY POWER KIOSK IN CONNECTION WITH THIS AGENT TOS, ARE OR WILL NECESSARILY ALWAYS BE COMPLETELY ACCURATE, CURRENT, COMPLETE AND/OR CONTINUOUSLY AVAILABLE. POWER KIOSK DOES NOT REPRESENT, WARRANT, OR COVENANT THAT THE SERVICE AND MATERIALS WILL BE AVAILABLE WITHOUT INTERRUPTION OR TOTALLY ERROR-FREE, OR THAT ALL DEFECTS (INCLUDING, BUT NOT LIMITED TO, MINOR OR COSMETIC DEFECTS THAT DO NOT SIGNIFICANTLY AND ADVERSELY AFFECT FUNCTIONALITY OR FEATURES) WILL BE CORRECTED. POWER KIOSK IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES OR OTHER LOSS OR DAMAGE RESULTING FROM TRANSFER OF DATA OVER COMMUNICATION NETWORKS SUCH AS THE INTERNET AND/OR INABILITY TO ACCESS OR GET ACCURATE DATA FROM THIRD-PARTY SYSTEMS AND/OR APPLICATIONS THAT THE SERVICES ARE DEPENDENT ON.

## **12. Indemnification.**

Power Kiosk, at its expense, will indemnify, defend and hold harmless Agent from and against any and all claims, damages, liabilities, losses, costs, demands and expenses (including without limitation reasonable attorneys' fees and costs of litigation) (collectively, the “**Claim(s)**”) arising out of or relating to any gross negligence or willful misconduct of Power Kiosk relating to its activities in connection with this Agent TOS or any claim that the provision or utilization of any Services or any portion thereof constitutes an infringement, violation, trespass, contravention or breach of any patent, copyright, trademark, license or other property or proprietary right of any third party, or constitutes the unauthorized use or misappropriation of any trade secret of any third party. The foregoing indemnity related to intellectual property infringement shall not apply (i) to a Claim arising from any modification of the intellectual property by Agent or any other third party or from the use of the intellectual property in combination with any other items not provided by Power Kiosk, to the extent such modification or use in combination resulted in the Claim and/or (ii) if such Claim results from any breach of the Agent’s obligations under this Agent TOS, or the use of the intellectual property other than in connection with this Agent TOS, or in a manner not reasonably contemplated by this Agent TOS. Agent shall give notice to Power Kiosk of any Claim upon becoming aware of the same and may reasonably participate in the defense at its sole expense. Agent, at its expense, will indemnify, defend and hold harmless Power Kiosk, its officers, associates, employees, contractors and agents from and against any and all Claims arising out of or relating to (a) any gross negligence or willful misconduct of Agent and/or any of its Representatives relating to its activities in connection with this Agent TOS; (b) any misrepresentation by Agent related to Suppliers, Power Kiosk, the Services, business customers and/or residential customers; (c) Agent’s failure to comply with applicable laws, rules, regulations, orders of any governmental (including any regulatory or quasi-regulatory) agency or contracts; (d) Agent’s relationship with the business and/or residential customer; (e) Agent’s relationship with Supplier; (f) Agent Information; (g) any act or omission by Agent that impacts or jeopardizes Power Kiosk’s licenses and/or intellectual property and/or (h) any determination by a federal, state or local government or administrative agency, or other regulatory or quasi-regulatory entity, or any court, that Agent and/or any of its Representatives acted as an employee of Power Kiosk in performing its services (in which case Agent also waives any and all claims that Agent may have as a result of any such determination). Agent will be solely liable for any claims, warranties and/or

representations made by Agent and/or Agent's Representatives that differ from the warranties expressly provided by Power Kiosk. Power Kiosk shall give notice to the Agent of any Claim upon becoming aware of the same and may reasonably participate in the defense at its sole expense.

**13. Limitation of Liability.**

POWER KIOSK'S TOTAL AND CUMULATIVE LIABILITY FOR DIRECT DAMAGES ARISING OUT OF AND/OR IN CONNECTION WITH THIS AGENT TOS SHALL IN NO EVENT EXCEED THE COMMISSIONS PAID BY POWER KIOSK TO AGENT DURING THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF SUCH CLAIM. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGENT TOS, IN NO EVENT WILL POWER KIOSK BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL AND/OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS) EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. AGENT ACKNOWLEDGES AND AGREES THAT POWER KIOSK SHALL HAVE NO LIABILITY AS IT RELATES TO SUPPLIER AND/OR THE REFERRED CUSTOMER. BECAUSE SOME STATES DO NOT ALLOW THE EXCLUSION AND/OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, IN SUCH STATES, POWER KIOSK'S LIABILITY IS LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

