

Customer Participation Agreement



Fax or Mail this Customer Participation Agreement including all appendices and addendums ("Agreement") to:

EnergySmart Jobs Program, Fax to 877-254-1003, 100 California St, Ste 1320, San Francisco, CA 94111.

This Agreement shall be effective from **August 2, 2010 to January 31, 2012** ("Term"), unless otherwise terminated in accordance with the terms set forth below. If store ownership or management changes during the Term of this Agreement, a new Agreement must be submitted to PECEI immediately. As used throughout this document, the term "Party" means Portland Energy Conservation, Inc. ("PECEI") and the Customer, or collectively the "Parties." This Agreement includes the following documents:

- Appendix 1: Information and Confidentiality Release
- Addendum A for multiple sites/facilities (if applicable)

Customer Information *All information is required for processing.*

If this Agreement applies to multiple Facilities please refer to the Addendum attached and check here.

Electric Utility Number:		Electric Utility Provider:		
Name of Facility:		Contact Person and Title:		
Telephone:	Fax:	Email:		
Installation Street Address (<i>physical location of facility</i>):		City:	State: CA	Zip:
Customer 9 Digit Taxpayer ID:	<input type="checkbox"/> Federal Tax ID <input type="checkbox"/> EIN	Tax Status: <input type="checkbox"/> Corporation <input type="checkbox"/> Individual/Sole Proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> Exempt (<i>tax exempt, non-profit</i>)		
Vintage (when facility was built): <input type="checkbox"/> Prior to 1978 <input type="checkbox"/> 1978-1992 <input type="checkbox"/> 1993-2001 <input type="checkbox"/> 2002-2005 <input type="checkbox"/> After 2005				

Square Footage of Facility:

Program Participation Requirements

By signing this Agreement, Customer acknowledges that they have read, understand and agree to comply with the following Program Participation Requirements:

- 1. Eligibility.** Eligibility for the EnergySmart Jobs Program ("Program") is restricted to California business locations with refrigeration systems. All purchase invoices or receipts for projects submitted for incentives must be dated between **August 2, 2010 and January 31, 2012**. All incentive paperwork must be received by the Program by February 1, 2012. Customer is responsible for ensuring that equipment meets the EnergySmart Jobs Program Equipment Specifications referenced on the Program website at www.energysmartjobs.org, which are subject to change. Please check with the Program before submitting Incentive Worksheets.
- 2. Taxes.** Payee must provide PECEI with tax information in order to process incentives and PECEI will report incentives and direct installations greater than \$600 to the IRS on Form 1099, unless the Payee is exempt. Customers and/or payees should consult their tax advisor concerning the taxability of incentives.
- 3. Funding:** All incentives paid under this Program are available on a first-come, first served basis until allocated funds are depleted. The Program may be modified or terminated at any time without notice. PECEI is receiving funds through a contract with the California Energy Commission (Energy Commission) for this Project. The Energy Commission has received American Recovery and Reinvestment Act of 2009 (ARRA) funds for the State Energy Program (SEP). SEP funds are to be used on energy programs focused on existing residential and commercial building energy efficiency (and water efficiency) retrofits. California's SEP is focused on increasing energy efficiency to reduce energy costs and consumption, cut reliance on imported energy, and shrink energy impacts on the environment. For additional information, please reference: www.energy.ca.gov/recovery/sep.html#efficiency
- 4. Incidental and Consequential Damages:** BOTH PARTIES AGREE NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES.
- 5. Life of Product:** Customer understands incentive payments are based on related energy benefits over the life of the product. Customer agrees to use the product at the above noted installation site for the useful life of the product.
- 6. Program incentives and partnering program incentives combined may not exceed Project cost:** Customer must submit Project invoice(s) which include: vendor name/address/phone, itemized listing of product(s) including quantity, product description(s), manufacturer, model #, and other identifying information as appropriate, Project cost, date invoice paid or payment terms, and installation date. ESJ Incentives, or ESJ incentives combined with other incentives, may not exceed the total installed cost of the measure. Some utility territories may restrict the total incentive to less than 100%. In utility areas not partnering with the Program, either ESJ Program or utility incentives may be leveraged, but not both.

