



Terms of Service

Efficiency Clipboard™ End User License Agreement

This Mobile Application End User License Agreement ("**Agreement**") is a binding agreement between trade ally ("**Trade Ally**") and Franklin Energy Services, LLC ("**Company**"). This Agreement governs Trade Ally's use of the Efficiency Clipboard™ mobile tool, (including all related documentation, the "**Application**"). The Application is licensed, not sold, to Trade Ally and shall be used solely for the Puget Sound Energy ("**PSE**") Home Energy Assessment Program ("**Program**").

BY CHECKING THE BOX NEXT TO THE STATEMENT "I HAVE READ AND AGREE TO THE CONDITIONS IN THE TERMS OF SERVICE AGREEMENT" YOU (A) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT; (B) AGREE THAT THE COMPANY HAS THE RIGHT TO UPDATE THIS AGREEMENT FROM TIME TO TIME AS COMPANY DEEMS NECESSARY; (C) REPRESENTS THAT YOU ARE AUTHORIZED TO ACCEPT THIS AGREEMENT ON BEHALF OF TRADE ALLY; AND (D) ACCEPT THIS AGREEMENT AND AGREE THAT TRADE ALLY IS LEGALLY BOUND BY ITS TERMS.

1. License Grant. Subject to the terms of this Agreement, Company grants Trade Ally a limited, non-exclusive and nontransferable license to:

(a) download, install and use the Application on mobile devices owned or otherwise controlled by Trade Ally ("**Mobile Device**") strictly in accordance with documentation provided by Company; and

(b) access, download and use on such Mobile Device the Content and Services (as defined in **Section 5**) made available in or otherwise accessible through the Application, strictly in accordance with this Agreement.

2. License Restrictions. Licensee shall not:

(a) copy the Application, except as expressly permitted by this license;

(b) modify, translate, adapt or otherwise create derivative works or improvements, whether or not patentable, of the Application;

(c) reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain access to the source code of the Application or any part thereof;

(d) remove, delete, alter or obscure any trademarks or any copyright, trademark, patent or other intellectual property or proprietary rights notices from the Application, including any copy thereof;

(e) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the Application or any features or functionality of the Application, to any third party for any reason, including by making the Application available on a network where it is capable of being accessed by more than one device at any time;

(f) remove, disable, circumvent or otherwise create or implement any workaround to any copy protection, rights management or security features in or protecting the Application;

(g) use the Application and information accessed through the Application for any purpose other than as permitted for the Program.

3. Reservation of Rights. Trade Ally acknowledges and agrees that the Application is provided under license, and not sold, to Trade Ally. Trade Ally does not acquire any ownership interest in the Application under this Agreement, or any other rights thereto other than to use the Application in accordance with the

license granted, and subject to all terms, conditions and restrictions, under this Agreement. Company reserves and shall retain its entire right, title and interest in and to the Application, including all copyrights, trademarks and other intellectual property rights therein or relating thereto. Furthermore, Company shall own all right, title and interest in and to information created, received, or sent using the Application.

4. Collection and Use of Information. Trade Ally acknowledge that when Trade Ally downloads, installs, or uses the Application, Company may use automatic means to collect information about Trade Ally's use of the Application. By downloading, installing, using and providing information to or through the Application, Trade Ally consents to such collection by Company. All information Trade Ally collects through or in connection with this Application is subject to Company's agreement with PSE.

5. Content and Services. The Application may provide Trade Ally with access to Company's or PSE's website (the "**Website**") and information and services accessible thereon, and certain features, functionality and content accessible on or through the Application may be hosted on the Website (collectively, "**Content and Services**"). Trade Ally's access to and use of such Content and Services are governed by Website's terms of use and by the Confidentiality requirements in this Agreement.

6. Updates. Company may from time to time in its sole discretion develop and provide Application updates, which may include upgrades, bug fixes, patches and other error corrections and/or new features (collectively, including related documentation, "**Updates**"). Updates may also modify or delete in their entirety certain features and functionality. Trade Ally agrees that Company has no obligation to provide any Updates or to continue to provide or enable any particular features or functionality. Based on Trade Ally's Mobile Device settings, when Trade Ally's Mobile Device is connected to the internet either:

- (a) the Application will automatically download and install all available Updates; or
- (b) Trade Ally may receive notice of or be prompted to download and install available Updates.

Trade Ally shall promptly download and install all Updates and acknowledge and agree that the Application or portions thereof may not properly operate should Trade Ally fail to do so. Trade Ally further agrees that all Updates will be deemed part of the Application and be subject to all terms and conditions of this Agreement.

7. Third Party Materials. The Application may display, include or make available third-party content (including data, information, applications and other products services and/or materials) or provide links to third-party websites or services ("**Third Party Materials**"). Trade Ally acknowledges and agrees that Company is not responsible for Third Party Materials, including their accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality or any other aspect thereof. Company does not assume and will not have any liability or responsibility to Trade Ally or any other person or entity for any Third Party Materials. Third Party Materials and links thereto are provided solely as a convenience to Trade Ally and Trade Ally accesses and uses them at entirely at Trade Ally's own risk and subject to such third parties' terms and conditions.

8. Term and Termination.

(a) The term of Agreement commences when Trade Ally acknowledges acceptance of this Agreement, and will continue in effect until the earlier of December 31, 2017 or upon termination by Trade Ally or Company as set forth in this **Section 8**.

