

# PowerResponse

## Residential Customer Demand Response Agreement

This Contract sets out the terms and conditions upon which we agree to provide you the Demand Response Program including the supply and installation of the Product. This Contract between you and EnergyAustralia Pty Ltd (ABN 99 086 014 968) (**EnergyAustralia**) is made up of:

1. **Terms and Conditions:** This sets out the standard terms and conditions applicable to the Demand Response Program provided by EnergyAustralia under this Contract.
2. **Product Schedule:** This sets out the special conditions applicable to the supply and installation of the Product and your participation in the Demand Response Program once the Product is installed at your Premises.

You should read and understand both of these documents. If you have any questions about this Contract, please do not hesitate to contact [arenatrial@energyaustralia.com.au](mailto:arenatrial@energyaustralia.com.au).

## Terms and Conditions

### 1. **TERM**

- (a) This Contract commences on the Commencement Date and expires on the Expiry Date, subject to:
  - (i) earlier termination of this Contract under clause 8; and
  - (ii) renewal of this Contract under clause 1(b),  
**(Term)**.
- (b) The Term may be renewed for a further period of 12 months, on mutual agreement between you and EnergyAustralia.

### 2. **ELIGIBILITY CRITERIA**

You must satisfy the following criteria in order to be entitled to receive Demand Response Payments under clause 5 of this Contract:

- (a) you are a current EnergyAustralia retail electricity customer in New South Wales, Victoria or South Australia;
- (b) you have a "type 4" or "type 5" meter at the Premises; and
- (c) neither you, nor any other person, is on life support at the Premises.

### 3. **CUSTOMER ACKNOWLEDGMENTS**

- (a) Your personal safety is a paramount consideration for EnergyAustralia. You acknowledge and agree that you have considered your individual circumstances including your own personal safety and those in your care before entering into this Contract.
- (b) You acknowledge that:

- (i) EnergyAustralia has provided you with access to a copy of, and you understand, the PowerResponse FAQs;
- (ii) EnergyAustralia has explained to you, and you understand, how the Demand Response Program works, including the circumstances, times and duration of any electricity supply interruptions to your Premises during the Term;
- (iii) EnergyAustralia has explained to you, and you understand, the need for you to consider your own specific health and safety requirements, and those of any other occupant of the Premises;
- (iv) you have considered and are satisfied that any electricity supply interruptions that may result from a Demand Response Event under this Contract will not adversely affect your health or safety, or that of any other occupant of the Premises, including persons under your care; and
- (v) you have read and understood the Product Schedule including any additional acknowledgements made by you under the Product Schedule.

#### 4. **DEMAND RESPONSE EVENTS**

EnergyAustralia may, from time to time, electronically activate a Demand Response Event in accordance with the Product Schedule.

#### 5. **PAYMENTS TO CUSTOMER**

- (a) You will be entitled to receive certain payments under this Contract (**Demand Response Payments**) as outlined in item 7 of Part A of the Product Schedule, and subject to the conditions of that Product Schedule.
- (b) Where a Demand Response Payment becomes payable to you in accordance with this Contract and the Product Schedule, EnergyAustralia will apply such amount as a credit against your account within 15 Business Days. Such amount will then be deducted from the next invoice issued under your electricity retail contract with EnergyAustralia after the credit has been applied.
- (c) EnergyAustralia may, subject to providing at least 30 days' prior written notice to you, vary any of the Demand Response Payments that may be payable to you under this Contract.

#### 6. **NOTICES**

- (a) A notice, consent or other communication under this document is only effective if it is in writing and either left at the addressee's address or sent to the addressee by email (for notices sent to EnergyAustralia) or by mail, email or SMS (for notices sent to you).
- (b) A notice, consent or other communication that complies with this clause is regarded as given and received:
  - (i) if it is delivered, when it has been left at the addressee's address;
  - (ii) if it is sent by mail, three Business Days after it is posted; or
  - (iii) on the same day if it is sent in electronic form by email or SMS between 9.00am (Melbourne time) and 11.00pm (Melbourne time) on that day.
- (c) A person's addresses are as set out below or as the person otherwise notifies the sender.

EnergyAustralia [arenatrial@energyaustralia.com.au](mailto:arenatrial@energyaustralia.com.au)

Customer Postal address, email and mobile telephone number as notified to EnergyAustralia.

