Varial X Terms and Conditions

Welcome to Varial X! We provide a short-term energy market analytics platform, including a public-data view presenting data published by the Australian Energy Market Operator (AEMO) and a proprietary short-term power price forecasting model (**Services**), as set out in more detail on our website (**Site**).

In these Terms, when we say **you** or **your**, we mean you as an individual if you are accepting these Terms for yourself. If you are accepting these Terms on behalf of an entity (such as your employer) and you are authorised to do so, then **you** or **your** means that entity. When we say **we, us,** or **our**, we mean Varial Energy Pty Ltd (ACN 699 848 470).

These terms and conditions (**Terms**) form our contract with you, and set out our obligations as a service provider and your obligations as a customer. You cannot use the Services unless you agree to these Terms. These Terms govern access to the free sandbox (sample view) of the Services and any paid trial of the Services. Access to the Services on a subscription basis is subject to a separate written agreement between you and us. If you wish to subscribe, please contact us.

Some capitalised words in these Terms have defined meanings, and each time that word is used in these Terms it has the same meaning. You can find a list of the defined words and their meaning at the end of these Terms.

OUR DISCLOSURES

Please read these Terms carefully before you accept. We draw your attention to:

- our privacy policy (on the Site) which sets out how we will handle your personal information;
- clause 1.9 (Variations) which sets out how we may amend these Terms; and
- clause 11 (Liability) which sets out exclusions and limitations to our liability under these Terms.

We may receive a benefit (which may include a referral fee or a commission) should you visit certain third party websites through a link in the Services, or for featuring certain goods or services on the Services.

These Terms do not intend to limit your rights and remedies at law, including any of your Consumer Law Rights.

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1. Engagement and Term

1.1 These Terms apply from the time you agree to these Terms, until the date these Terms are terminated in accordance with their Terms (**Term**).

1.2 Subject to your compliance with these Terms, we will provide you with access to the sandbox (sample view) of the Services or, if you have paid the applicable trial fee, the trial version of the Services for the duration of the trial period.

1.3 Where we require access to your premises or computer systems in order to provide the Services, you agree to provide us with such access free from risk to the safety of our employees and contractors.

1.4 Under these Terms, you are granted access to the following sandbox features only (unless you have paid for a trial under clause 2):

(a) Public view: a user interface presenting data published by AEMO, as collected by us;

(b) Model preview: a limited sample view of outputs of our proprietary price forecasting model; and

(c) Sandbox limits: access is limited in depth, scope and duration, and may be changed or withdrawn by us.

1.5 Full access to the proprietary model on a subscription basis is not granted under these Terms and requires a separate enterprise agreement with us.

1.6 We will not be responsible for any other services unless expressly set out in these Terms or on our Site.

1.7 If we provide you with access to any new or beta services, you acknowledge that because of the developmental nature of such services, you use them at your own risk and we have no obligation to maintain or provide error corrections. Any new or beta services we provide you with access to are for evaluation purposes only and not for production use, and we may discontinue those services at any time at our sole discretion.

1.8 Where you engage third parties to operate alongside the Services (for example, any third-party software systems you wish to integrate with the Services), those third parties are independent of us and you are responsible for (meaning we will not be liable for) the goods or services they provide, unless we expressly agree otherwise.

1.9 We may amend these Terms at any time, by providing written notice to you. By clicking "I accept" or continuing to use the Services after the notice or 30 days after notification (whichever date is earlier), you agree to the amended Terms. If you do not agree to the amendment, you should cease using the Services.

2. Paid Trial

2.1 We may offer you a paid trial of the Services, granting you temporary access to certain features of the proprietary model, as set out on the Site. The trial period, trial fee and any other trial conditions will be set out on the Site or otherwise notified to you before you pay. At the end of the trial period, you will lose access to the paid version of the Services. If you wish to access the full proprietary model on a subscription basis, you can request to enter into a separate enterprise agreement with us.

2.2 You must pay all amounts due under these Terms in accordance with these Terms or as set out on our Site (as applicable). Unless we notify you otherwise, and subject to your Consumer Law Rights, trial fees are non-refundable.

2.3 Our payment methods will be set out at the time you purchase the paid trial of our Services. If you choose to pay your fees using one of our third-party payment processors, you may need to accept their terms and conditions (if this is the case, these will be set out at the time you make payment).

2.4 You must not pay, or attempt to pay, any fees due under these Terms or as a result of your use of the Services by fraudulent or unlawful means. If you make payment by debit or credit card, you must be the authorised card holder. If payment is made by direct debit, by providing your bank account details and accepting these Terms, you authorise our nominated third-party payment processor to debit your bank account, and you confirm that you are either the holder or an authorised signatory of that bank account.

