

## PROGRAM TERMS AND CONDITIONS

**Welcome to Colorado Springs Utilities' Peak Energy Rewards ("Program").** The Program is provided by Colorado Springs Utilities ("**Springs Utilities**") to its customers and is facilitated by Springs Utilities' contractor, EnergyHub ("**EnergyHub**"). By becoming a Participant of the Program, you may reduce stress on the grid in your electricity service area. By participating in the Program, you may be eligible to receive the Reward described below. Participation in this program is subject to Springs Utilities Tariffs and Rules and Regulations (collectively the "**Tariffs**") and to these Terms and Conditions ("**Terms**"). Furthermore, Participants in this Program will be subject to the terms of their selected Device provider. To become a Participant in the Program, you must (A) have an installed and operational Device from Lux and (B) submit an application to, and have it accepted by, EnergyHub and the Springs Utilities.

**Binding Agreement.** By applying for the Program, you agree to comply with and be bound by these Terms, even if your application is not accepted or approved by EnergyHub, the Tariffs, and Springs Utilities; provided, however, in the event your application is not accepted or approved, you will not be subject to data collection under these Terms. Failure to comply may result in your unenrollment from the Program. Initial and ongoing Program eligibility criteria are determined by EnergyHub and Springs Utilities; which reserve the right to unenroll any Participant for, among other things: (1) tampering or attempting to tamper with the operation of the Program; or (2) violating these Terms or the terms and conditions of use of any of Sponsor Parties' property or service. **Any false information provided within the context of the Program by any Participant is a violation of these Terms and may result in the immediate unenrollment of a Participant and forfeiture of any Reward.**

**About the Program.** Applicants whose applications to participate in the Program are accepted by Springs Utilities ("**Participants**") and who fully comply with these Terms may receive the incentive set forth below ("**Reward**") to be provided to you by Springs Utilities. To receive the Reward, you must be accepted as a Participant by EnergyHub and Springs Utilities and your participation must not be withdrawn or terminated.

**Definitions.** In the context of these Terms,

- "**EnergyHub**" The Program is provided by EnergyHub, Inc., 41 Flatbush Ave. Suite 400A Brooklyn, NY 11217.
- "**Adjustment Events**" mean times during the Program Period when the DER Vendor will control Participant's Device(s) (on behalf of the Sponsor Parties) to signal the Device to change its mode of operation, change device mode, setpoint, or other settings, as applicable.
- "**DER Vendor**" means the third party manufacturer of the Participant's thermostat.
- "**Device**" means your DER Vendor thermostat.
- "**Participant**" mean an applicant that has been accepted into the Program by Springs Utilities.
- "**Program**" means the Peak Energy Rewards Program.
- "**Springs Utilities**" means your utility, Colorado Springs Utilities.
- "**Program Data**" means data related to your identity, your Adjustment Event opt-in or opt-out status, your energy usage and/or energy production, your Springs Utilities account, your electric bill, and operational data about your Device(s).
- "**Program Period**" means the duration of the Program. The Summer Program runs from May 1<sup>st</sup> – September 30<sup>th</sup> and Springs Utilities is able to call demand response events outside of this window for emergency purposes only (at Springs Utilities' discretion).
- "**Reward**" means \$50, one-time enrollment billed credit.
- "**Rebate**" means one \$25 bill credit per season of successful participation
- "**Service**" means a valid connection between the Device and DER Vendor platform.

- **“Sponsor Parties”** means EnergyHub, Lux, and Springs Utilities, their respective successors and assigns, and each of their respective affiliates, agents, directors, officers, and employees.
- **“Terms”** means these Program Terms and Conditions.

**Application Consent by Participant.** By submitting an application to enroll as a Participant, you authorize the Sponsor Parties to 1) collect and exchange data related to your identity, your Adjustment Event opt-in or opt-out status, your energy usage and/or energy production, your Springs Utilities account, your electric bill, and operational data about your Devices (collectively, **“Program Data”**), solely for the purposes of determining your eligibility for the Program and operating the Program; 2) review and analyze all of your Program Data for the purposes of the Sponsor Parties fulfilling their obligations under the Program and applicable law, improving the Program and as otherwise permitted by applicable law, and to exchange conclusions with each other and publish results based on those conclusions, provided that they treat all such Program Data in accordance with their respective privacy policies; 3) automatically adjust your Devices, as required by the Program at times indicated by Springs Utilities (as described below) or for general system testing purposes; 4) send you emails, text messages and other notifications related to the Program and other relevant programs, including about your enrollment status and Program-related adjustments to your Devices; 5) send you emails, text messages and other notifications related to surveys about the Program and to share your responses to such surveys among themselves; and 6) summarize the results of the Program in publicly-available studies, provided that any Program Data included in such studies will be anonymous, in accordance with Springs Utilities’ standards, such that you are not individually identifiable.