## 7. **ENERGYAUSTRALIA'S LIABILITY**

- (a) Under the Australian Consumer Law, consumer guarantees apply to the supply of "goods" and "services" to "consumers" (within the meaning of the Australian Consumer Law). If any such consumer guarantee applies to any goods or services we supply under this contract then our liability (if any) for any failure to comply with that guarantee in connection with any goods or services (that are not of a kind ordinarily acquired for personal, domestic or household consumption) is limited, as far as the law permits and at our option, to resupplying the goods or services or paying for their resupply.
- (b) Subject to clause 7(a) and to the extent permitted by law, all conditions, warranties, guarantees, rights, remedies, liabilities or other terms implied or conferred by statute, custom or the general law that impose any liability or obligation on EnergyAustralia are expressly excluded under this Contract.
- (c) To the extent permitted by law, EnergyAustralia is not liable to you for any loss, harm, damage, cost or expense, including any indirect or consequential loss, arising directly or indirectly under or in connection with this Contract or the performance or non-performance under this Contract and whether arising under any indemnity, statute, in tort (for negligence or otherwise) or on any other basis in law or equity.

## 8. **TERMINATION**

### 8.1 **Termination of this Contract**

- (a) EnergyAustralia may terminate this Contract:
  - (i) immediately where you have breached a material term of this Contract and have not rectified that breach within 14 days from receipt of a written notice from EnergyAustralia;
  - (ii) immediately where you no longer satisfy any one or more of the eligibility criteria under clause 2;
  - (iii) immediately where a Field Services Technician deems that the Premises is unsuitable or not safe for the installation of the Product under item 1(g)(ii) of Part B of the Product Schedule;
  - (iv) immediately where you do not consent to an Inspection under item 2(b) of Part B of the Product Schedule; or
  - (v) upon EnergyAustralia providing you with 30 days written notice of its intention to terminate this Contract.
- (b) You may terminate this Contract by providing at least 30 days' prior written notice to EnergyAustralia, subject to clause 8.2(b).

### 8.2 **Consequences of termination**

- (a) Where this Contract is terminated by EnergyAustralia under clause 8.1(a):
  - (i) EnergyAustralia will pay to you all Demand Response Payments that are payable up to the date of termination, in accordance with clause 5; and

- (ii) risk in, and title to, the Product shall transfer to you immediately upon termination.
- (b) Where this Contract is terminated by you under clause 8.1(b):
  - (i) EnergyAustralia shall pay to you all Demand Response Payments that are payable up to the date of termination, in accordance with clause 5;
  - (ii) risk in, and title to, the Product shall transfer to you immediately upon termination.

**9. YOUR PRIVACY**

- (a) You consent to us using, collecting, disclosing and transferring your personal information and sending you information in accordance with our Privacy Policy, available at [energyaustralia.com.au/privacy](http://energyaustralia.com.au/privacy), as amended from time to time. This may include using your personal information in order to sell, deliver and market energy to you and for customer analysis purposes. We may also provide you with information on other products and services available to our customers. Personal information is shared within our group of companies and disclosed to other service providers, including credit reporting bureaus, to the extent required to undertake these activities. Some of those companies and service providers may be located overseas. For further information, please see the "How do we use your information?" section of our Privacy Policy.
- (b) Subject to this clause 9 and our Privacy Policy, you consent to an EnergyAustralia third party service provider contacting you about participating in a study and/or research project, which may include an in-depth insights session with other EnergyAustralia retail electricity customers.

**10. GST**

- (a) Words defined in the GST Law have the same meaning in this clause, unless the context makes it clear that a different meaning is intended.
- (b) The Demand Response Payments or any other consideration under this Contract includes any GST payable on that supply, and EnergyAustralia is responsible for payment of that GST.
- (c) EnergyAustralia must, within 20 Business Days of request from you, issue a tax invoice (or an adjustment note) to you for any supply under or in connection with this Contract.

**11. GENERAL**

- (a) This Contract is governed by the laws of the State of Victoria and you agree to submit to the non-exclusive jurisdiction of the courts in that State.
- (b) This Contract contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Contract and has no further effect.
- (c) This Contract may not be varied except in writing signed by a duly authorised representative of each of the parties.
- (d) This Contract may consist of a number of counterparts each signed by one or more parties to this Contract. When taken together, the signed counterparts are treated as making up the one document.

