

This Agreement is made

BETWEEN:

1. **Energylinx Limited** whose registered office is **the e-Centre, Cooperage Way Business Village, Alloa, Clackmannanshire, FK10 3LP** and Company Number is **SC244794** (“Energylinx”)

AND

2. Click here to enter text. whose registered office is Click here to enter text. and Company Number is Click here to enter text.(the “Affiliate”)

hereafter referred to as the “Party” or “Parties”

RECITALS:

- (A) Energylinx has entered into agreement with Energy Suppliers to provide Broker Services in return for a Commission Payment.
- (B) Energylinx has developed and operates various online portals where Customers can enter information and compare current Energy Prices from Energy Suppliers in the UK.
- (C) The Affiliate has a Customer base and wishes to offer their Customers access to an independent energy comparison service in return for a share of the Commission Payment received by Energylinx (the “Affiliate Commission”).
- (D) Energylinx is willing to offer the Affiliate a White Label Website that will allow the Affiliate to offer an online energy comparison that can be used for switching domestic energy Customers; the charge to create this will depend on the platform type selected.
- (E) For every Successful Transfer via the White Label Website, as a direct result of Affiliate activities, Energylinx will pay to the Affiliate the Affiliate Commission.

IT IS AGREED AS FOLLOWS:

1.0 DEFINITIONS AND INTERPRETATIONS

1.1 In this Agreement, except where the context otherwise requires, the following expressions shall have the following meanings:-

“Affiliate Commission” means the amount of money paid by Energylinx to the Affiliate for each Successful Transfer:

	Dual Transfer (GBP)	Single Transfer (GBP)
Online Transaction	Click here to enter text.	Click here to enter text.
Offline Transaction	Click here to enter text.	Click here to enter text.

Where a Dual Transfer is where there Customer changes both their electricity and gas; and a Single Transfer is where the change either their Electricity or Gas.

“Agreement” means these terms and conditions and any Schedules hereto.

“Business Day”	means a day other than a Saturday or Sunday or any day on which the major clearing banks are not open for business.
“Commission Payment”	means the amount of money paid by the Energy Supplier to Energylinx following the Customer successfully entering into an Energy Supply Agreement with the Energy Supplier.
“Customer”	means any party who enters into an Energy Supply Agreement with an Energy Supplier as a direct result of marketing activity by the Affiliate.
“Data Protection Legislation”	means the Data Protection Act 1998 and any and all other applicable data protection legislation including but not limited to the Telecommunications (Data Protection and Privacy) Regulations 1998, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as amended by the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011), the EU Data Protection Directive, the Regulation of Investigatory Powers Act 2000, the Data Protection (Processing of Sensitive Personal Data) Order 2000, Directive 2009/136/EC and all other industry guidelines (whether statutory or non-statutory) or codes of practice issued by the office of the Information Commissioner relating to the processing of personal data or privacy and/or any amendments thereto and re-enactments thereof and any subordinate rules, regulations or legislation made there under.
“Dispute”	means any dispute between the Parties arising in connection with the interpretation or application of any of the provisions of this Agreement.
“Energy Prices”	mean tariff prices to be compared within the White Label Website and as provided to Energylinx by the Energy Supplier.
“Electricity Services”	means the supply of electricity to a customer pursuant to a contract by an Energy Supplier.
“Energy Supplier”	means the licensed energy company who will be responsible for entering into an Energy Supply Agreement with the Customer.
“Energy Supply Agreement”	means a contract facilitated by Energylinx by virtue of this Agreement between an Energy Supplier and a Customer for the supply of Electricity Services and/or Gas Services (which includes the terms and conditions of supply).
“Erroneous Transfer”	means either an event where an Energy Supplier has advised that an Erroneous Transfer has occurred. A deduction of GBP250 per fuel is deducted for each Erroneous Transfer
“Gas Services”	means the supply of gas to a Customer pursuant to the Energy Supply Agreement entered into by the Energy Supplier.

