

# Program agreement Terms and Conditions

Entergy New Orleans, LLC (“ENO”) and APTIM Environmental & Infrastructure, LLC. (“APTIM” or “Program Administrator”) have entered into an agreement whereby APTIM will design, implement, and administer the Energy Smart Program in accordance with the ENO comprehensive demand-side management plan. Program Administrator and any eligible applicants to a Program shall be the parties to and bound by these terms and conditions (“this Agreement”). ENO, Entergy Corporation, and ENO’s affiliates shall be third-party beneficiaries of this Agreement and Applications.

## 1. Definitions

- a. Applicant means any person who submits an application to a Program.
- b. Approval Date means the date on which Program Administrator approves an Application.
- c. APTIM means APTIM Environmental & Infrastructure, Inc.
- d. ENO means Entergy New Orleans, LLC.
- e. Program Administrator means APTIM.
- f. Program means any of the Energy Smart Programs that are administered by the Program Administrator.
- g. Program Payment means any monetary incentive or reward available to ENO customers that meet the requirements for each Program and which are paid pursuant to the terms and conditions of this Agreement.
- h. Project or Project Measure means specific energy efficiency measures listed on applications and approved by Program Administrator.
- i. Project Pre-Approval Date means the date the Program Administrator confirms all required documentation has been provided to pre-approve the Project for participation in the Program.
- j. Project Approval Date means the date the Program Administration approves the Project for payment.
- k. Project Completion Date means the date the Program Administrator accepts the Project Completion Notice.
- l. Project Completion Deadline means the completion date established by the Program for the specific Project or Project measure associated with the Application.
- m. Project Completion Notice means the notice to be provided by Applicant to Program Administrator after completion of a Project.

## 2. Incentive offer

Program Payments shall be available to eligible Applicants who properly submit a Program application (“Application”) and meet Program requirements described further herein. Program Payments shall be available according to the terms of the applicable Program and Application, as well as this Agreement. Products required by the applicable Program must be purchased and installed within the date range outlined on the Application. Applicant understands that all custom incentive Applications must be pre-approved in writing by the Program Administrator. Applicants should maintain a copy of the Application for your records. Incomplete Applications will be returned and will not be processed. Final applications must have complete information and be submitted with proof of purchase, such as receipts or invoices that clearly itemize the product(s) and/or services(s) received. Purchase orders, proposals, and quotes are not considered proof of purchase.

## 3. Project term and description

The Term of this Agreement shall begin on the Approval Date as determined by the Program as part of the Application to this Agreement and shall run continuously through the Project Completion Deadline, unless extended or terminated pursuant to this Agreement or by notification of either of the parties. The Project shall be implemented in accordance with this Agreement.

## 4. Program payments

Upon completion of a Project, Applicant shall submit a Project Completion Notice to Program Administrator. Upon receipt and acceptance of a Completion Notice and any other requested project documentation, Program Administrator will facilitate Program Payment to the Applicant. There shall be no obligation to make any payments to the Applicant if ENO does not provide the funds to the Program for this purpose. The Program Administrator, on behalf of the Program, reserves the right to increase or decrease incentive amounts, and associated energy savings to be claimed, if conditions change from the time of Project Pre-Approval to the time of Project implementation. This includes, but is not limited to, Project cost and Project scope. Applicants may only receive one payment per Project Measure. Should Applicant or its representative make duplicate application for payment for the same Project, ENO or its representative has the right to recover any payments made in excess of the entitled payment. The Program excludes internal, non-contracted labor for private companies or individuals when calculating the total project cost. Incentives are available on a first-come, first-served basis. Incentives are subject to change or termination without notice at the discretion of the Program Administrator and ENO. Agreements that are in place and applications that are in-progress during a change in incentive or program availability shall be honored.

## 5. Program discretion

The Program Administrator and ENO reserve the right to change or discontinue aspects of the Program upon a 45-day notice. The Program Administrator also reserves the right, in its sole discretion, to withhold or terminate Program Payments immediately if:

- (1) An identified problem with a Project is not resolved, due to an Applicant’s failure to follow any and all applicable terms and conditions, rules, or procedures; or
- (2) Determination that Applicant’s receipt of Incentive Payments will not result in the implementation of any measures by Applicant, or if the measures will not result in the reduction of energy usage; or
- (3) The Applicant becomes “Insolvent” (which shall mean Applicant (i) files a petition or otherwise commences, authorizes, and acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization, or similar law, including but not limited to the United States Bankruptcy Code or the laws of any state, or has any such petition filed or commenced against it; (ii) makes an assignment or any general arrangement for the benefit of creditors; (iii) otherwise becomes the subject of a bankruptcy proceeding or insolvent (however evidenced); (iv) has a liquidator, administrator, receiver, trustee, conservator, or similar official appointed with respect to it or any substantial portion of its property or assets; or (v) is generally unable to pay its debts as they fall due).