- (e) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Contract enforceable, unless this would materially change the intended effect of this Contract.
- (f) Each party must pay its own expenses incurred in negotiating and executing this Contract.
- (g) If there is any inconsistency between the Terms and Conditions and the Product Schedule, then the Product Schedule will prevail to the extent of the inconsistency.

## 12. DEFINITIONS

The following definitions apply in this document.

**Australian Consumer Law** means the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

**Authorisation** means any consent, authorisation, accreditation, registration, filing, recording, agreement, notarisation, nomination, certificate, permission, licence, approval, permit, authority, exemption, ruling or statutorily required policy of insurance and any renewal or variation of any of them.

**Business Day** means a day other than a Saturday or Sunday when the banks in Melbourne are open for business.

**Commencement Date** means the date that we receive confirmation from the Field Services Technician that the Product is commissioned at your Premises.

**Confidential Information** has the meaning given under item 3(d)(i) of Part B of the Product Schedule.

**Contract** means this contract, including the Terms and Conditions and Product Schedule.

**Demand Response Event** means the reduction of the electricity supply at your Premises, activated in accordance with the procedure outlined in item 3(a) of Part A of the Product Schedule.

**Demand Response Payment** has the meaning given in clause 5(a).

**Demand Response Program** means the demand response program described in item 1 of Part A of the Product Schedule.

**Expiry Date** means 3 years from the Commencement Date.

**Field Services Technician** means the person we assign or the Product Supplier assigns to perform the Work.

**GST** has the meaning given in the GST Law.

**GST Law** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Inspection** has the meaning given to that term in item 2(a) of Part B of the Product Schedule.

**NEM** means the National Electricity Market.

**Owner's Guide** means the owner's guide provided to you by EnergyAustralia or the Product Supplier.

**Premises** means the address where your Product is installed and commissioned.

**Product** means an internet-connected energy monitor and circuit-breaker, supplied by the Product Supplier, known as the Auditor+Switch, providing real-time measurement of energy use inside your home and allowing all devices and appliances that are connected to the circuit(s) it is installed on (such as a pool-pump or air-conditioner) to be remotely switched off via the internet.

**Product Schedule** means the "Product Schedule" that forms part of the Contract.

**Product Supplier** means Wattwatchers Pty Ltd (ACN 123 010 588).

**SMS** means short message service via electronic text message.

**Term** has the meaning given in clause 1(a).

**Terms and Conditions** means these terms and conditions that form part of the Contract.

**Work** means the installation of the Product under Part B of the Product Schedule.

## **PRODUCT SCHEDULE**

### **PART A DEMAND RESPONSE PROGRAM**

#### **1. Demand Response Program**

The Demand Response Program is a program offered by EnergyAustralia to eligible residential customers in Victoria, South Australia and New South Wales with a Product installed and commissioned at their Premises. Under this program, customers allow EnergyAustralia to remotely control and operate their Product to help manage the variability in the power system, and to secure the electricity grid during unforeseen events and in doing so can earn credits on their electricity bill.

#### **2. Application of this Part A**

This Part A only applies where the following conditions have been met:

- (a) you satisfy the eligibility criteria in clause 2 of the Terms and Conditions;
- (b) the Product has been installed and commissioned at the Premises in accordance with Part B of this Product Schedule; and
- (c) you have access to SMS and email necessary to receive notifications from EnergyAustralia and you consent to receiving notifications which do not include an unsubscribe facility.

#### **3. Electronic Activation of Demand Response**

- (a) At any time during the Term, EnergyAustralia may activate a Demand Response Event as follows:
  - (i) EnergyAustralia may send you an SMS notification at least 10 minutes prior to activating a Demand Response Event;
  - (ii) EnergyAustralia will activate the Demand Response Event by remotely activating the Product(s) at your Premises to interrupt power supply to the circuit(s) in respect of which the Product(s) is installed;
  - (iii) at the conclusion of the Demand Response Event, EnergyAustralia will remotely deactivate the Product(s) at your Premises to restore power supply to the circuit(s) in respect of which the Product(s) is installed; and
  - (iv) EnergyAustralia may send you an SMS notification indicating that the Demand Response Event is complete.
- (b) EnergyAustralia may electronically activate a Demand Response Event:
  - (i) on any day of the week and at any time of the day;
  - (ii) no more than 20 times in each period of 12 months from 1 December to 30 November during the Term (including up to 4 activations for the purpose of testing during that same period); and
  - (iii) for a period not exceeding 4 hours in duration per activation.

