

# PeakSmart Industry Incentive Program

## Terms and Conditions Version 1

In consideration for Energex accepting you as a participant in the PeakSmart Industry Incentive Program ("the **Program**"), you acknowledge and agree to the following terms and conditions ("**Agreement Terms and Conditions**"):

### 1. NATURE OF PARTICIPATION IN THE PROGRAM

- (a) Energex has invited you to participate in the Program to promote air-conditioning units fitted with PeakSmart technology and the Energex Eligible PeakSmart Compatible Air-Conditioner Project ("the **Project**") to retail customers ("the **Services**"). For each valid Installer Submission Form submitted to Energex as a result of your participation in the Program, Energex will pay you a PeakSmart Industry Incentive in accordance with the terms of this Agreement.
- (b) Nothing in this Agreement shall be construed as constituting an agency, partnership, joint venture, or any other form of association between the Parties in which one party may be liable for the acts or omissions of the other Party. No Party has the authority to incur any obligation or make any representation or warranty on behalf of, or to pledge the credit of, the other Party.
- (c) By participating in the Program, you agree that:
  - (i) you will provide the Services to Energex;
  - (ii) you will not give the impression to any person that you are an agent, partner or representative of Energex;
  - (iii) you will be bound by the Installer Submission Form Terms and Conditions; and
  - (iv) you will register for the Program by completing the Agreement Form provided on the Energex PeakSmart website in the Retailers and Tradespeople section. This registration will be reviewed by Energex and you will be notified by email once it has been approved.

### 2. VARIATION AND DURATION OF PROGRAM AND AGREEMENT

- (a) Energex may, in its sole discretion, vary the Program at any time and will provide you with written notice of such variation.
- (b) This Agreement will commence on the date indicated on the Agreement Form and will continue (as varied under clause 2(a)) until terminated in accordance with clause 3(a) or 3(b).

### 3. TERMINATION OF PROGRAM AND AGREEMENT

- (a) Energex may, in its sole discretion, terminate the Program at any time and will provide you with written notice in the event of such termination. This Agreement will be terminated if the Program is terminated in accordance with this clause.
- (b) Either Party may terminate this Agreement at any time by providing written notice to the other Party.

4. USE OF PROMOTIONAL MATERIAL

Energex may supply you with Energex Promotional Material. You agree that:

- (a) you must not make any representation about the Project or Energex that is inconsistent with the Energex Promotional Material to any customer; and
- (b) following the termination of the Program or this Agreement, you will return any Energex Promotional Materials to Energex upon its request.

5. LICENCE OF POSITIVE PAYBACK LOGO

- (c) Before using Energex's Positive Payback logo ("the **Logo**") on any marketing and advertising materials in relation to the Services, we require you to obtain our prior written approval by sending us a mock-up which indicates where the Logo and any supporting text will be placed on the marketing and advertising material ("the **Material**"). Energex's approval will be granted in Energex's sole discretion and subject to any conditions or requirements Energex considers necessary. In granting its approval for you to use the Logo, Energex will provide you with the Logo to be used in respect of the Material.
- (d) The Material must not contain any representations, warranties or other statements concerning Energex, Energex's Positive Payback Program, the Project or any other Energex project or campaign, websites, policies or any Energex product or service, unless expressly authorised by Energex in writing. At no stage may you engage in any conduct that is likely to mislead or deceive in relation to Energex, Energex's Positive Payback Program, the Project or any Energex project or campaign, websites, policies or any Energex product or service.
- (e) You must promptly comply with any request from Energex to remove, alter or modify the Material should it be deemed by Energex to be a breach of any of the conditions contained in this clause 5.
- (f) Energex retains all rights in any of its trademarks and logos (including the Logo) which will be in the Material. Energex grants you a limited, revocable, non-exclusive licence to reproduce and display the Logo only to promote Energex's Positive Payback Program in the Material. Nothing in this document confers any further rights on you in any of its trademarks or logos used in the Material pertaining to Energex or Energex's Positive Payback Program.