(b) Trade Ally may terminate this Agreement by notifying the Company in writing and deleting the Application and all copies thereof from Trade Ally's Mobile Device.

(c) Company may terminate this Agreement at any time upon notice, which Company may do in its sole discretion. In addition, this Agreement will terminate immediately and automatically without any notice if Trade Ally violates any of the terms and conditions of this Agreement.

- (d) Upon termination:
 - (i) all rights granted to Trade Ally under this Agreement will also terminate; and
 - (ii) Trade Ally must cease all use of the Application and delete all copies of the Application from Trade Ally's Mobile Device and account.
- (e) Termination will not limit any of Company's rights or remedies at law or in equity.

9. Confidentiality. Trade Ally shall not disclose or use Confidential Information accessed through the Application, Website, Content or Services except as necessary to perform work as a CAN Network trade ally. As used in this Agreement, "Confidential Information" means all information received by Trade Ally in connection with this Agreement that is identified as being proprietary and/or confidential, or that, by the nature of the circumstances surrounding the disclosure, reasonably ought to be treated as proprietary and confidential, including customer information. Confidential Information does not include information Trade Ally can prove (i) was or becomes generally available through no breach of an obligation of confidentiality; (ii) was lawfully obtained by Trade Ally from a third party without breach of an obligation of confidentiality or (iii) was independently developed by Trade Ally as evidenced by business records. PSE exclusively owns all PSE Information. "PSE Information" is any information about persons or entities that Trade Ally obtains in any manner from any source under this Agreement, which concerns prospective and existing customers or employees of PSE, or any third party PSE has a business relationship with. PSE Information includes, without limitation, names, addresses, telephone numbers, e-mail addresses, social security numbers, credit card numbers, call-detail information, purchase information, product and service usage information, account information, credit information and demographic information. Trade Ally (a) may collect, access, use, maintain and disclose PSE Information only for the specific purpose for which such PSE Information is collected, stored or processed by Trade Ally in order to perform work as CAN Network Trade Ally, and (b) shall not otherwise use or disclose PSE Information, whether or not it is publicly available.

10. Security. Trade Ally is responsible to protect the confidentiality, integrity and availability of PSE company information (including customer names) that Trade Ally accesses through the Application. Trade Ally shall immediately notify Company of any actual, probably or reasonably suspected unauthorized access to or use, loss, destruction, compromise, breach or disclosure of the security of the Application, Website, Content or Services, or any Confidential information of Franklin Energy or PSE.

11. Disclaimer of Warranties. THE APPLICATION IS PROVIDED TO LICENSEE "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, COMPANY, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES AND ITS AND THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE APPLICATION, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, COMPANY PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE APPLICATION WILL MEET TRADE ALLY'S REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR FREE OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

12. Limitation of Liability. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL COMPANY OR ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS OR SERVICE PROVIDERS, HAVE ANY LIABILITY ARISING FROM OR RELATED TO TRADE ALLY'S USE OF OR INABILITY TO USE THE APPLICATION OR THE CONTENT AND SERVICES FOR:

(a) PERSONAL INJURY, PROPERTY DAMAGE, LOST PROFITS, COST OF SUBSTITUTE GOODS OR SERVICES, LOSS OF DATA, LOSS OF GOODWILL, BUSINESS INTERRUPTION, COMPUTER FAILURE OR MALFUNCTION OR ANY OTHER CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES

(b) DIRECT DAMAGES IN AMOUNTS THAT IN THE AGGREGATE EXCEED THE AMOUNT ACTUALLY PAID BY TRADE ALLY FOR THE APPLICATION.

THE FOREGOING LIMITATIONS WILL APPLY WHETHER SUCH DAMAGES ARISE OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW CERTAIN LIMITATIONS OF LIABILITY SO SOME OR ALL OF THE ABOVE LIMITATIONS OF LIABILITY MAY NOT APPLY TO TRADE ALLY.

13. Indemnification. Trade Ally agrees to indemnify, defend and hold harmless Company and its officers, directors, employees, agents, affiliates, successors and assigns from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, arising from or relating to Trade Ally's use or misuse of the Application or Trade Ally's breach of this Agreement. Furthermore, Trade Ally agrees that Franklin Energy assumes no responsibility for the content Trade Ally submits or makes available through this Application.

14. Severability. If any provision of this Agreement is illegal or unenforceable under applicable law, the remainder of the provision will be amended to achieve as closely as possible the effect of the original term and all other provisions of this Agreement will continue in full force and effect.

15. Governing Law. This Agreement is governed by and construed in accordance with the internal laws of the State of Wisconsin without giving effect to any choice or conflict of law provision or rule. Any legal suit, action or proceeding arising out of or related to this Agreement or the Application shall be instituted exclusively in the federal courts of the United States or the courts of the State of Wisconsin in each case located in Milwaukee and Milwaukee County. Trade Ally waives any and all objections to the exercise of jurisdiction over Trade Ally by such courts and to venue in such courts.

16. Entire Agreement. This Agreement and all policies incorporated by reference constitute the entire agreement between Trade Ally and Company with respect to the Application and supersede all prior or contemporaneous understandings and agreements, whether written or oral, with respect to the Application.

17. Waiver. No failure to exercise, and no delay in exercising, on the part of either party, any right or any power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or power hereunder preclude further exercise of that or any other right hereunder. In the event of a conflict between this Agreement and any applicable purchase or other terms, the terms of this Agreement shall govern.