“Intellectual Property Rights”	means the letters patent, trade-marks, service marks, designs, copyrights, utility models, design rights, applications for registration of any of the foregoing and the right to apply for them in any part of the world, drawings, computer programs, know-how and rights of like nature arising or subsisting anywhere in the world in relation to all of the foregoing whether registered or unregistered.
“Landing Page”	means the unique URL assigned to the Affiliate by Energylinx and used for the purposes of comparing Energy Prices for Customers.
“Management Information”	means the information to be provided by Energylinx to the Affiliate with respect to Successful Transfers progressed as a result of the Affiliate’s activities, as detailed in Schedule 3.
“Marketing Policy”	means the policy as defined in Schedule 2.
“Services”	means the provision of access to the White Label Website in accordance with the provisions of this Agreement.
“Service Level Agreement”	means the platform performance and support services provided by Energylinx in order to obtain and maintain an agreed level of platform availability as detailed in Schedule 1.
“Successful Transfer”	means the transfer of a Customer’s Electricity Services or Gas Services to an Energy Supplier, or where an Energy Supplier has retained the Customer’s Electricity Services or Gas Services as a direct result of the Affiliates marketing activities.
“URL”	means a Uniform Resource Locator which is a specifically formatted string of text used by web browsers to create a web address.
“White Label Website”	means the domestic comparison and switching service platform provided to the Affiliate that allows The Affiliate to offer an energy comparison and switching service to their customers. The White Label Website allows customers complete the entire switching process online (Online Transaction) and, if requested by the Affiliate a telephone number can be provided which would be answered on behalf of the Affiliate with a dedicated IVR specific to the Affiliate (Offline Transaction).

- 1.2 Statutory provision includes a reference to the statutory provision as modified and/or re-enacted from time to time and any subordinate legislation made under the statutory provision (as so modified and/or re-enacted)
- 1.3 Reference to any Party includes a reference to its affiliates, permitted successors and assigns in such capacity;
- 1.4 References to **“Clauses”**, **“Schedules”** or **“Recitals”** are to such subdivisions contained in this Agreement;

- 1.5 Reference to any agreement or document (including this Agreement) shall be construed as a reference to such agreement or document as amended, modified or supplemented and in effect from time to time and shall include a reference to any agreement or document which amends, modifies or supplements it, or is entered into, made or given pursuant to or in accordance with its terms;
- 1.6 Headings in this Agreement are for ease of reference only and do not affect its interpretation.

2.0 TERM

- 2.1 This Agreement shall commence on the date of signature by Energylinx and shall continue for 12 calendar months unless terminated early by either Party in accordance with clause 9 (the "Initial Term").
- 2.2 If neither party gives notice to terminate this Agreement 1 month prior to the end of the Initial Term then the Agreement shall remain in full force and effect until a notice of termination is served by either party in accordance with clause 9 (the "Term").
- 2.3 The termination of this Agreement shall be without prejudice to the rights that have accrued to either Party at the date of termination in connection with this Agreement and each Party shall be and remain liable to perform all outstanding liabilities under this Agreement notwithstanding that the other may have exercised one or more of the rights and remedies against it.

3.0 SERVICES

- 3.1 Energylinx shall provide the Affiliate with a White Label Website.
- 3.2 The White Label Website will allow customers to enter details of their current energy arrangements, carry a fully impartial comparison, select a suitable tariff and arrange a transfer
- 3.3 Energylinx shall use reasonable endeavours to ensure that all Energy Supplier prices within the White Label Website are current, and if not current then such prices either be either removed from the White Label Website or to be updated within 12 hours of such notice being given to Energylinx either by the Energy Supplier.
- 3.4 Energylinx shall provide the White Label Website support services as further defined in the Service Level Agreement as detailed in Schedule 1.