6. PAYMENT OF PEAKSMART INDUSTRY INCENTIVE

- (a) Subject to clauses (b) - (h) below, Energex will credit to you a PeakSmart Industry Incentive for each Customer Application Form, accepted by Energex that identifies you as the 'installer'.
- (b) Notwithstanding clause (a) above, a PeakSmart Industry Incentive will only be credited to you after a completed Industry Submission Form which nominates you as the 'installer' has been received, processed and accepted by Energex. Energex reserves the right to refuse to credit you with a PeakSmart Industry Incentive if an Industry Submission Form has not been completed and submitted.
- (c) A limit of one PeakSmart Industry Incentive per Eligible PeakSmart Compatible Air-Conditioner will be credited to you up to the maximum number of eligible air-conditioners for each customer who participates in the Project.
- (d) Energex will seek to notify you quarterly of the PeakSmart Industry Incentives for which you are eligible for the quarter preceding the applicable notice ("**Eligibility Notice**"). You have 30 days from the date of the applicable Eligibility Notice to claim the PeakSmart Industry Incentives the subject of that Eligibility Notice.
- (e) In order to claim the relevant PeakSmart Industry Incentives, you must issue to Energex a valid tax invoice for the PeakSmart Industry Incentives for which you are eligible for the relevant quarter (as specified in the relevant Eligibility Notice) within 30 days from the date of the relevant Eligibility Notice. Invoices not complying with this clause 6(e) will not be accepted nor paid in subsequent quarters.

- (f) Energex will endeavour to issue the PeakSmart Industry Incentive payment to you within 28 days of acceptance of the invoice.
- (g) Energex will not credit to you a PeakSmart Industry Incentive if you have already claimed a 'PeakSmart' Incentive Reward in respect of the Eligible PeakSmart Compatible Air Conditioner in your capacity as a Participant in the PeakSmart Compatible Air-conditioners Program.
- (h) If this Agreement or the Program is terminated in accordance with clause 3, Energex's sole liability to you will be any credit that has accrued between the start of this Agreement and the date of termination of either the Program, your participation in the Program, or this Agreement.

## 7. SIGNAL RECEIVER DISTRIBUTION

In order to facilitate ease of connections, preferably at the time of installation of Eligible PeakSmart Compatible Air-conditioner(s), Energex can provide you with PeakSmart Signal Receiver stock to provide to your customers.

By placing an order for PeakSmart Signal Receivers you agree that the following terms and conditions in this clause will apply:

### (a) Ordering

You must place orders:

- (i) commensurate with the number of Eligible PeakSmart Compatible Air-conditioners that you expect to install and the percentage of those installations where you estimate the purchaser will want to participate in the program; and
- (ii) in advance to ensure continuity of stock (delivery of stock may take up to 5 Business Days).

### (b) Inwards Goods Receipting

You warrant that:

- (i) you have suitable processes in place to track each Signal Receiver Energex delivers to you.
- (ii) you have the capability to check Signal Receiver stock against the Signal Receiver serial numbers Energex delivers to you.

### (c) Stock Control

You warrant that you have the ability to:

- (i) store the Signal Receivers in a secure location; and
- (ii) track the Signal Receivers you deliver to customers by plant (serial) number,

and you agree to provide to Energex a reconciliation of Signal Receiver stock on a minimum monthly basis and when requested by Energex.

### (d) Signal receiver dispatch tracking

You must:

- (i) only install Signal Receivers for customers who have provided their consent to have the Signal Receivers installed in an Eligible PeakSmart Compatible Air-Conditioner;
- (ii) track and match the plant (serial) number of each Signal Receiver delivered to each customer; and
- (iii) use best endeavours to obtain express consent from your customers who elect to have a Signal Receiver installed in an Eligible PeakSmart Compatible Air-Conditioner to your provision of those customers' names,



addresses and contact details to Energex to enable Energex to contact those customers to ascertain why their application to participate in the Project has not been received by Energex and to encourage those customers to claim their incentive for participating in the Project.

(e) Signal receiver device

You agree that:

- (i) you will install all components of the Signal Receiver supplied to you in accordance with our installation instructions;
- (ii) you will not charge customers for the Signal Receiver; and
- (iii) the Signal Receiver will at all times remain the property of Energex.

(f) Return of Stock

You acknowledge and agree that:

- (i) Energex reserves the right at any time to request the return of Signal Receiver stock;
- (ii) you will undertake a final reconciliation of stock which must be conducted and provided to Energex within 10 Business Days; and
- (iii) you will return all remaining Signal Receiver stock to Energex promptly (and, in any event, not more than 10 Business Days after providing the final reconciliation to Energex).