2.5 If any fees due under these Terms or as a result of your use of the Services are not paid on time, we may:

(a) suspend your access to the Services; and

(b) charge interest on any overdue payments at a rate equal to the Reserve Bank of Australia's cash rate, from time-to-time, plus 2% per annum, calculated daily and compounding monthly.

2.6 You are responsible for paying any levies or taxes associated with your use of the Services, for example sales taxes, value-added taxes or withholding taxes (unless we are required by law to collect these on your behalf).

3. Account

3.1 You must sign up for an Account in order to access and use the Services.

3.2 You may invite Authorised Users to access and use the Services under your Account. You are responsible for ensuring that your Authorised Users comply with these Terms. You may change who your Authorised Users are at any time through your Account, and what access rights or permissions they have when using the Services. Any limitations on the number of Authorised Users you can have will be set out in your Account or on the Services.

3.3 While you have an Account with us, you agree to (and to ensure your Authorised Users agree to):

(a) keep your information up-to-date (and ensure it remains true, accurate and complete);

(b) keep usernames and passwords secure and confidential, and protect them from misuse or being stolen; and

(c) notify us if you become aware of, or have reason to suspect, any unauthorised access to your Account or any logins linked to your Account.

3.4 If you close your Account, you and your Authorised Users will lose access to the Services.

4. Licence

4.1 During the Term, we grant you and your Authorised Users a right to use our basic Services in accordance with these Terms. This right cannot be passed on or transferred to any other person.

4.2 You must not (and you must ensure that your Authorised Users do not):

(a) access or use the Services in any way that is improper or breaches any laws, infringes any person's rights (for example, intellectual property rights and privacy rights), or gives rise to any civil or criminal liability;

(b) interfere with or interrupt the supply of the Services, or any other person's access to or use of the Services;

(c) introduce any viruses or other malicious software code into the Services;

(d) use any unauthorised or modified version of the Services, including but not limited to for the purpose of building similar or competitive software or for the purpose of obtaining unauthorised access to the Services;

(e) attempt to access any data or log into any server or account that you are not expressly authorised to access;

(f) use the Services in any way that involves service bureau use, outsourcing, renting, reselling, sublicensing, concurrent use of a single user login, or time-sharing;

(g) circumvent user authentication or security of any of our networks, accounts or hosts or those of any third party;

(h) access or use the Services to transmit, publish or communicate material that is defamatory, offensive, abusive, indecent, menacing, harassing or unwanted; or

(i) use the Services, or any outputs generated by the Services, for any commercial purpose, including but not limited to resale, redistribution, or incorporation into any commercial product or service, without our prior written consent.

5. Forecasts and Data - Important Disclaimers

5.1 The Services provide short-term (including day-ahead and intraday) forecasts and modelled outputs only. All forecasts and outputs:

(a) are provided for informational purposes only and must not be relied upon as the sole basis for any commercial, financial, investment, trading, bidding or risk management decision, including any time-critical decision;

(b) are subject to inherent uncertainty and may not reflect actual future market conditions; and

(c) are used entirely at your own risk.

5.2 Our house view forecasts are based in part on publicly available data published by the Australian Energy Market Operator (AEMO). We make no representation that our use of, or commentary on, that data is endorsed or approved by AEMO. AEMO data is subject to AEMO's own terms of use, and you are responsible for ensuring your use of any AEMO-derived information complies with those terms.

5.3 The Services do not constitute, and are not a substitute for, financial, legal, or risk management advice. You should obtain independent professional advice before making any decision based on outputs from the Services.

5.4 Short-term forecasts can be incorrect, and actual market outcomes may differ materially from any forecast. Any decision to trade, bid or hedge (for example, bidding a battery into the market or buying ASX energy products) is made by you, at your own risk. You acknowledge and agree that you are solely responsible for any decisions you make based on your use of the Services.

5.5 Any data in the public view is sourced from AEMO and other third parties and any outputs from the Services are based on this data. To the maximum extent permitted by law, we do not warrant any accuracy, completeness or timeliness of the data, forecasts or outputs.

6. Availability, Disruption and Downtime

6.1 While we strive to always make the Services available to you, we do not make any promises that these will be available 100% of the time. The Services may be disrupted during certain periods, including, for example, as a result of scheduled or emergency maintenance.