4.0 AFFILIATE OBLIGATIONS

- 4.1 The Affiliate shall comply with the Marketing Policy ad detailed in Schedule 2.
- 4.2 The Affiliate shall work exclusively with Energylinx to provide energy comparison services to Customers and shall not work with any other party providing energy comparison services during the Initial Term or Term of this Agreement.
- 4.3 The Affiliate shall comply with the Terms of Use, Privacy Policy and Cookie Policy as defined within the White Label Website. Failure to do so will result in immediate termination of this Agreement.

5.0 ENERGYLIX OBLIGATIONS

- 5.1 Energylix shall provide the White Label Website to the Affiliate within 1 month following signature of this Agreement, subject to the Affiliate providing information as requested from Energylix.
- 5.2 Energylix shall pay the Affiliate the Affiliate Commission for each Successful Transfer.
- 5.3 Energylix shall maintain the White Label Website and shall provide Management Information and support services as further detailed in the Service Level Agreement.

6.0 PAYMENTS

- 6.1 The Affiliate shall enter into a self-billing agreement with Energylix and Energylix shall pay to the Affiliate the Affiliate Commission by BACs transfer on the last Business Day on the month following receipt of cleared funds.
- 6.2 Energylix shall have no obligation to make a payment or payments to the Affiliate for any Commission Payment not received from the Energy Supplier and this includes any disputed amounts.
- 6.3 If a Party is paid in error for any reason whatsoever then that Party shall as soon as reasonably practical, and no later than 5 Business Days upon receipt of a request for repayment, repay the amount due to the other Party.
- 6.4 In the event that the Energy Supplier requests a repayment of the Commission Payment for any reason, or part thereof, then Energylix shall have the right to withhold and or off-set this amount against future Affiliate Commission payments; where no Affiliate Commission payments are due then Energylix shall invoice the Affiliate the fully payment as deemed due by the Energy Supplier. For the avoidance of doubt the Affiliate shall hold Energylix harmless against any claim by the Energy Supplier for any error in payment of the Commission Payment.
- 6.5 All sums payable under this Agreement are exclusive of VAT or any other applicable sales tax which shall be added to the sum in question or otherwise included in any relevant calculation.
- 6.6 On termination of this Agreement, any sums remaining unpaid by the Affiliate to Energylix then Energylix shall be entitled to recover such sums as a debt.
- 6.7 After termination of this Agreement Energylix shall have no obligation whatsoever to pay the Affiliate Commission for any Successful Transfers.

7.0 INTELLECTUAL PROPERTY RIGHTS

- 7.1 The Affiliate acknowledges that all Intellectual Property Rights relating to the Service Portal belong to Energylix and its successors, and the Affiliate shall not register or seek to register, acquire or claim any title to such rights under or by virtue of this Agreement.
- 7.2 Each Party undertakes that it will not, without the prior written consent of the other, use the other's trade-marks, domain names (or any variants of either of them) or other Intellectual Property Rights.

8.0 WARRANTIES AND INDEMNITIES

- 8.1 The Affiliate warrants and undertakes that:
- 8.1.1 their business will at all times comply with all applicable UK laws and regulations;
 - 8.1.2 its content within the Affiliates website will at all times comply with all applicable UK laws and regulations;
 - 8.1.3 it has full capacity and authority to enter into this Agreement.
- 8.2 Energylinx warrants and undertakes that:
- 8.2.1 the White Label Website will at all times comply with all applicable UK laws and regulations;
 - 8.2.2 it shall obtain and maintain all necessary licences, equipment and networks, software, hardware and other facilities necessary to provide the White Label Website; and
 - 8.2.3 it has full capacity and authority to enter into this Agreement.
- 8.3 The Affiliate agrees to indemnify and keep indemnified Energylinx against any direct loss, damage, fine, penalty, cost or expense (including reasonable legal fees and expenses to be assessed on the standard basis if not agreed) suffered or incurred as a result of any claims by any third party which arises out of:
- 8.3.1 a breach by the Affiliate of any of its warranties contained in this Agreement;
 - 8.3.2 an alleged infringement of a third party's Intellectual Property Rights.
- 8.4 Nothing in this clause 8 shall be construed to exclude the liability of either Party to the other for death or personal injury or breach of intellectual property rights caused by its negligence or fraudulent misrepresentation.
- 8.5 Neither party shall be liable to the other Party for any indirect or consequential loss or damage (including but not limited to loss of profit, anticipated savings and wasted expenditure) arising out of or in connection with this Agreement.

