

PeakSmart Retailer / Installer Incentive Scheme

Terms & Conditions

1. GENERAL

- a) Ergon Energy is undertaking the PeakSmart Compatible Air-Conditioner Project (**Project**) for the purpose of managing peak demand on its network.
- b) In connection with the Project, Ergon Energy is operating the PeakSmart Retailer / Installer Incentive Scheme (**Scheme**) as set out in these terms and conditions.
- c) Your participation in the Scheme and Ergon Energy's obligations to you under the Scheme are governed by your Retailer / Installer Application Form and these terms and conditions (together, the **Agreement**).

2. TERM

- a) This Agreement commences on the date your Retailer / Installer Application Form is accepted by Ergon Energy and continues until it is terminated or until Ergon Energy, in its absolute discretion, notifies you in writing that the Scheme has ended (**Term**).
- b) Either party may terminate this Agreement by notice in writing to the other party. Without limiting the foregoing, Ergon Energy may terminate this Agreement if you breach any material term, if an installation by you fails to comply with industry best practice, or otherwise without cause at Ergon Energy's absolute discretion.
- c) Any rights accruing prior to termination and any clauses which by their nature are intended to survive, shall survive termination of this Agreement.

3. SERVICES

During the Term, you must provide the following services to Ergon Energy (**Services**):

- i) promote the Project to Customers;
- ii) promote PeakSmart Compatible Air-Conditioners to Customers; and
- iii) if appropriately qualified and experienced, fit Signal Receivers to PeakSmart Compatible Air Conditioners when requested by Customers.

4. INCENTIVE FEE

- a) As part of the Project, Ergon Energy will receive, process and (in its absolute discretion) accept or reject Customer Application Forms.
- b) For every approved Customer Application Form in which you are named the "Appliance Retailer / Installer", Ergon Energy will allocate to you an Incentive Fee calculated based on the number of PeakSmart Compatible Air-Conditioners on the Customer Application Form that were purchased and/or installed during the Term, up to the per-customer limit set by Ergon Energy.

- c) The Incentive Fee is \$50 per approved Customer Application, provided that Ergon Energy may vary the Incentive Fee at its sole discretion by providing 30 days' notice.

5. REDEEMING INCENTIVE FEE

- a) At the end of each quarter, Ergon Energy will notify you of the Incentive Fee allocated to you during that quarter.
- b) You have 60 days from the date of that notice to redeem the allocated Incentive Fee by issuing a tax invoice for that amount plus GST to Ergon Energy.
- c) Within 28 days of receiving a valid invoice, Ergon Energy will pay the invoice.
- d) Any Incentive Fee not redeemed in accordance with this Agreement or outside the time limits imposed by this Agreement will automatically expire.

6. SIGNAL RECEIVERS

- a) This clause 6 applies to any orders you place with Ergon Energy for Signal Receivers in connection with the Project.
- b) Signal Receivers delivered to you in connection with the Project will remain the property of Ergon Energy.
- c) You must:
 - i) place orders for Signal Receivers only commensurate with your anticipated sales of PeakSmart Compatible Air-Conditioners and the percentage of those sales you reasonably estimate are likely to participate in the Project;
 - ii) place orders sufficiently in advance to ensure continuity of stock (noting that delivery of stock may take up to 5 business days).
 - iii) store Signal Receivers securely;
 - iv) make reasonable efforts to track, by serial number, each Signal Receiver delivered to you;
 - v) track each Signal Receiver you provide to a Customer or install in a Customer's air conditioner;
 - vi) only provide Signal Receivers to Customers who have confirmed to you their intention to have the Signal Receivers installed in a PeakSmart Compatible Air-Conditioner;
 - vii) make reasonable efforts to ensure Customers are only given Signal Receivers that are the correct model for their intended location; and
 - viii) request that Customers return uninstalled Signal Receivers to Ergon Energy or to you.
- d) You must not:
 - i) charge Customers for any Signal Receiver; or

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- ii) alter or remove any items from the package in which the Signal Receiver is delivered to you.
- e) At the end of this Agreement or on request by Ergon Energy, you must within 10 business days:
 - iii) undertake a stocktake and reconciliation of Signal Receivers you hold; and
 - iv) promptly return any stock to Ergon Energy at your expense.

7. USE OF PROMOTIONAL MATERIAL

- a) Ergon Energy may supply you with promotional, marketing and advertising material related to the Project (**Promotional Material**).
- b) You agree that:
 - i) you must not make any representation about the Project or Ergon Energy that is inconsistent with the Promotional Material to any customer ; and
 - ii) following the termination or expiry of the Scheme or this Agreement, you will immediately return all Promotional Material to Ergon Energy upon its request.

8. INDEMNITY

You indemnify Ergon Energy against any claim, loss, damage, liability, cost and expense that may be incurred or sustained by Ergon Energy arising directly or indirectly out of your negligence, fraud or wilful default under this Agreement.

9. LIABILITY OF ERGON ENERGY

- a) Ergon Energy's liability to you in relation to this Agreement is limited insofar as is possible as a matter of law to performing this Agreement, processing any accrued and unexpired Incentive Credits and paying any accrued and unpaid Incentive Fee.
- b) Otherwise than as set out in clause a) above, Ergon Energy shall have no liability to you in connection with this Agreement. In particular and without limiting the foregoing, Ergon Energy is not liable for any indirect, special, incidental or consequential damage, loss of earnings or loss of profits suffered by you as a result of any act or omission by Ergon Energy.

10. GST

- a) Words in this clause have the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), unless the context makes it clear that a different meaning is intended.
- b) 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 is entitled.

- f) All amounts stated in this Agreement are GST exclusive unless otherwise indicated.
- g) If an amount in this Agreement is not stated as GST inclusive then the following provisions apply:
 - i) a recipient of a taxable supply under or in connection with this Agreement must pay to the supplier, in addition to the consideration for the taxable supply, an amount equal to any GST paid or payable by the supplier in respect of the taxable supply; and
 - ii) the recipient must make that payment to the supplier when the consideration or part of it is provided, except that the recipient need not pay any amount referable to GST unless the recipient has received a tax invoice for that taxable supply.

11. NO AGENCY

- a) Nothing in this Agreement shall be construed as constituting an agency, partnership, joint venture or other form of association between the parties and you must not make any representation or give any impression to any person that you are an agent, partner or representative of Ergon Energy.
- b) You are responsible and liable for any representation, act or omission made by you to any customer regarding the Project or Ergon Energy.

12. 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:

- i) in the case of delivery by post, 5 business days after the date of posting; and
- ii) in the case of email, the time that the notice is first opened or read by an employee or officer of the recipient.

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 Ergon Energy.

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.

15. DEFINITIONS

In this Agreement:

- a) "Customer" means the owner or occupier of any residential or business premise connected to Ergon Energy's network;
- b) "Customer Application Form" means an application in the approved form submitted by a customer to Ergon Energy in connection with the Project;
- c) "Ergon Energy" means Ergon Energy Corporation Limited, its employees, contractors and agents;
- d) "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;
- e) "Retailer / Installer Application Form" means the completed application form you submit to Ergon Energy in connection with these terms and conditions; and
- f) "Signal Receiver" means an Ergon Energy approved Demand Response Enabling Device (DRED) / Demand Control Signal Receiver (DCSR) that has to be connected to a 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.