#### 4. Notifications

From time to time we may (but are not obliged to) send you SMS or email notifications in relation to our provision of the Demand Response Program to you including in relation to Demand Response Events.

#### 5. Your Obligations

- (a) You acknowledge that EnergyAustralia may interrupt the supply of electricity to circuits at your Premises during a Demand Response Event.
- (b) You acknowledge and agree that, notwithstanding any other provision of this Contract, you will not be entitled to receive any Demand Response Payments under this Contract where:
  - (i) you override or control (or permit any person, other than a person authorised by EnergyAustralia, to override or control) any signals being sent to, or received from, the Product by EnergyAustralia during a Demand Response Event; or
  - (ii) you are in breach of any of your obligations under item 3(a) or (b) of Part B of this Product Schedule;
- (c) You must not authorise anyone other than EnergyAustralia to control the Product.
- (d) You acknowledge and agree that you have not, and will not during the Term of this Contract participate in any other demand response program (whether or not it is the same or similar to this Demand Response Program) offered by us or a third party in relation to the Premises without our prior written consent.
- (e) You agree to maintain the Product in accordance with the Owner's Guide.

#### 6. Authorisations

You must do all things that EnergyAustralia may reasonably require for it to obtain and maintain all necessary Authorisations to enable it to exercise its rights under this Contract, including, without limitation, the provision of information and any written consent, and the execution of documentation within a reasonable time.

#### 7. Demand Response Payments

Subject to clause 5(c) of the Terms and Conditions, you will be entitled to receive the following Demand Response Payments:

Fixed Amount	Event
\$25.00	Payable when you sign up to this Contract.
\$20.00	Payable per Demand Response Event.
\$5.00	Payable where EnergyAustralia has requested that you complete a survey, and such survey has been completed by you and returned to EnergyAustralia as required.



## **PART B PRODUCT SUPPLY AND INSTALLATION**

### **1. Installation of the Product at your Premises**

- (a) We agree to install (or procure the installation of) the Product at your Premises and may provide certain supporting services to you on the terms of this Part B.
- (b) You will not be charged for the installation of the Product and the provision of any supporting services by us to you under this Part B.
- (c) We will:
  - (i) notify you when the Product is ready to be installed and we will agree a mutually suitable installation date with you; and
  - (ii) notify you when the Product is ready for operation and any supporting services are ready to be provided.
- (d) You agree to:
  - (i) provide safe, convenient and unhindered access to the Premises to the Field Services Technician during the installation of the Product; and
  - (ii) be present on site at the Premises during the installation of the Product.
- (e) The Product will be installed:
  - (i) by Field Services Technicians who are suitably experienced and qualified (including being duly licensed and/or registered by law);
  - (ii) pursuant to the Product Supplier's instructions and relevant Australian standards and laws;
  - (iii) in a location at the Premises deemed suitable by the Field Services Technician, taking into account the building infrastructure; and
  - (iv) within five days from the scheduled installation date.
- (f) The Field Services Technician will:
  - (i) test and commission the Product after installation; and
  - (ii) test all existing infrastructure required for the Product to ensure that it complies with the Product Supplier's instructions and relevant Australian standards and laws.
- (g) If the Field Services Technician deems that the Premises is unsuitable (including inadequate electrical supply) or unsafe for installation of the Product, EnergyAustralia may (in its absolute discretion) either:
  - (i) rectify the non-compliance; or
  - (ii) terminate the Contract under clause 8.1(a)(iii) of the Terms and Conditions.
- (h) The Field Services Technician will supply a certificate of electrical safety (or equivalent) upon completion of installation of the Product.
- (i) EnergyAustralia or the Field Services Technician may provide basic instructions to you on the operation of the Product.

- (j) To avoid doubt, EnergyAustralia is not obliged to provide any additional work to ensure that, prior to installation of the Product, the Premises complies with electrical standards as imposed by law.