**Eligibility and Enrollment.** You may apply to become a Participant and participate in the Program if you meet the following eligibility criteria and do the following:

- You must be at least 18 years of age;
- You must have one or more Devices that are compatible with and connected to the DER Vendor platform (“Service” as defined above) and compatible with the Program design;
- You must own and utilize a Direct Exchange air conditioner for cooling during the Program Period;
- You must maintain an active account in good standing on the Service and a continuous connection between your enrolled Devices and the Service;
- You must assist Sponsor Parties’ support personnel in troubleshooting and resolving connectivity, firmware and other Device-related issues; and
- You must have an active electric account with Springs Utilities.

**Program Period.** The Program will run for the Program Period defined above. You may be automatically re-enrolled in subsequent Program Periods at EnergyHub’s discretion, subject to the then-current Terms for the Program. You may unenroll from the Program at any time, in accordance with “How To Withdraw” below. You may also be un-enrolled in the program if you no longer meet the program requirements.

**Program Description.** Participant agrees to allow Sponsor Parties to control the Participant’s Devices during the Program Period. Such adjustments are referred to as **“Adjustment Events.”** Adjustment Events may change device mode, setpoint, or other settings, as applicable. For Devices that allow for temperature control, Adjustment Events may include or be preceded by “pre-cool” or “pre-heat” periods, wherein the then-current or scheduled target temperature setpoint is temporarily changed to prepare for the subsequent adjustment. For certain types of services offered by the Sponsor Parties, an Adjustment Event may occur even if the Device is in any kind of hold mode at the start of the Adjustment Event. Participant may opt out of an Adjustment Event at any time directly by adjusting the Device. Please see program rules for details on the opt out policy.

**How To Apply.** You can apply to participate in the Program at the program enrollment website specified below which may be amended from time to time.

**How To Withdraw.** Once you are accepted as a Participant in the Program, you may withdraw by emailing the EnergyHub contact address specified below. Withdrawal will not affect the other services provided by the Sponsor Parties to you. By withdrawing, you may render yourself ineligible to receive the Reward and Rebate, participate in the Program in the future, or participate in other programs offered by EnergyHub.

**Program Termination.** Springs Utilities may terminate the Program at its sole discretion. EnergyHub's ability to offer the Program is contingent on receiving certain approvals and acceptances from Program Administrator. If such approvals and acceptances are withheld or withdrawn, or if the Program is declared unlawful, the Program will be terminated along with the Reward and Rebate. Further, EnergyHub's ability to offer the Program to you is contingent on EnergyHub's agreements with DER Vendor, and in the event such agreement(s) terminate for any reason, your participation in the Program will be terminated along with the Reward and Rebate. In the event of such termination, DER Vendor may provide notice to you by email, and EnergyHub may provide notice at [www.energyhub.com](http://www.energyhub.com).

**Disqualification.** EnergyHub, as Springs Utilities' contractor for the Program, may terminate your participation in the Program, Reward and Rebate at any time and without liability upon notice to you via email if you violate these Terms or applicable law, if you do not comply with any reasonable request from a Sponsor Party in connection with this Program, if Springs Utilities declares you ineligible for the Program, if you cease to be a Springs Utilities' customer, if your account with EnergyHub or DER Vendor is no longer in good standing, or if you do not maintain a continuous connection between your enrolled Device(s) and the Service. If you enroll in a conflicting energy program through Sponsor Parties, EnergyHub may terminate your participation in the Program without liability and without notice.

**Privacy Notice.** By participating in the Program, you agree that the Sponsor Parties may collect your personal information or data and that if they cannot collect the required information or data, you may not be eligible to participate in the Program. Sponsor Parties will administer your personal information and usage data consistent with these Terms and each company's then-current privacy policy. EnergyHub's privacy policy is located at: <http://www.energyhub.com/privacy-policy>.