9.0 TERMINATION

- 9.1 The rights and obligations under this Agreement shall commence on the date of signature of this Agreement by Energylinx and shall continue until terminated:
- 9.1.1 For any reason during the Initial Period subject to 1 months' written notice of termination by either Party;
 - 9.1.2 After the expiry of the Initial Term, either Party may terminate this Agreement subject to three (3) month's written notice of termination of the Agreement given by either Party.
 - 9.1.3 With immediate effect where a Party breaching in any material respect of any of the provisions of this Agreement, provided, however, that where such breach is capable of remedy, only if the defaulting Party has failed to remedy such breach within five (5) Business Days of receipt of written notice thereof from the other Party; and
 - 9.1.4 With immediate effect where either Party is unable to pay its debts as they fall due or its liabilities exceed its assets so as to trigger an event of insolvency, receivership or administration, or sufficient owners or creditors entitled to do so decide, or a court decides, to place it in liquidation, or it declares a moratorium on or in respect of its indebtedness or any part thereof or makes any similar arrangement with or any assignment for the benefit of any class of its creditors or a receiver, trustee or similar person is appointed over all or a substantial part of its assets, or, under the laws of any applicable jurisdiction, any event analogous to any of the events described above occurs.

9.2 Notwithstanding the termination rights set out in clause 9.1 above, the Affiliate may terminate this Agreement forthwith:

9.2.1 if there has been an under payment or non-payment of the Affiliate Commission and such under payment or non-payment has not been remedied within 30 days from the date of notification as defined within the Dispute Resolution in clause 17.0.

9.3 Upon termination of the Agreement each Party shall promptly execute and deliver such documents and agreements as the other Party may reasonably request in order to give effect to the termination contemplated by this clause 9.0.

9.4 Termination of this Agreement shall not affect the rights and liabilities of the Parties that have accrued prior to and at the date of termination, and should terminate be as a result of clause 9.1.4 then:

9.4.1 Monies due and unpaid subject to clause 6.0 shall be withheld by Energylinx for a period of 12 months ,

9.4.2 Monies due and unpaid subject to clause 6.0 shall incur an automatic deduction of 20% in favour of Energylinx to cover any additional costs incurred by Energylinx as a result of termination.

9.5 The obligations of each Party under or contemplated by clause 6.0, clause 8.0, clause 9.0, clause 10.0, clause 11.0 and clause 16.0 of this Agreement shall remain in force notwithstanding termination of this Agreement.

10.0 CONFIDENTIALITY

10.1 Each Party undertakes to use all Confidential Information which is obtained in connection with this Agreement, or with the negotiations leading up to it, solely for the purposes of performing this Agreement, to treat them confidentially and to make them available or disclose them to third parties only as far as it is necessary for the performance of this Agreement. Further, each party undertakes not to disclose to any person, without the previous written consent of the other party, the existence of any term of this Agreement, or the existence or any information about any dispute or disagreement between the parties.

10.2 The obligations of confidentiality in this clause will not extend to information acquired by the party receiving confidential information which it can show:

10.2.1 At the time of its acquisitions was in, or at a later date has come into, the public domain, other than following a breach of this clause 10;

10.2.2 It knew prior to first disclosure to it by the other party; or It received independently from a third party with the full right to disclose.