Customer Participation Agreement



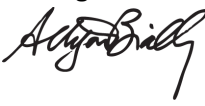
- 7. Compliance with Laws:** Customer agrees to comply with all federal, state, and municipal laws, ordinances, rules, orders, and regulations, which apply to the activities at the Facility or to the Project.
- 8. Public Information:** Because this Program is federally funded through a state agency contract, the information collected during survey, post install check, or captured in the Program's Project Tracking System ("PTS"), including status of installation and all incentive paperwork, will be delivered to the Energy Commission at the end of the Program and available under the California Public Records Act, however PECEI has negotiated that specific store information will be separated out into separate data files in order to ensure privacy and confidentiality of data, unless Customer specifically waives this anonymity. Customers must fill out the Information and Confidentiality Release attached to this Agreement as Appendix 1 to identify specific confidentiality requests.
- 9. Indemnification.** Each party shall indemnify the other party and its officers, employees, and agents against any liabilities, losses, expenses (including reasonable attorneys' fees), or claims for injury or damages which arise out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorney's fees, or claims for injury or damages are caused by or result from the negligent acts or omissions of the indemnifying party, its officers, agents, employees and subcontractors.
- 10. Intellectual Property.** PECEI and Customer shall each retain ownership of, and all right, title, and interest in and to, their respective pre-existing intellectual property.
- 11. If Tenant.** If the Facility is under lease, the tenant who controls the Facility, by executing this Agreement, assumes the rights and obligations of the Customer hereunder and is responsible for obtaining the property owner's permission to install any equipment for a project under the Program. The tenant's signature as the "Customer" on this Agreement indicates the tenant has obtained the property owner's permission.

Access Requirements

Trained EnergySmart Jobs Surveyors or Field Representatives conduct energy efficiency pre-inspections, audits or post-inspections of store refrigeration, lighting, and HVAC equipment (the "Project"). For purposes of the Project, Customer agrees to the following terms regarding access to the Customer's backrooms, machine room or rooftop (to identify multiplex systems), sales floor, prep areas, and walk-ins (collectively "Facility").

- 1. Permission.** Customer specifically agrees to permit PECEI, and its subcontractors, to visit, photograph, and monitor the Facility and to install the Equipment for purposes of the associated Project.
- 2. Access.** Customer agrees to permit PECEI reasonable access to and egress from the Facility during normal business hours to carry out the work of this Project, and to direct Customer's employees and contractors to cooperate with PECEI in the conduct of this Project. In addition, customer will allow, if requested, a representative from the Energy Commission, the California Public Utilities Commission (CPUC), PECEI, or any authorized subcontractor reasonable access to Facility to verify the installed product.
- 3. Customer Convenience.** PECEI agrees to coordinate visits to the Facility with the Customer, so as to minimize any disruptions or inconvenience to the Customer.
- 4. Costs.** PECEI agrees to bear all of the actual costs associated with performing the Project.

Agreed and Accepted

Authorized Customer Signature <div style="text-align: center;">Date —/—/—</div>	PECEI Signature 
Customer Name <i>(printed)</i>	PECEI Name <i>(printed)</i> Allison Bially
Corporate Access Approval _____ (initial) Customer agrees that this Agreement, including Appendix 1 (the Information and Confidentiality Release), applies to the list of stores in Addendum A only. Addendum A may be amended by an email request from Customer detailing additional stores to be included.	PECEI Title Associate Director

Appendix 1: Information and Confidentiality Release



This Information and Confidentiality Release ("Release") and additional Program paperwork must be faxed or mailed to:

EnergySmart Jobs Program, Fax to 877-254-1003, 100 California St, Ste 1320, San Francisco, CA 94111.

This Release is attached to and made part of the Customer Participation Agreement. If Customer has opted to have the Customer Participation Agreement apply to multiple Stores or Facilities by filling out Addendum A, this Release also applies to all Stores or Facilities listed in Addendum A.

1. Confidentiality of Facility Data. The information gathered from Customer via the EnergySmart Jobs Program ("Program") is collected in accordance with PECEI's contract with the California Energy Commission ("Energy Commission"), which is funded under the federal American Recovery and Reinvestment Act of 2009 ("ARRA").

a. During Program Term

During the Program period, in order to facilitate and assess energy efficiency projects and associated incentive processing, certain participants ("Participants" defined below) require limited rights to access Customer Facility data ("Facility Data"). Facility Data includes information documented by trained Program Surveyors and Field Representative(s) at a Facility while performing Site Survey or Post Install Checks (PIC) of store refrigeration, lighting and HVAC equipment and the same information provided to PECEI for incentive processing. Participants who require access during the Program period are: (i) PECEI, including its subcontractors under the Program, (ii) the Energy Commission and their subcontractors, (iii) the local utility or a local utility funded program, and (iv) Installation Contractors. By signing the Owner Participation Agreement, Customer agrees to provide access during the Program Term to this Facility Data. Please note that specific use of photographs or energy usage data is discussed in Section 4 below.