**6. Misrepresentation**

Any and all funds determined by the Program, Program Administrator, or ENO to have been acquired on the basis of false information supplied by or on behalf of Applicant must be returned to the Program. This article shall not limit other remedies that may be available for the filing of false or fraudulent Applications. Applicant shall be responsible for all costs incurred for collection of monies owed due to any misrepresentation or false statements.

**7. Project implementation**

(i) The Applicant's procurement, installation, and implementation ("Completion") of energy efficiency measures shall be accomplished in accordance with the requirements outlined in this Agreement. The Applicant shall deliver to Program Administrator a Project Completion Notice by the Project Completion Deadline noted in the Application. The Applicant must provide invoices for equipment purchased or service performed as well as documentation that verifies that the energy efficiency measures (i) have been properly installed, (ii) are functioning properly, and (iii) have the potential to generate energy savings if properly maintained and operated. All Projects are expected to comply with standard federal, state, and local building and construction codes. All equipment must be new; used or rebuilt equipment is eligible only when pre-approved by Program Administrator in writing. Displaced equipment must not be reused as part of the Project unless determined as part of the Project and reviewed in accordance with Project Pre-Approval. Equipment purchased under a capital lease structure may qualify for an incentive, but must be pre-approved by Program Administrator in writing before project initiation or entering into the equipment lease.

(2) Should Program Administrator discover that the Project was not implemented as attested to in the Project Completion Notice, the Applicant may be considered in breach of this Agreement and required to repay any incentive payment made, including costs incurred by the Program Administrator or ENO to recover such fees, and may be subject to any additional relief to which ENO may be entitled.

**8. Right to inspect**

The Program Administrator and ENO shall have the right to inspect any and all Project records and installations during the term of this Agreement and the corresponding Application, and for a two-year period thereafter. The Program Administrator and its designated representatives shall have the right to observe and inspect all Project work in any of the Applicant's facilities upon advance notice for a period of 2 years from the Project Payment date. The Applicant shall maintain accurate records of the Project work (e.g., installation records, invoices, and maintenance information) that is performed hereunder for a period of 2 years from the date of the applicable Project Payment.

**9. Monitoring and verification**

The Program Administrator, and its designated representatives, shall have the right to monitor energy use/production prior to and after installation of the Project and to perform an inspection of any Project to evaluate Program efficacy for a period of 2 years from the date of Project Payment under this Agreement or pursuant to an Application.

**10. Manner and performance**

The Applicant shall perform its responsibilities under this Agreement in an efficient and expeditious manner and in accordance with all of the terms and provisions of this Agreement. The Applicant shall make all reasonable attempts to ensure that all Project work, as described in this Agreement, is performed in accordance with current professional standards and with the diligence and skill expected for the performance of such work.

**11. Representations/warranty**

The Program Administrator and ENO do not endorse any particular trade ally, manufacturer, product, system, or design by offering an incentive. The Program Administrator and ENO are not responsible for any tax liability imposed on the recipient as a result of the payment of incentives. The Program Administrator and ENO make no representation or warranty and assume no liability with respect to the quality, safety, performance, or other aspect of any design, consulting, product, system, equipment, Project, or appliance installed or received and expressly disclaims any such representations, warranties, and liability, including, but not limited to, any implied warranties of merchantability or fitness for a particular purpose. The Program Administrator and ENO do not guarantee that installation and operation of energy-efficient equipment will result in reduced usage or in cost savings. The Program Administrator and ENO are not responsible for the proper disposal or recycling of any waste generated as a result of any Project. The Program Administrator and ENO are not liable for any damages, including any incidental or consequential damages, arising out of the operation or malfunction of any Project, products, equipment, or appliances, or the installation thereof.

**12. Default and termination**

(1) This Agreement shall remain in effect until the Project Completion Deadline as specified in the Application hereof unless a Party is in breach of any provision of this Agreement.

(2) In the event that ENO terminates, for any cause, Program Administrator's Contract, which terminates Program Administrator's right to act as Program Administrator of the Energy Smart Program, responsibility for this Agreement transfers to the new Program Administrator or ENO until a new Program Administrator is named.

(3) This Agreement may be terminated at Program Administrator's sole discretion if Applicant does not complete implementation of the Project on or before the Project Completion Deadline, unless the Project Completion Date is extended by mutual written agreement of the Parties.

(4) Program Administrator as approved by ENO reserves the right to change or discontinue any Program at any time with 45-day notification, and reserves the right to terminate or amend this Agreement upon the change or discontinuance of any such Program, or as directed by the Council of the City of New Orleans or pursuant to a change in laws or regulations applicable to a Program.