11.0 DATA PROTECTION

11.1 Each Party shall comply with all the requirements of the Data Protection Legislation in connection with its obligations as data controller or data processor pursuant to this Agreement. The terms "data controller", "data processor", "data subject" and "personal data", when used in this clause 11, have the meanings ascribed to them in the Data Protection Legislation. Each Party undertakes to the other to co-operate in the making of all necessary registration applications under the Data Protection Legislation where it is a data controller in connection with Customer Personal Data and, on request, to provide a copy of its registration under the Data Protection Legislation to the other.

11.2 Where either Party is to process personal data under this Agreement on behalf of the other Party, the other Party being a data controller (as defined in the Data Protection Legislation) in respect of that personal data, then the processing Party shall:

- 11.2.1 procure that appropriate technical and organisational measures are taken against unauthorised or unlawful processing of such personal data and against accidental loss or destruction of, or damage to, such personal data, taking into account the nature of the personal data;
- 11.2.2 in relation to such personal data, act only as authorised and instructed by the other Party;
- 11.2.3 ensure that all personal data shall be collected, processed and used fairly and lawfully and in accordance with Data Protection Legislation;
- 11.2.4 operate adequate security procedures, processes and systems to ensure that unauthorised persons do not have access to any equipment used to process personal data or to the personal data itself;
- 11.2.5 ensure that any and all use of personal data for marketing purposes shall comply with Data Protection Legislation;
- 11.2.6 render such assistance as the other Party may reasonably require to assist it with all subject information requests, which may be received as a result of the processing Party's processing of personal data; and
- 11.2.7 ensure that its employees, workers and sub-contractors shall comply with the provisions of this clause 11 as if they were a Party to this Agreement.

11.3 Energylix undertakes that it shall use Customer Personal Data that is in its possession as result of this Agreement (or otherwise) for the purpose of complying with its obligations under this Agreement.

12.0 NON COMPETE

12.1 During the Initial Term or Term of this Agreement the Affiliate agrees not to knowingly compete with Energylix in terms of seeking to work with parties offering similar Services.

13.0 FORCE MAJEURE

13.1 For the purpose of this clause 13.0 a "Force Majeure Event" means any circumstances or event not reasonably foreseeable at the date of this Agreement and not within the reasonable control of the party in question including, without prejudice to the generality of the foregoing, strikes, lockouts, shortages of labour or raw material, computer virus, civil commotion, riot, invasion, war, threat of or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural physical disaster.

13.2 If and to the extent that either party is prevented or delayed by the Force Majeure Event from performing any of its obligations under this Agreement and promptly so notifies the other party, specifying the matters constituting the Force Majeure and specifying the period for which it is estimated that the prevention or delay will continue, then the party so affected shall be relieved of liability to the other for failure to perform or for delay in performing such obligations (as the case may be), but shall nevertheless use its best endeavours to resume full performance thereof, provided that if the Force Majeure Event continues for a period of one month or more following notification, the party not affected by the Force Majeure Event may terminate this Agreement by giving not less than 30 days prior written notice to the other Party, but the notice of termination shall be of no effect if the Party affected by the Force Majeure Event resumes full performance of its obligations before the expiry of the notice period.

14.0 ASSIGNMENT

14.1 This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns. The Affiliate shall not assign or otherwise transfer any of its rights or obligations under this Agreement to a third party without the prior written consent of Energylinx (such consent shall not be unreasonably withheld or delayed), Energylinx shall be free to assign or transfer any of its rights or obligations under this Agreement to a third party without any approval being required from the Affiliate.

14.2 Both Parties may assign, novate or transfer its rights and obligations under this Agreement to any other member of their respective group companies of equal or better financial standing or any other party named in this Agreement without the consent of the other Party.

14.3 Any prohibited assignment which breaches this clause 13.0 shall be null and void.

15.0 NOTICES

15.1 Any notice required to be given by either Party to the other shall be in writing and shall be served by either sending to the same by pre-paid first class post (airmail in the case an address for service outside the UK) or by delivering the same by hand to the addressee at their registration address (or such other address as the Party to be served may have notified as its address for service) or by electronic media given that proof can be obtained that the party receiving noticed received and then opened the notice delivered.