8. LIABILITY OF ENERGEX

- (a) To the full extent permitted by law and subject to clause 6(h), Energex excludes any and all liability in connection with this Agreement.
- (b) Where the above exclusion does not apply for any reason (including where a court of competent jurisdiction indicates it is invalid), to the full extent permitted by law, Energex's liability to you for any direct damages you incur in connection with this Agreement is limited to the amount of any credit that has accrued in accordance with clause 6(b).
- (c) To the fullest extent permitted by law, Energex is not liable for any indirect, special, incidental or consequential damage, or loss of profits or loss of earnings, suffered by you due to any breach of this Agreement by Energex.

9. RESPONSIBILITY OF INDUSTRY PARTNER

- (a) You agree to promote the Project to your customers and advise your customers of the customer application process, ensuring each customer is aware of:
  - (i) their entitlement to payment of an incentive for each Signal Receiver installed in an Eligible PeakSmart Compatible Air-conditioner; and
  - (ii) the process for claiming the incentive (including the requirement to submit a Customer Application Form to Energex).
- (b) You agree to notify each customer of the proposed installation of a Signal Receiver prior to installation.
- (c) You warrant that you will not install a Signal Receiver, nor complete and submit the Installer Submission Form, if the customer has not provided their consent for the installation to proceed.
- (d) You warrant that you will not provide to Energex the name, address or contact details of a customer without first complying with clause 9(c) and obtaining that customer's express consent to collect and pass those details to Energex.

- (e) You agree to discuss the requirements of access to a customer's property by Energex for the purpose of inspection of installed Signal Receivers. This requirement is laid out in section 5 of the PeakSmart Air-Conditioning Rewards Terms and Conditions for customers, which states *"You agree to allow Energex access to the Property to carry out necessary audits or examination of the Signal Receiver(s) from time to time. Energex will contact you at least 5 business days prior to any audit or examination required"*.
- (f) You agree that Energex has the right to terminate your participation in the Program, if Energex discovers, or has reasonable grounds to believe, that you are installing Signal Receivers without a customer's consent or falsifying installation details.
- (g) You agree that Energex may monitor your compliance with the obligation to obtain customer consent with regular onsite audits and monitoring of your overall Customer Claim rate and you agree to cooperate with any such audit or monitoring.
- (h) You will comply with any request by Energex to:
  - (i) provide additional proof of the customer's purchase and installation of an Eligible PeakSmart Compatible Air- conditioner and the associated installation of a Signal Receiver in order to validate an Installer Submission Form;
  - (ii) allow Energex to complete random audits to ensure your full compliance with the Program.
- (i) You are responsible for any representation, act or omission made by you to any customer regarding the Project or Energex that results in a breach of any law including the Australian Consumer Law (as contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth))
- (j) You indemnify Energex against any claim, loss, damage, liability, cost and expense that may be incurred or sustained by Energex arising directly or indirectly out of any breach of warranty or any representation, act, matter or thing done, permitted or omitted to be done by you in a manner that is inconsistent with this Agreement or the Energex Promotional Material.

## 10. GST

### (a) Goods and Services Tax

Any Consideration to be paid or provided for any supply made under or in connection with this Agreement, unless expressly described in this Agreement as including GST, does not include an amount on account of GST. Despite any other provision in this Agreement, if a party ('Supplier') makes a Taxable Supply under or in connection with this Agreement on which GST is imposed:

- (i) the GST exclusive Consideration otherwise payable or to be provided for that Taxable Supply under this Agreement but for the application of this clause is increased by, and the recipient of the supply ('Recipient') must also pay to the Supplier, an amount equal to the GST payable by the Supplier on that Taxable Supply; and
- (ii) the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided. However, the Recipient need not pay any amount referable to GST unless they have received a valid Tax Invoice (or a valid Adjustment Note) for that Taxable Supply.

### (b) Reimbursements

If a payment to a party under or in connection with this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment must be reduced by the amount of any Input Tax Credit to which that party is entitled for that loss, cost or expense. That party is assumed to be entitled to a full Input Tax Credit unless it proves, before the date on which the payment must be made, that its entitlement is otherwise.

(c) Adjustment Events

If, at any time, an Adjustment Event arises in respect of any Taxable Supply made by a Supplier under the Agreement, a corresponding adjustment must be made between the parties in respect of any amount paid pursuant to clause (a). Payments to give effect to the adjustment must be made between the parties and the Supplier must issue a valid Adjustment Note in relation to the Adjustment Event.

(d) GST Group

If a party is a member of a GST Group, references to GST which the party must pay and to Input Tax Credits to which the party is entitled, include GST which the representative member of the GST Group must pay and Input Tax Credits to which the representative member of the group is entitled.