To help provide efficient energy services and improve our energy portfolio, Springs Utilities has partnered with EnergyHub. Our security teams have worked together to ensure your information is secured throughout your participation in the program. Some data resides with your chosen thermostat provider, and we encourage you to fully understand their privacy policies and options for managing your data.

**Changes in Your Electricity Costs.** Participation in the Program is a voluntary action by Participants and Sponsor Parties make no representations, express or implied, that Program participation will result in decreased utility costs, as such costs are dependent on Participant's utility usage and future utility rate changes.

**Information.** You represent and warrant to EnergyHub that the information you provide to EnergyHub while applying for and during the course of the Program is accurate and complete, and you agree to promptly notify EnergyHub if any information you provided during your application for the Program has changed.

**General Conditions.** This Program is governed by the laws of the State of Colorado without regard to its applicable principles of conflicts of law. The Sponsor Parties' failure to enforce any term of these Terms shall not constitute a waiver of that provision. THE SPONSOR PARTIES (AND EACH

OF THEIR RESPECTIVE AFFILIATES, AGENTS, DIRECTORS, OFFICERS, AND EMPLOYEES) ARE NOT RESPONSIBLE OR LIABLE FOR ANY INCORRECT OR INACCURATE PROGRAM APPLICATION INFORMATION, AND ASSUME NO RESPONSIBILITY FOR (I) TYPOGRAPHICAL OR OTHER ERRORS IN THE PRINTING OF THE PROGRAM MATERIALS OR THE OFFERING OR ANNOUNCEMENT OF ANY REWARD OR REBATE, (II) ANY ERROR, OMISSION, INTERRUPTION, DEFECT OR DELAY IN OPERATION OR TRANSMISSION AT ANY WEBSITE, (III) FAILURE OF ANY APPLICATION TO BE RECEIVED BY ENERGYHUB DUE TO TECHNICAL PROBLEMS, TELEPHONE SERVICE PROBLEMS, PRINTING ERRORS, HUMAN ERROR OR TRAFFIC CONGESTION ON THE INTERNET OR AT ANY WEBSITE, (IV) COMMUNICATIONS LINE, HARDWARE AND/OR SOFTWARE FAILURES, (V) DAMAGE TO ANY COMPUTER OR DEVICE (SOFTWARE OR HARDWARE) RESULTING FROM PARTICIPATION IN THE PROGRAM, (VI) THEFT OR DESTRUCTION OF, TAMPERING WITH, UNAUTHORIZED ACCESS TO, OR ALTERATION OF APPLICATIONS AND/OR PROGRAM APPLICATION INFORMATION, OR (VII) APPLICATIONS WHICH ARE LATE OR LOST, OR (VIII) ANY LOSS OF INCOME DUE TO DEVICE CONTROL. PARTICIPANT ASSUMES ALL RISK OF PARTICIPATION IN THE PROGRAM. TO THE MAXIMUM EXTENT PERMITTED BY LAW, YOU INDEMNIFY AND AGREE TO KEEP THE SPONSOR PARTIES (AND EACH OF THEIR RESPECTIVE AFFILIATES, AGENTS, DIRECTORS, OFFICERS, AND EMPLOYEES) INDEMNIFIED AT ALL TIMES FROM AND AGAINST ANY LIABILITY, CLAIMS, DEMANDS, LOSSES, DAMAGES, COSTS AND EXPENSES THAT ARISE FROM OR ARE RELATED TO ANY ACT, DEFAULT OR OMISSION BY YOU AND/OR A BREACH OF ANY WARRANTY BY YOU AND/OR TO ANY ACT, DEFAULT OR OMISSION BY YOU UNDER THESE TERMS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, YOU AGREE TO HOLD THE SPONSOR PARTIES (AND EACH OF THEIR RESPECTIVE AFFILIATES, AGENTS, DIRECTORS, OFFICERS, AND EMPLOYEES) HARMLESS FROM ANY INJURY OR DAMAGE CAUSED OR CLAIMED TO BE CAUSED BY PARTICIPATION IN THE PROGRAM AND/OR USE OR ACCEPTANCE OF ANY REWARD OR REBATE OTHER THAN FOR: (1) DEATH OR PERSONAL INJURY ARISING AS A RESULT OF ENERGYHUB'S OR DER VENDOR'S NEGLIGENCE OR BREACH OF CONTRACT; OR (2) THE SPONSOR PARTIES' FRAUDULENT MISREPRESENTATION OR DELIBERATE BREACH OF CONTRACT. THE SPONSOR PARTIES (AND EACH OF THEIR RESPECTIVE AFFILIATES, AGENTS, DIRECTORS, OFFICERS, AND EMPLOYEES) HAVE NO LIABILITY TO ANY PARTICIPANT FOR ANY LOSS, DAMAGE, COSTS OR EXPENSE INCURRED AS A RESULT OF OR IN CONNECTION WITH A PARTICIPANT'S PARTICIPATION IN THE PROGRAM. Nothing in these Terms shall be interpreted to limit or prevent the protections afforded to Springs Utilities under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.* If any provision of these Terms is held to be invalid or unenforceable, all remaining provisions of these Terms will remain in full force and effect. These Terms will be binding on the Sponsor Parties and respective successors and assigns, and Participant. Participant may not assign these Terms without the written consent of EnergyHub whereas EnergyHub may assign these Terms to any third party. The Sponsor Parties are not responsible for the policies, actions, or inactions of others that might prevent the Participant from entering, participating, or claiming a Reward or Rebate. For the avoidance of doubt, it is specifically understood and agreed that there shall be no personal liability on the part of any affiliates, agents, directors, officers, and employees of each Sponsor Party under these Terms.