**14. Independent Contractor.**

Nothing contained in this Agent TOS shall create or imply any agency relationship between the parties, nor shall this Agent TOS be deemed to constitute a joint venture or partnership between the parties. Neither party shall have authority to act for or on behalf of the other, except as expressly provided for in this Agent TOS. Agent has no authority, without the prior written consent of Power Kiosk, to bind Power Kiosk or the Supplier to any contract, representation, warranty, guarantee and/or understanding concerning Power Kiosk, the Supplier, the supply of energy or gas, or the Platform offered by Power Kiosk. It is further understood and agreed that the relationship of Agent with Power Kiosk is and shall continue to be that of an independent contractor and neither Agent nor any of Agent's employees shall be entitled to receive Power Kiosk employee benefits. As an independent contractor, Agent agrees to be responsible for the payment of all taxes and withholdings specified by law, which may be due in regard to payments made by Power Kiosk.

**15. Force Majeure.**

Notwithstanding any other provision of this Agent TOS, neither party is liable for any failure to perform, or delay in performing, any particular obligations under this Agent TOS where the failure or delay arises from any cause or causes beyond its reasonable control, including without limitation fire, flood, earthquake, elements of nature, acts of God, acts of war, terrorism, riots, civil disorders or rebellions ("**Force Majeure Event**"). In the event of a Force Majeure Event, the parties agree to meet and discuss how to resolve the issue.

**16. Arbitration, Governing Law and Choice of Forum.**

**ARBITRATION NOTICE: EXCEPT FOR CERTAIN TYPES OF DISPUTES DESCRIBED IN THIS ARBITRATION CLAUSE, YOU AGREE THAT DISPUTES BETWEEN YOU AND POWER KIOSK WILL BE RESOLVED BY MANDATORY BINDING ARBITRATION AND YOU WAIVE ANY RIGHT TO PARTICIPATE IN A**

**CLASS ACTION LAWSUIT AND/OR CLASS-WIDE ARBITRATION. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE PARTIES ARE WAIVING THEIR RIGHT TO A TRIAL BY JURY IN THE EVENT OF ARIBTRATION.**

Except for claims for injunctive or equitable relief or claims regarding Power Kiosk's intellectual property rights or Confidential Information (which may be brought in any competent court without the posting of a bond), any dispute, controversy or claim arising out of or relating to this Agent TOS will be settled in the following manner (i) the parties will meet to discuss and attempt to resolve the controversy or claim within thirty (30) days following the date the non-disputing party receives notice from the disputing party of such dispute; (ii) if the controversy or claim is not resolved as contemplated by subsection (i), the parties will settle the dispute by binding arbitration. The arbitration proceedings shall be conducted under the Commercial Arbitration Rules of the American Arbitration Association in effect at the time a demand for arbitration under the rules is made. The decision of the arbitrators, including determination of the amount of damages suffered, if any, shall be final and binding on all parties, their heirs, executors, administrators, successors and assigns and judgment with respect to such decision may be entered in any court of applicable jurisdiction. Each party shall bear its own expenses in arbitration, for attorneys' fees, and for fees with respect to its witnesses. Other arbitration costs, including arbitrators' fees and administrative fees, and fees for records or transcripts, shall be paid equally by the parties. This Agent TOS will be governed by, and construed in accordance with, the internal laws of the State of Illinois, without regard to its choice of laws principles. Any action related to or arising from this Agent TOS shall take place exclusively in the courts situated in Chicago, Illinois and the parties hereby submit to the venue of the courts situated therein. Notwithstanding anything herein to the contrary, in any arbitration, suit, action, or legal proceeding relating to this Agent TOS, the prevailing party shall have the right to recover from the other its costs and reasonable fees and expenses of attorneys, accountants, and other professionals incurred in connection therewith.

**17. Assignment.**

Agent may not assign, as a result of a change of control or by operation of law or otherwise, its rights and/or obligations under this Agent TOS without the prior written consent of Power Kiosk. This Agent TOS will be binding upon the parties and their respective legal successors and permitted assigns.

**18. Notices.**

All notices and other communications given or made pursuant to this Agent TOS must be in writing, sent to the persons designated herein or to such other persons and addresses as the parties may designate from time to time and will be deemed to have been given upon the earlier of actual receipt or: (a) personal delivery to the party to be notified, (b) when sent, if sent by facsimile or electronic mail during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient's next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) business day after deposit with a nationally recognized overnight courier, freight prepaid, specifying next business day delivery, with written verification of receipt.