(e) Non-monetary Consideration

If a supply made under this Agreement is a Taxable Supply made for non-monetary consideration then:

- (i) the Supplier must provide the Recipient with a valid Tax Invoice which states the GST inclusive market value of the non-monetary consideration; and
- (ii) for the avoidance of doubt any non-monetary consideration payable under or in connection with this Agreement is GST inclusive.

(f) Definitions

Words or expressions used in this clause which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and related imposition and amending Acts have the same meaning in this clause.

(g) Survival

This clause will continue to apply after termination of this Agreement.

11. NOTICES

Notices given under this Agreement must be done so in writing via post or email and will be taken to be duly given or made:

- (a) in the case of delivery by post, 5 Business Days after the date of posting;  
and
- (b) in the case of email, the time that the notice is first opened or read by an employee or officer of the recipient.

12. SURVIVAL OF TERMS

Clauses 4(b), 6(e)-(h), 7, 8, 9 and 15 shall survive termination of this Agreement.

13. ASSIGNMENT

You may not assign, charge, encumber or otherwise deal with any of your rights or obligations under this Agreement, or attempt or purport to do so, without the prior written consent of Energex.

14. GOVERNING LAW AND JURISDICTION

This Agreement is governed by the laws of Queensland. In relation to it and related non-contractual matters each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there and waives any right to object to the venue on any ground.

## 6. DEFINITIONS

**"Agreement"** means these Terms and Conditions and the Agreement Form.

**"Agreement Form"** means the form that you must complete and submit to Energex to participate in the Program

**"Business Day"** means a day other than a Saturday, Sunday or statutory holiday or public holiday in Queensland.

**"Customer Application Form"** means the PeakSmart Reward Agreement Form that is submitted by the customer to Energex in order for the customer to participate in the Project.

**"Customer Claim Rate"** means the percentage rate at which your customers claim their incentives. This percentage is calculated based on the number of Signal Receivers that have been delivered to you against the number of your customers who have submitted a Customer Application Form.

**"Eligible PeakSmart Compatible Air-conditioner"** means an air-conditioning unit with PeakSmart capability, meaning the unit is AS4755 demand response enabled and has DRM1, DRM2 and DRM3 capability, and which is listed at the time of sale as an acceptable model at [www.energex.com.au](http://www.energex.com.au).

**"Energex", "We", "Us", "Our"** means Energex Limited, its employees, contractors and agents.

**"Energex Promotional Material"** means promotional, marketing and advertising material related to the Project.

**"Installer", "you", "your"** means the installer of air-conditioning units to retail customers whose details are set out in the Agreement Form, including its employees, contractors and agents.

**"Installer Submission Form"** means the online form that you must submit to claim payment of a PeakSmart Industry Incentive.

**"Installer Submission Form Terms and Conditions"** means the terms and conditions that apply to and govern your use of the Installer Submission Form.

**"law"** means any statute, regulation, order, rule, subordinate legislation or other document enforceable under any statute, regulation, rule or subordinate legislation.

**"Party", "Parties"** means, respectively, each or both of Energex and the Retailer.

**"PeakSmart Industry Incentive"** means the reward based on the cooling capacity of the Eligible PeakSmart Compatible Air-conditioner/s sold to a customer, payable in accordance with clause 6, calculated as follows:

- (a) \$50 for each Eligible PeakSmart Compatible Air-conditioner(s) with a cooling capacity of 4kW or more, but less than 10kW; and
- (b) \$50 for each Eligible PeakSmart Compatible Air-conditioner(s) with a cooling capacity of 10kW or more. **"Project"** means the Energex PeakSmart Compatible Air-Conditioner Project.

**"Services"** means the promotion of PeakSmart Compatible Air-conditioners and the Project in accordance with the Agreement.

**"Signal Receiver"** means the Energex approved Demand Response Enabling Device (DRED)/Demand Control Signal Receiver (DCSR) that has to be connected to an Eligible PeakSmart Compatible Air-conditioner to enable the air-conditioning unit to receive a signal that will cap the rated input load for short periods of during peak times.





## Contact Energex

To report loss of supply:

[13 62 62](tel:136262)

For electricity emergencies:

[13 19 62](tel:131962)

For general enquiries:

[energex.com.au](http://energex.com.au)

[custserve.energex.com.au](http://custserve.energex.com.au)

[13 12 53](tel:131253) (8am to 5:30pm, Monday to Friday)

Telephone interpreter service [13 14 50](tel:131450)

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