15.2 Any notice served in accordance with clause 15.1 above shall be deemed to have been served when delivered by hand at the time of delivery and when sent through the post 48 hours after the time of despatch and when sent by electronic media when there has been a receipt confirming delivery including the day and time. In proving the service of any notice it shall be sufficient to prove, in the case of a letter, that the letter was properly delivered or stamped, addressed and placed in the post and in the case of electronic media a receipt notice confirming that the receiving party received and opened the notice.

16.0 APPLICABLE LAW

16.1 This Agreement is governed by, and shall be construed in accordance with and interpreted according to, the laws of Scotland. The Parties agree that the courts of Scotland shall have exclusive jurisdiction in relation to any Dispute.

16.2 If a Dispute arises then, except as expressly provided in this Agreement, the Parties shall follow the dispute resolution procedure as follows:

16.2.1 Either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("Dispute Notice"), together with relevant supporting documentation. On service of the Dispute Notice, the Affiliate's Managing Director (or nominee) and Energylinx's Managing Director (or nominee) shall attempt in good faith to resolve the Dispute;

16.2.2 If the representatives in clause 16.2.1 are for any reason unable to resolve the Dispute within 10 days of it being referred to them, this Agreement shall terminate and the Parties shall refer the Dispute to the Scottish Courts for resolution.

16.3 For the avoidance of doubt, no Party may commence any court proceedings in relation to any dispute arising out of this Agreement until it has attempted to settle the dispute as proposed in clause 16.2.1, except as specifically provided in this Agreement.

17.0 BRIBERY ACT

17.1 Each Party to this Agreement shall (and shall procure that any Associated Person as defined in section 8 of the Bribery Act 2010) in connection with this Agreement):

- 17.1.1 comply with the all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
- 17.1.2 undertake that it will not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010;
- 17.1.3 not authorise or acquiesce in, and has not authorised or acquiesced in any bribery, extortion, fraud, deception, collusion, cartel, abuse of power, embezzlement, trading in influence, money-laundering or other form of corruption;
- 17.1.4 have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including but not limited to Adequate Procedures (as defined in Section 7 of the Bribery Act 2010).

17.2 If a Party (or any Associated Person of that party) commits a breach of clause 17.1 above, then the other Party in addition to any other rights and remedies it may have may at its absolute discretion terminate this Agreement with immediate effect by giving written notice to the first party.

18.0 GENERAL

18.1 This Agreement can only be varied in writing with the agreement of both Parties. All notices and other communications required under this Agreement must also be in writing and from an authorised representative of the Party providing such notice, and be sent to the other Party at the address shown at the head of this Agreement, by personal delivery, courier, registered post, or electronic mail with read receipt to a confirmed email address. Valid notices will be treated as given on the day received.

18.2 This Agreement contains the entire Agreement between the Parties, and supersedes any prior agreement between the Parties, whether written or oral. Neither Party has relied upon any other statement made, nor shall either Party have any remedy in respect of any untrue statement unless that remedy is available to them under this Agreement. Nothing in this clause is intended to limit or exclude either Party's liability for fraud.

18.3 Neither Party shall make or authorise any public or private announcement or communication concerning this Agreement or refer to or in any way use any business name, logo or trade mark of the other Party in any promotional or other communication without the prior written approval of the other Party, except as required by the FCA or any other regulator of the Parties.

18.4 Each Party hereby undertakes that it will not (whether directly or indirectly, or whether on its own account or on behalf of any other person, firm or company, or as agent, director, partner, manager, consultant or shareholder in any other person, firm or company) at any time during the Initial Term or Term from this Agreement being in force to the expiry of one (1) year after the date of expiry or termination of this Agreement, solicit any person then employed or engaged by the other Party, without the prior written consent of that Party.