6.2 The Services may interact with, or be reliant on, products or services provided by third parties, such as cloud hosting service providers. To the maximum extent permitted by law, we are not liable for disruptions or downtime caused or contributed to by these third parties.

6.3 We will try to provide you with reasonable notice, where possible, of any disruptions to your access to the Services.

7. Intellectual Property and Data

7.1 We own all intellectual property rights in the Services. This includes how the Services look and function, as well as our copyrighted works, trademarks, inventions, designs and other intellectual property. You agree not to copy or otherwise misuse our intellectual property without our written permission (for example, to reverse engineer or discover the source code of our intellectual property), and you must not alter or remove any confidentiality, copyright or other ownership notice placed on the Services.

7.2 We own all intellectual property rights in any outputs generated by the Services, including but not limited to forecasts, valuations, reports, charts, and any other results produced by the Services (Outputs). To the extent any intellectual property rights in the Outputs vest in you by operation of law, you hereby assign (and agree to assign) all such rights to us.

7.3 We grant you a non-exclusive, non-transferable, revocable licence to use the Outputs solely for your own internal business purposes during the Term. You must not reproduce, distribute, publish, or commercialise the Outputs without our prior written consent.

7.4 We may use any feedback or suggestions that you give us in any manner which we see fit (for example, to develop new features), and no benefit will be owed to you as a result of any use by us of your feedback or suggestions.

Your Data

7.5 We do not own any of Your Data, but when you enter or upload any of Your Data into the Services, you grant us the right to access, analyse, backup, copy, store, transmit, and otherwise use Your Data for the duration of your use of the Services (and for a reasonable period of time afterwards). We may use Your Data (or disclose it to third party service providers) to:

(a) supply the Services to you and your Authorised Users (for example, to enable you and your Authorised Users to access and use the Services), and otherwise perform our obligations under these Terms;

(b) diagnose problems with the Services;

(c) improve, develop and protect the Services;

(d) send you information we think may be of interest to you based on your marketing preferences;

(e) perform analytics for the purpose of remedying bugs or issues with the Services; or

(f) perform our obligations under these Terms (as reasonably required).

7.6 You acknowledge and agree that because of the nature of the internet, the processing and transmission of Your Data by us may occur over various networks.

7.7 You are responsible for (meaning we are not liable for):

(a) the integrity of Your Data on your systems, networks or any device controlled by you or your Authorised Users; and

(b) backing up Your Data.

7.8 When you use the Services, we may create anonymised statistical data from Your Data and usage of the Services (for example, through aggregation). Once anonymised, we own that data and may use it for our own purposes, such as to provide and improve the Services, to develop new services or product offerings, to identify business trends, and for other uses we communicate to you. This may include making such anonymised data publicly available, provided it is not compiled using a sample size small enough to make underlying portions of Your Data identifiable.

7.9 If you do not provide Your Data to us, it may impact your ability to receive the Services.

7.10 This clause 7 will survive the termination or expiry of these Terms.

8. Confidential Information

8.1 While using the Services, you may share confidential information with us, and you may become aware of confidential information about us. Each party agrees to keep the other party's Confidential Information confidential and to take reasonable steps to protect it from unauthorised access or disclosure. Each party may only disclose the other party's Confidential Information to its employees, contractors, professional advisors, agents and Authorised Users on a need-to-know basis, and to its third party service providers for the purposes of assisting it to perform its obligations under these Terms, provided in each case that those parties keep the Confidential Information confidential in accordance with this clause 8.

8.2 The obligations in this clause 8 do not apply to Confidential Information that:

(a) is or becomes publicly available other than through a breach of confidence;

(b) is independently created by the receiving party without reference to the disclosing party's Confidential Information; or

(c) is rightfully known by the receiving party prior to receipt from the disclosing party.

8.3 Either party may disclose Confidential Information to legal or regulatory authorities if required by law to do so, provided that the disclosing party uses reasonable efforts to give the other party prior written notice where permitted by law.

8.4 Each party acknowledges that a breach of this clause may cause irreparable harm for which damages may not be an adequate remedy, and that either party may seek injunctive or other equitable relief to protect its confidential information in addition to any other remedies available at law.

8.5 This clause 8 will survive the termination or expiry of these Terms.

9. Personal Information

9.1 We collect, hold and disclose and use any Personal Information you provide to us in accordance with our privacy policy, available on the Site, and applicable privacy laws.

9.2 You must only disclose Personal Information to us if you have the right to do so (such as having the individual's express consent).

9.3 We may need to disclose Personal Information to third parties, such as our related companies or our service providers (for example, IT and administrative service providers and our professional advisors).

