

PeakSmart™ Retailer Incentive Scheme Agreement Form

Thank you for your interest in the EnergeX PeakSmart™ Retailer Incentive Scheme ('the Scheme').

Under the Scheme, EnergeX will pay to you an incentive of \$20.00 for each PeakSmart™ Compatible Air-conditioner sold to a customer who participates in the PeakSmart™ Compatible Air-conditioner Project ('the Project') and has indicated that they bought the PeakSmart™ Compatible Air-conditioner(s) from your store/company. To be eligible to participate in the Project, customers must:

1. Purchase from you a PeakSmart™ Compatible Air-conditioner(s); and
2. Arrange for an appropriately qualified electrical/air-conditioner contractor to install the PeakSmart™ Compatible Air-conditioner(s) and a Signal Receiver(s) in their home; and then
3. Enrol in the Project by completing and returning to EnergeX a PeakSmart™ Compatible Air-conditioner Project Agreement Form.

To receive your PeakSmart™ Retailer Incentive, you will need to comply with the Terms and Conditions on the back of this Agreement Form.

PLEASE READ THE TERMS AND CONDITIONS CAREFULLY

If you accept the terms and conditions and wish to participate in the Scheme, you must complete this Agreement Form and return it to EnergeX.

Should you have any questions or require further information regarding the PeakSmart™ Retailer Incentive Scheme please do not hesitate to contact EnergeX on (07) 3664-5778 between the hours of 9.00am and 5.00pm, Monday to Friday (public holidays excluded). Our email address for notices in connection with this Agreement is: kennymizz@energeX.com.au



SECTION A: Retailer details (to be completed by the Retailer)

Retailer Name:

Retailer ABN:

Name of Authorised Representative of Retailer:

Position:

Direct Telephone: ()

Email:

Address:

State:

Postcode:

By signing this Agreement Form I confirm I accept the Terms and Conditions of this offer as outlined overleaf.

Name of person signing this Agreement:

Position of person signing this Agreement:

Signature:

Date:

SECTION B: ENERGEX office use only

Confirm eligibility of Retailer to participate in the Scheme.

Yes No

In consideration for Energex accepting you as a Participant in the PeakSmart™ Retailer Incentive Scheme ('the Scheme'), you acknowledge and agree to the following terms and conditions:

1. Nature of Participation in the Scheme

- (a) Energex has invited you to participate in the Scheme to promote air-conditioning units fitted with PeakSmart™ technology and the Energex PeakSmart™ Compatible Air-Conditioner Project ('the Project') to retail customers ('the Services'). For each customer that Energex accepts as a participant in the Project as a result of your participation in the Scheme, Energex will pay you an 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 Scheme, you agree that:
 - (i) you will provide the Services to Energex; and
 - (ii) you will not give the impression to any person that you are an agent, partner or representative of Energex.

2. Duration of Scheme and Agreement

- (a) Energex intends the Scheme to be valid from 1 September 2012 until 31 March 2013 (the 'Term'). However Energex may, in its sole discretion, vary or extend the Term at any time and will provide you with written notice of such variation or extension.
- (b) Subject to clause 3 below, this Agreement will commence on the date indicated on the Agreement Form and will expire on the last day of the Term (as varied or extended under clause 2(a) above).

3. Termination of Scheme and Agreement

- (a) Energex may, in its sole discretion, terminate the Scheme at any time and will provide you with written notice in the event of such termination. This Agreement will be terminated if the Scheme 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 promotional, marketing and advertising material related to the Project (the '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 or expiry of the Scheme, the Term or this Agreement, you will return any Energex promotional materials to Energex upon its request.

5. Payment of Incentive

- (a) Subject to clause (b) and (c) below, Energex will credit you AUD \$20.00 per PeakSmart™ Compatible Air-Conditioner sold to a customer who participates in the Project (the 'incentive') upon acceptance by Energex of the Customer Application Form that identifies you as the 'appliance retailer' (in Section B). Note that for identification purposes a legible copy of a valid receipt which clearly identifies the retail outlet must be attached to the Customer Application Form. Energex reserves the right to refuse crediting you with an incentive if a customer does not attach such copy of a receipt to the Customer Application Form.
- (b) Notwithstanding clause (a) above, an incentive will only be credited to you:
 - (i) after a completed Customer Application Form has been received, processed and accepted by Energex; and
 - (ii) if the sale of the air-conditioning unit(s) to which the Customer Application Form relates is or was made during the Term (as evidenced by the copy of the receipt attached to the Customer Application Form).
- (c) A limit of one incentive per PeakSmart™ Compatible Air-Conditioner will be credited to you up to a maximum of three (3) incentives for each customer who participates in the Project.
- (d) Energex will seek to write to you in December 2012 and March 2013 to inform you of the total incentive credited and payable to you as at the date of the applicable notice ('incentive payment').
- (e) In order to claim an incentive payment, you must issue to Energex a valid tax invoice specifying the incentive payment.
- (f) Energex will then seek to issue the incentive payment to you within 28 days of acceptance of the invoice.
- (g) If this Agreement or the Scheme is terminated in accordance with clause 3, Energex's sole liability to you will be any credit that has accrued between the start of the Term and the date of termination of either the Scheme, your participation in the Scheme, or this Agreement.

6. Liability of Energex

- (a) To the full extent permitted by law and subject to clause 5(g), 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 5(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.

7. Responsibility of Retailer

- (a) 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)
- (b) 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 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.

8. 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 expiration or termination of this Agreement.

9. 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,

10. Survival of Terms

Clauses 4(b), 5(e)-(g), 6, 7, 8 and 12 shall survive termination of this Agreement.

11. 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.

12. 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.

13. Definitions

"**Agreement**" means these Terms and Conditions and accompanying Agreement Form;

"**Agreement Form**" means the first page of this Agreement which contains sections A and B of this Agreement and information about the Scheme;

"**Customer Application Form**" means the PeakSmart™ Compatible Air-Conditioner Gift-Card Reward Agreement Form that is submitted by the customer to Energex in order to participate in the Project;

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

"**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 supplier of air-conditioning units whose details are set out in Section A of the Agreement Form;

"**PeakSmart™ Compatible Air-conditioner**" means an air-conditioning unit with PeakSmart™ capability, meaning the unit is AS4755 demand response enabled;

"**Project**" means the Energex PeakSmart™ Compatible Air-Conditioner Project;

"**Retailer**", "**you**", "**your**" means the supplier of air-conditioning units to retail customers whose details are set out in Section A of the Agreement Form, including its employees, contractors and agents;

"**Services**" means the promotion of PeakSmart™ Compatible Air-conditioners and the Project.