**19. DMCA Copyright Policy and Copyright Agreement.**

Power Kiosk respects the intellectual property rights of others and expects you to do the same. We reserve the right to block access to and/or remove material that we believe in good faith to be copyrighted material that has been illegally distributed by you and/or other third parties and remove and discontinue service to repeat offenders. We will respond to clear notices of copyright infringement when you provide the following:

- a. a physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- b. identification of the copyrighted work claimed to have been infringed;
- c. identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled;
- d. information sufficient to permit Power Kiosk to contact you, such as your physical address, telephone number, and, if available, an electronic mail address;
- e. a statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
- f. a statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Contact information for Power Kiosk DMCA Agent for notice of claims of copyright infringement is: Power Kiosk, Attn: Copyright Agent, Power Kiosk Client Partners Group, 351 W Hubbard, Suite 502, Chicago, Illinois 60654 or email us at [support@powerkiosk.com](mailto:support@powerkiosk.com).

The Copyright Agent will not remove content from the Services in response to phone or email notifications regarding allegedly infringing content, since a valid DMCA notice must be signed, under penalty of perjury, by the copyright owner or by a person authorized to act on his or her behalf. Please submit such notifications by fax or ordinary mail only and as further described by this Section. The Copyright Agent should be contacted only if you believe that your work has been used or copied in a way that constitutes copyright infringement and that such infringement is occurring on the Services linked to and/or from the Services. We will not respond to any other inquiries directed to the Copyright Agent except as described herein.

## **20. Changes to this Agent TOS.**

Subject to the terms and conditions set forth herein, Power Kiosk may, at any time, for any reason, in its sole discretion make changes to the Services, plans, pricing and/or modify this Agent TOS. You agree to review this Agent TOS and Privacy Policy on a regular basis to ensure you are aware of any changes to the Agent TOS or Privacy Policy. If Power Kiosk makes changes and/or modifications that affect your access to and/or use of the Services, Power Kiosk will provide a notice of such changes by posting the updated terms and conditions on the page and changing the “last updated” date listed above. We may also provide you with additional forms of notice of modifications and/or updates as appropriate under the circumstances. If you do not agree with the changes and/or modifications to this Agent TOS, you shall not use the Services after the effective

date of the changes. Please revisit this Agent TOS regularly to ensure that you stay informed of any changes.

**21. Eligibility.**

To access and/or use the Services, you must be eighteen (18) years or older and have the requisite power and authority to enter into this Agent TOS and meet any other applicable age and residency requirements. The Services are not intended for and should not be used by anyone under the age of thirteen (13) unless Power Kiosk receives legal parental or guardian consent. Otherwise, you represent and warrant that you are over the age of eighteen (18) and are the intended recipient of the Services. You may not access and/or use the Services for any purpose if either of the representations in the preceding sentence are not true.

**22. California Users.**

Pursuant to California Civil Code Section 1789.3, any questions about pricing, complaints, or inquiries about Power Kiosk must be sent to our agent for notice to support@powerkiosk.com.

California users are also entitled to the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1625 North Market Blvd., Sacramento, CA 95834, or by telephone at (916) 445-1254 or (800) 952-5210.

**23. Consent to Notices.**

By using the Services, you agree to receive certain communications in connection with the Services. When you access and/or use the Services, you are communicating with Power Kiosk electronically, and you consent to receive communications from Power Kiosk electronically including but not limited to notices related to the Services provided to you via email. You agree that all agreements, notices, disclosures and/or other communications that Power Kiosk provides to you electronically satisfy any legal requirement that such communications be in writing. Your consent to receive records and notices electronically will remain in effect until you withdraw it. You may withdraw your consent to receive further records and notices electronically at any time by contacting Power Kiosk. If you withdraw your consent to receive such records and notices electronically, Power Kiosk will revoke your access to the Services. Any withdrawal of your consent to receive records and notices electronically will be effective only after Power Kiosk has a reasonable period of time to process your request for withdrawal.

**24. General.**

If you agree to this Agent TOS on behalf of an entity, or in connection with providing and/or receiving services on behalf of an entity, you represent and warrant that you have authority to bind such entity or agency to this Agent TOS. In such event, “you” and “your” as used herein will refer and apply to each entity or agency. The headings and titles of the paragraphs of this Agent TOS are not part of this Agent TOS, but are for convenience only and are not intended to define, limit or construe the contents of the provisions contained herein. No waiver of any of the terms of this Agent TOS will be valid unless in writing and designated as such. Any forbearance and/or delay on the part of either party in enforcing any of its rights under this Agent TOS will not be construed as a waiver of such right to enforce same for such occurrence or any other occurrence. If any one or more of the provisions of this Agent TOS are for any reason held to be invalid, illegal and/or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agent

TOS will be unimpaired and will remain in full force and effect. Any right or obligation of the parties in this Agent TOS which, by its express terms or nature and context is intended to survive termination of this Agent TOS, will survive any such termination. This Agent TOS and the Privacy Policy constitutes the complete agreement and understanding between the parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings between the parties.

**Contact us:** If you would like to request additional information regarding this Agent TOS, please contact us at [support@powerkiosk.com](mailto:support@powerkiosk.com).