9.4 Where we are required by law to report on our activities, you acknowledge that from time to time we may request certain information from you in order to meet our requirements, and you agree to provide us with such information within the timeframes reasonably requested by us.

9.5 This clause 9 will survive the termination or expiry of these Terms.

10. Consumer Law Rights

10.1 In some jurisdictions, you may have guarantees, rights or other remedies provided by law (**Consumer Law Rights**), and these Terms do not restrict your Consumer Law Rights. We will only be bound by your Consumer Law Rights and the express wording of these Terms.

10.2 If you accept these Terms in Australia, nothing in these Terms should be interpreted to exclude, restrict or modify the application of, or any rights or remedies you may have under, any part of the Australian Consumer Law (as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth)).

10.3 This clause 10 will survive the termination or expiry of these Terms.

11. Liability

11.1 To the maximum extent permitted by law, we will not be liable for, and you release us from liability for, any Liability caused or contributed to by, arising from or in connection with:

(a) your computing environment (for example, your hardware, software, information technology and telecommunications services and systems);

(b) any loss arising from the deletion of Your Data following termination or expiry of these Terms in accordance with clause 13.8;

(c) any decision made, or action taken, in reliance on any forecast, output, or other information generated by or obtained through the Services, including any trading, bidding or hedging loss, and any delay, latency, outage or inaccuracy in data or outputs;

(d) any loss, corruption, unauthorised access to, or unauthorised disclosure of, any data you input into the Services, including commercially sensitive data such as PPA pricing and energy position data, howsoever caused. You input such data at your own risk and are solely responsible for maintaining independent copies; or

(e) any use of the Services by a person or entity other than you or your Authorised Users.

11.2 Regardless of whatever else is stated in these Terms, to the maximum extent permitted by law:

(a) neither we or you are liable for any Consequential Loss;

(b) a party's liability for any Liability under these Terms will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the actions (or inactions) of the other party, including any failure by the other party to mitigate its loss;

(c) (where the Services are not ordinarily acquired for personal, domestic or household use or consumption) in respect of any failure by us to comply with relevant Consumer Law Rights, our Liability is limited (at our discretion) to supplying the Services again or paying the cost of having the Services supplied again; and

(d) our aggregate liability to you for any Liability arising from or in connection with these Terms will be limited to the greater of the trial fees paid by you to us under these Terms and AU$100.

11.3 This clause 11 will survive the termination or expiry of these Terms.

12. Notice Regarding Apple

12.1 To the extent that you are using or accessing the Services on an iOS device through a mobile application from the Apple App Store, you further acknowledge and agree to the terms of this clause. You acknowledge that these Terms are between you and us only, not with Apple Inc. (Apple), and Apple is not responsible for the Services and any content available on the Services.

12.2 Apple has no obligation to furnish you with any maintenance and support services with respect to the Services.

12.3 If our mobile application fails to conform to any applicable warranty, you may notify Apple and Apple will refund the purchase price of the mobile application to you. To the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the mobile application and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be our responsibility.

12.4 Apple is not responsible for addressing any claims by you or any third party relating to our mobile application or your use of our mobile application, including but not limited to: (1) product liability claims; (2) any claim that our mobile application fails to conform to any applicable legal or regulatory requirement; and (3) claims arising under consumer protection or similar legislation.

12.5 Apple is not responsible for the investigation, defence, settlement and discharge of any third-party claim that our mobile application infringes that third party's intellectual property rights.

12.6 You agree to comply with any applicable third-party terms when using our mobile application.

12.7 Apple and Apple subsidiaries are third-party beneficiaries of these Terms, and upon your acceptance of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as a third-party beneficiary of these Terms.

12.8 You hereby represent and warrant that: (1) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (2) you are not listed on any U.S. Government list of prohibited or restricted parties.

13. Suspension and Termination

Suspension

13.1 We may suspend your access to the Services where we reasonably believe there has been any unauthorised access to or use of the Services (such as the unauthorised sharing of login details for the Services). If we suspend your access to the Services, we will let you know within a reasonable time of doing so, and we will work with you to resolve the matter, or if it cannot be resolved, then we may terminate these Terms and your access to the Services will end.

Termination

13.2 We may terminate these Terms (meaning you will lose access to the Services) if:

(a) you or your Authorised Users breach these Terms and do not remedy that breach within 14 days of us notifying you of that breach;

(b) you or your Authorised Users breach these Terms and that breach cannot be remedied;

(c) we decide to discontinue the Services, in which case we will provide you with written notice; or

(d) you experience an insolvency event (including but not limited to bankruptcy, receivership, voluntary administration, liquidation, or entering into creditors' schemes of arrangement).