## 2. **Site Inspections and Data**

- (a) During the Term, EnergyAustralia representatives may reasonably require access to the Premises for a site inspection or to test the Product and if required, conduct any manual adjustments to the Product (**Inspection**).
- (b) If we wish to conduct an Inspection, we will request your prior consent (not to be unreasonably withheld) and arrange a mutually suitable date to conduct the Inspection. If you refuse to consent to an Inspection, we may terminate this Contract under clause 8.1(a)(iv) of the Terms and Conditions.
- (c) You must be on site at the Premises during all Inspections.
- (d) You consent to us:
  - (i) collecting, storing and managing any data, metadata, information, compilation, list containing aggregated data or other information that we collect, store, create or process, or that is otherwise provided by you to us in connection with the Product and the Demand Response Program (**Data**);
  - (ii) using the Data to undertake data analytics for EnergyAustralia's internal business purposes, determining any variation to your energy usage as a result of using the Product and assessing the performance of the Product (amongst other things); and
  - (iii) disclosing the Data to third parties as needed for the purposes of managing the Demand Response Program.
- (e) All Data remains the property of EnergyAustralia. All right, title and interest in any Data will automatically vest in EnergyAustralia immediately on its creation.

## 3. **Your Obligations**

- (a) You must not, and must not permit any third party to use, access, re-locate or interfere with the Product. EnergyAustralia is not liable for use of, or interference with, the Product by a third party.
- (b) You must not, and must not permit a third party to:
  - (i) copy, modify, alter, de-install, repair, decompile, reverse engineer or interfere with all or any part of the Product;
  - (ii) sell, sub-license, dispose of, assign, mortgage, pledge, change or otherwise encumber the Product; or
  - (iii) alter, remove or obscure any proprietary notices or disclaimers from the Product.
- (c) You must:
  - (i) provide EnergyAustralia with sufficient prior written notice if you intend to cease occupying the Premises; and
  - (ii) notify EnergyAustralia in the event of an alteration in your contact details, including a change to your phone number or email address.

- (d) You acknowledge and agree that:
  - (i) you will be in receipt of certain non-public information that relates to EnergyAustralia's business, assets or affairs, including the existence, status and nature of the Demand Response Program and information relating to the Product ("**Confidential Information**");
  - (ii) the Confidential Information is secret, confidential and valuable to EnergyAustralia;
  - (iii) you agree to keep the Confidential Information confidential and must not disclose it or make it available (directly or indirectly) to any person, other than in accordance with the terms of this Contract; and
  - (iv) any breach of your obligations of confidentiality under this Contract may cause EnergyAustralia immediate and irreparable harm.
- (e) You agree to participate, at EnergyAustralia's reasonable request, in all promotional activity (such as publicity and photography) surrounding the Demand Response Program, and consent to EnergyAustralia using your name and image in such promotional activity.
- (f) You acknowledge that, in order to obtain the most benefit out of the Product, you will need to download a third-party app which will provide you with access to a user portal. The app is subject to terms and conditions between you and a third party.

#### 4. **Feedback and Complaints**

- (a) You consent to being contacted about the Product, including providing regular feedback on your experiences with the Product including via telephone interviews and by completing surveys.
- (b) If you have any complaints relating to or in connection with the Product or the Demand Response Program, contact us at [arenatrial@energyaustralia.com.au](mailto:arenatrial@energyaustralia.com.au).

#### 5. **Our Obligations**

- (a) All work done under this Contract will comply with:
  - (i) the Building Code of Australia (to the extent required under the Environmental Planning and Assessment Act 1979), including any regulation or other instrument made under that Act;
  - (ii) all other relevant codes, standards and specifications that the Work is required to comply with under any law;
  - (iii) the conditions of any relevant development consent or complying development certificate; and
  - (iv) any construction certificate and any other requirement of the relevant local council and any statutory authority whose approval or consent is required with respect to the Work and of which you have notified EnergyAustralia.
- (b) EnergyAustralia will not be liable for a failure to comply with items 5(a)(i)-(iii) if the failure relates solely to a design or specification:
  - (i) prepared by or on behalf of you (but not by or on behalf of EnergyAustralia);  
or

- (ii) required by you, if EnergyAustralia has advised you in writing that the design or specification contravenes items 5(a)(i)-(iii).
- (c) To the extent permitted by law, EnergyAustralia will be entitled to delay the provision of our services under the Contract to the extent that EnergyAustralia is prevented from providing the services due to matters beyond our reasonable control.

6. **Ownership and Risk**

- (a) EnergyAustralia will retain ownership of the Product during the Term.
- (b) EnergyAustralia is responsible for all risks associated with transport, supply and installation of the Product.
- (c) Risk and title to the Product shall transfer to you at the termination or expiry of the Term.

7. **Definitions**

Capitalised terms that appear in this Part B have the meanings given under clause 12 of the Terms and Conditions.