These Terms and the Tariffs constitutes the entire agreement between Sponsor Parties and a Participant relating to the subject matter hereof and supersedes all other such prior or contemporaneous oral and written agreements and understandings.

**Arbitration.** Solely with respect to EnergyHub, if you and EnergyHub do not resolve any dispute by informal negotiation, any other effort to resolve the dispute will be conducted exclusively by binding individual arbitration governed by the Federal Arbitration Act ("FAA"). You are giving up the right to litigate (or participate in as a party or class member) all disputes in court before a judge or jury. Instead, all disputes will be resolved on an individual basis before a neutral arbitrator, whose decision will be final except for a limited right of appeal under the FAA. Any court with jurisdiction over the parties may enforce the arbitrator's award. For the avoidance of doubt, this arbitration

clause does not apply to Springs Utilities or any potential dispute you may have, in whole or in part, with Springs Utilities. .

**No Class Action Procedure.** Notwithstanding any of the foregoing or any other provision of these Terms, class arbitration is not permitted under any circumstance. You and the Sponsor EnergyHub agree that, by entering into this Agreement, THE PARTIES MAY BRING CLAIMS AGAINST THE OTHER ONLY IN THEIR RESPECTIVE INDIVIDUAL CAPACITY, and not as a plaintiff or class member in any purported class or representative proceeding. Further, you agree that the arbitrator may not consolidate proceedings or more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. Although the non-availability of any form of representative or class proceeding is clear from this Agreement, should any dispute arise regarding or relating to the existence, validity, enforceability, or interpretation of the Arbitration and No Class Action procedures provisions above, the federal court located in New York, New York shall have the sole and exclusive jurisdiction to hear and determine the issue.

**Changes to the Terms.** Springs Utilities and EnergyHub may modify these Terms at any time. We will notify you by email at the most current email address we have on record for you when we make any material changes to these Terms, and the effective date of the modified Terms, which will be after the date of our notice to you. Your continued participation in the Program thereafter signifies your acceptance to such modified Terms. The modified Terms will apply only to disputes that arise after the effective date of such modified Terms. We will also post the most current version of the Terms on our website specified below and encourage you to check this site frequently.

**Acceptance of Agreement.** The use of an electronic signature process to accept and sign these Terms, including your indication of acceptance of these Terms by a click-through or click-wrap process presented on DER Vendor's website, shall constitute effective execution and delivery of these Terms, and shall form a binding contract between you, EnergyHub and Springs Utilities, and the other Sponsor Parties shall be express third party beneficiaries hereof and may enforce the provisions hereof as if they were a party hereto.

**Additional Program Details.** Additional program details are available at the following website address: [www.csu.org/Pages/PeakEnergyRewards](http://www.csu.org/Pages/PeakEnergyRewards). EnergyHub contact information for the program is: [peakenergyrewards@energyhub.com](mailto:peakenergyrewards@energyhub.com).