**13. Indemnification and damages**

The Applicant shall protect, indemnify, defend, and hold harmless Program Administrator, ENO, and the City of New Orleans (the "City") respective affiliates, subsidiaries, parent companies, officers, directors, agents, and employees, (collectively the "Indemnitees") against all losses, damages, expenses, fees, costs, and liability arising from the Program, any Project, design, consulting, product, system, equipment, or appliance, and claims thereof by Applicant or any third party. The Applicant agrees that such obligations under this Article shall survive any expiration or termination of this Agreement or an Application, and shall not be limited by any enumeration herein of required insurance coverage. To the maximum extent permitted by law, the Applicant agrees to limit Program Administrator's, ENO's, and the City's liability to the total amount of the Project Payments identified in the Application for the Project giving rise to such liability. This limitation shall apply regardless of the cause of action or legal theory pled or asserted. Under no circumstances shall Indemnitees be liable for any special, indirect, or consequential damages, including, but not limited to, lost profits, loss of earning, or loss of use, however the same may be caused.

**14. Publicity**

The Applicant shall not use the Program, Program Administrator's or ENO's corporate name, logo, identity, any affiliation, or any related logo including the "Energy Smart" name, logo, or identity, for any marketing, advertising, or solicitation without prior written consent of Program Administrator and ENO, which may be withheld for any or no reason. Program Administrator and ENO reserve the right to publicize the Applicant's participation in the Energy Smart program unless requested otherwise in writing and submitted to [info@energysmartnola.com](mailto:info@energysmartnola.com) at the time the Application is submitted. For purposes of the foregoing, to the extent applicable, Applicant grants Program Administrator and its contractors a nonexclusive, fully paid up, irrevocable license to Applicant's name and logo solely for the purpose of publicizing Applicant's participation in the Program.

**15. Review and disclaimer**

Execution of this Agreement and any review of the design, construction, operation, or maintenance of the Project by any Program representative or any of their subcontractors shall not constitute any representation or warranty by the Program, Program Administrator, or ENO as to the economic or technical feasibility, operational capability, or reliability of any renewable or energy efficiency measures or the capability or reliability of any market provider performing any work on the Project. The Applicant shall in no way represent to any third party that the execution of this Agreement or an Application, or any reviews by Program representatives or their subcontractors, including, but not limited to, review of the design, construction, operation, or maintenance of the Project is a representation or warranty by the Program, Program Administrator, or ENO as to the economic or technical feasibility, operational capability, or reliability of the renewable or energy efficiency measures or an endorsement of the contractor performing work on the Project. The Applicant is solely responsible for the technical feasibility, operational capability, and reliability of the renewable or energy efficiency measures.

**16. Miscellaneous**

- (1) Governing Law. All Applications, Incentive Agreements, and these Terms and Conditions shall be governed, construed, and enforced in accordance with the laws and regulations of the State of Louisiana, without regard to any conflicts of laws or principles that may direct the application of the laws of another jurisdiction. The Applicant irrevocably submits to the jurisdiction of the state and federal courts sitting in New Orleans, Louisiana, with regard to any controversy in any way relating to the execution, delivery, or performance of an Application or this Agreement. Suits, claims, or actions founded upon such controversies shall be brought or filed exclusively in such courts and nowhere else. The exclusive venue for any dispute or controversy arising under an Application or Incentive Agreement shall be the Orleans Parish Civil District Court or the Federal District Court for the Eastern District of Louisiana.
- (2) Compliance with Applicable Laws. The Applicant shall at all times comply with and observe all federal and Louisiana state laws and published circulars, local laws, ordinances, rules, and regulations which are in effect from the time at which Applicant submits an Application or enters into this Agreement through Applicant's receipt of a Program Payment as they pertain to this Program. All references to statutes or regulations contained in any Application or this Agreement shall be construed to include successors thereto.
- (3) Assignment. Upon consent of ENO, Program Administrator may assign, transfer, or convey any Application or any of its rights, obligations, interests, or responsibilities thereunder, in whole or in part, without the consent of the Applicant. Neither an Application nor any rights or obligations hereunder or thereunder may be sold, assigned, transferred, or otherwise disposed by Applicant, whether pursuant to a change of control, by operation or law, or otherwise, without Program Administrator's prior written consent.
- (4) Severability. If any provision of any Application or this Agreement is construed by a court of competent jurisdiction to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable and the Application or this Agreement shall be construed and enforced as if the illegal, invalid, or unenforceable provision had never comprised a part thereof. Furthermore, in lieu of such illegal, invalid, or unenforceable provision, the Application or this Agreement shall be reformed with a similar provision that is legal, valid, and enforceable.
- (5) Risk of Loss. The Program Administrator and ENO at no time assume risk of loss for any personal property of the Applicant or any third party.
- (6) Waiver. Failure or delay on the part of either party to exercise any right, power, privilege, or remedy hereunder shall not constitute a waiver thereof. A waiver of any default shall not operate as a waiver of any other default or of the same type of default on a future occasion.

**17. Acceptance**

The Applicant is required to acknowledge its understanding and acceptance of the terms and conditions of this Agreement by signing and returning executed copy of the Energy Smart Program Application to the Program Administrator at the address or email identified in this form on or before the required Deadline. If a completed Application is not received by the Project Pre-Approval or Application deadline, Program Administrator will consider that Applicant's decision is to decline the terms and conditions contained herein, and this Agreement will be of no force and effect.