13.3 You may terminate these Terms if we breach these Terms and do not remedy that breach within 14 days of you notifying us of that breach.

13.4 You may also terminate these Terms at any time by notifying us through your Account or to our email for notices (as set out in clause 14.7), and termination will take effect immediately.

13.5 Prior to termination or expiry of these Terms, you should export Your Data through your Account. We encourage you to do this before the termination date, as we cannot guarantee access to Your Data after that date.

13.6 Following termination or expiry of these Terms, we may delete Your Data (including copies) in our possession or control. If you request a copy of Your Data following termination, we may, to the extent we still hold Your Data, assist you with that request at our discretion. We reserve the right to charge a reasonable fee to cover our costs of doing so, which we will notify you of prior to fulfilling your request.

13.7 We will retain Your Data where required to do so by law or regulatory requirements, and will otherwise handle any retained data in accordance with our privacy policy, and these Terms.

13.8 Termination of these Terms will not affect any other rights or liabilities that we or you may have.

13.9 This clause 13 will survive the termination or expiry of these Terms.

14. General

14.1 **Assignment:** You may not transfer or assign these Terms (including any benefits or obligations you have under these Terms) to any third party without our prior written consent. We may assign or transfer these Terms to a third party, or transfer any debt owed by you to us to a debt collector or other third party.

14.2 **Disputes**: Neither we or you may commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, these Terms (including any question regarding its existence, validity or termination) (**Dispute**) unless we and you first meet (in good faith) to resolve the Dispute. Nothing in this clause will operate to prevent us or you from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.

If the Dispute is not resolved at that initial meeting:

(a) where you are resident or incorporated in Australia, refer the matter to mediation, administered by the Australian Disputes Centre in accordance with Australian Disputes Centre Guidelines for Commercial Mediation; or

(b) where you are not resident or incorporated in Australia, refer the matter to arbitration administered by the Australian Centre for International Commercial Arbitration, with such arbitration to be conducted in Sydney, New South Wales, before one arbitrator, in English and in accordance with the ACICA Arbitration Rules.

14.3 **Events Outside Our Control**: We will not be liable for any delay or failure to perform our obligations (including the Services), if such delay or failure is caused or contributed to by an event or circumstance beyond our reasonable control.

14.4 **Governing law:** These Terms are governed by the laws of New South Wales, and any matter relating to these Terms is to be determined exclusively by the courts in New South Wales and any courts entitled to hear appeals from those courts.

14.5 **Illegal Requests:** We reserve the right to refuse any request for or in relation to the Services that we deem inappropriate, unethical, unreasonable, illegal or otherwise non-compliant with these Terms.

14.6 **Nature of Legal Relationship:** These Terms do not create, and should not be interpreted so as to create, a partnership, joint venture, employment or agency relationship between us and you.

14.7 **Notices:** Any notice you send to us must be sent to support@varialenergy.com. Any notice we send to you will be sent to the email address registered against your Account.

14.8 **Professional Services Disclaimer**: The Services do not constitute, and are not a substitute for, financial, legal or risk management advice.

15. Definitions

15.1 In these Terms:

Account means an account accessible to the individual or entity who signed up to the Services, under which Authorised Users may be granted with access.

Authorised User means a user that you have invited to use the Services through your Account.

Confidential Information means information which:

(a) is disclosed by one party to the other in connection with these Terms at any time;

(b) relates to a party's business, assets or affairs; or

(c) relates to the subject matter of, or any transactions contemplated by, these Terms,

whether or not such information is reduced to a tangible form or marked as "confidential", and however it is received.

Consequential Loss includes any consequential loss, special or indirect loss, real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise. However, your obligation to pay us any amounts for access to or use of the Services (including the Services) will not constitute “Consequential Loss”.

Liability means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or us or you or otherwise.

Personal Information means any information or opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not, and whether the information or opinion is recorded in a tangible form or not.

Services means the services we provide to you, as detailed at the beginning of these Terms.

Your Data means the information, materials, logos, documents, qualifications and other intellectual property or data supplied by you and your Authorised Users when receiving the Services or stored by or generated by your use of the Services, including any Personal Information collected, used, disclosed, stored or otherwise handled in connection with the Services. Your Data does not include any data or information that is generated as a result of your usage of the Services that is a back-end or internal output or an output otherwise generally not available to users of the Services.