b. Post-Program

At the end of the Program period, PECEI is contractually required to deliver all Facility Data to the Energy Commission, at which point the Facility Data will become a public record. However, pursuant to an agreement between PECEI and the Energy Commission, unless specifically authorized by this Release in Section 2 below, this Facility Data will be delivered in an aggregated form, be anonymous and not be directly associated with the Facility address and/or name of Customer to assure confidentiality. For further clarification, unless specifically authorized by this Release, the Facility address and/or name of the Customer will be available publicly to show participation in the Program, but will not be tied to the specific Facility Data.

2. Confidentiality Waivers for Facility Data

Customer has several options in regard to disclosure of Facility Data Post-Program as described above in Section 1 (b). Please initial below as applicable:

a. Maintain full anonymity at the end of the Program:

I request that my Facility Data is kept fully anonymous, as stated above in Section 1 (b).

Initial: _____

b. Waive anonymity at the end of the Program:

I waive my right to keep the Facility Data anonymous, as stated above in Section 1 (b). I further understand that granting this waiver is optional, and not required for participation in the Program. I understand that should my preference change prior to the Program end date, I must resubmit this waiver in the form of an updated Release.

Initial: _____

c. Waive anonymity to allow disclosure to specific entities at the end of the Program:

I waive my right to keep the Facility Data anonymous for specific entities and hereby authorize the disclosure of my Facility Data to the entities listed below without the above-referenced anonymity. I understand that should my preference change prior to the Program end date, I must resubmit this waiver in the form of an updated Release.

Initial: _____

Appendix 1: Information and Confidentiality Release

3. Ownership of Information

PECI may provide the Customer with information about its findings regarding specific projects at Customer's Facility, but Customer specifically acknowledges and agrees that pursuant to the PECI contract with the Energy Commission, the Energy Commission shall retain all ownership rights, including copyright and other intellectual property rights, in all data, reports, research results, summaries, information, or other written, recorded, photographic, or visual materials produced and collected during the term of the Program.

4. Releasing photographs

As part of the Program, photographs may be taken of Facility for the purposes of project verification or illustration or as part of marketing and advertising the Program. As with Post-Program disclosure of Facility Data, Customer has the option of restricting disclosure of these photographs or allowing disclosure.

- a. I hereby grant permission for these photos to be used for published project reports, project verification, or illustration. I understand granting this permission is optional and is not required for participation in the Program.

Initial: _____

- b. I hereby grant permission of these photos to be used for purposes of advertising, sales promotion, or other publicity or public disclosure designed to promote the Program. I understand granting this permission is optional and is not required for participation in the Program.

Initial: _____

- c. I request that photographs of my Facility are not disclosed for either of the purposes set forth above in Sections 4 (a) and (b).

Initial: _____

5. Releasing electric usage data

As part of the Program, specific electric usage data may be requested for M&V (Measurement and Verification) purposes. As with Post-Program disclosure of Facility Data, Customer has the option of restricting disclosure of this electric usage data or allowing disclosure.

- a. I hereby authorize the disclosure of specific site electricity usage and monitoring information from the electric utility listed below, including kW, kWh, and rate information. I understand granting this permission is optional and is not required for participation in the Program.

Electric Utility: _____

Initial: _____

- b. I request that specific energy usage data is not disclosed.

Initial: _____

Agreed and Accepted

Authorized Customer Signature

Date

___/___/___

Customer Name (*printed*)

Addendum A



Multiple Site Participation Addendum for:

_____ Parent Account Name

“Facility” Store / # & Store Contact	Address & Phone number	City	ST	Zip	Name of Electric Utility & Utility Account Number	Vintage*	Square Footage of Facility*
			CA				
			CA				
			CA				
			CA				
			CA				
			CA				
			CA				
			CA				
			CA				
			CA				
			CA				
			CA				
			CA				
			CA				
			CA				

*Vintage of each site location is required: a. Prior to 1978 b. 1978 – 1992 c. 1993 – 2001 d. 2002 – 2005 e. After 2005

*Square Footage of each site location is required.

By filling out this Addendum A, Customer agrees that the Agreement, including Appendix 1 (Information and Confidentiality Release) applies to all Facilities or Stores listed above. This Addendum A may only be amended to include additional Facilities upon an email request from an authorized representative of Customer. PECI will maintain all documentation of such requests with the Agreement records.