PROGRAM TERMS AND CONDITIONS

Welcome to the Duke Energy EnergyWise® Home Program. By becoming a Participant of the Program, you may reduce stress on the grid in your utility service area. By participating in the Program, you may be eligible to receive the Reward described below, subject to these Program Terms and Conditions ("**Terms**"). To become a Participant in the Program, you must submit an application to, and have it accepted by, both the Sponsor and the Program Administrator (as each is defined below). You must have an installed and operational Device to participate in this Program.

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 the Sponsor and the Program Administrator (both as defined below); provided, however, in the event your application is not accepted or approved, you will not be subject to Program Data collection under these Terms. Failure to comply with these Terms may result in your unenrollment from the Program. The decisions of the Sponsor and the Program Administrator regarding your eligibility to participate are final and binding in all respects. **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 submitted by the enrollment deadline and accepted by the Program Administrator (**"Participants", "you", and "your"**) and who fully comply with these Terms may receive an incentive, as set forth below (**"Reward"**), to be provided to you by Program Administrator following the conclusion of the Program term. To receive the Reward, you must be accepted as a Participant by the Sponsor and Program Administrator, and your participation must not be withdrawn or terminated.

Definitions. In the context of these Terms,

- The Program is provided by EnergyHub, Inc., 41 Flatbush Avenue, Suite 400A, Brooklyn, NY 11217 ("**Sponsor**").
- "**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 device mode, setpoint, or other settings, as applicable. The duration of Adjustment Events will not exceed 4 hours and are usually 1-2 hours in length.
- **"DER Vendor"** means your DER device.
- **"Device"** means your DR device or product, which can be monitored and operated during the Program by DER Vendor's network operations center.
- "**FAA**" means the Federal Arbitration Act.
- "**Participant**" means an applicant that has been accepted into the Program by the Program Administrator.
- "**Program**" means the Duke Energy EnergyWise® Home Program.
- "**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 Program Administrator account, your utility bill, other enrollment application information (if applicable) and operational data about your Device(s).
- "**Program Period**" means the duration of the program from January 1st through December 31st. The Non-winter season runs April 1 – October 31st; the Winter program runs November 1st – March 31st.
- **"Program Administrator"** means Duke Energy
- "**Reward**" means (1) **an "Enrollment Incentive**" a bill credit per household when you are accepted into the program; and (2) **"Participation Incentive**" an additional bill credit per household every 12 months you remain enrolled in the program. Participation incentives will be issued after the anniversary of your acceptance into the program.

    - Refer to program tariff for exact enrollment incentive and participation incentive bill credit amounts – North Carolina or South Carolina
- "**Service**" means the DER Vendor platform.
- **"Sponsor Parties"** means Sponsor, DER Vendor, and Program Administrator, 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 Program Data and retain such Program Data indefinitely, 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 signal your Devices to take part in Adjustment Events for this Program or for general system testing purposes; 4) send you emails, text messages and other notifications related to the Program, 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 the Sponsor Parties; 6) retain all of your Program Data indefinitely for record keeping purposes; and 7) summarize the results of the Program in publicly-available studies, provided that any Program Data included in such studies will be anonymous 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 Service and compatible with the Program design;
- 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;
- If you have two or more eligible WiFi-connected thermostats in your household and would like to participate in the Program, all thermostats must be enrolled in the Program. All thermostats in the home must be WiFi-connected to be eligible for the Program (customers that have at least one standard thermostat that is not WiFi-connected are not eligible to apply). Customers with multiple enrolled WiFi-connected thermostats in one household are only eligible for one Enrollment Incentive and one annual Participation Incentive;
- You must have an active utility account with your Program Administrator.
- Customer shall have the option to opt out of a control event; however, if Customer exceeds two (2) control event opt-outs in a single winter or non-winter control season, Customer may be subject to removal from the program and forfeit receipt of program incentives.

Any additional Devices installed at your Program Administrator service address will be automatically enrolled in the Program and may also participate in Adjustment Events.

Program Period. The Program will run for the Program Period defined above. You may be automatically re-enrolled in subsequent Program Periods at Sponsor's discretion, subject to the then-current Terms for the Program. You may unenroll from the Program at any time.

Program Description. Participant agrees to allow DER Vendor, on behalf of the Sponsor Parties, to control the Participant's Devices during **Adjustment Events** throughout the Program Period. 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 the Program at any time by directly adjusting the Device or contacting their device dealer.

How to Apply. You can apply to participate in the Program through your DER Vendor mobile app or at the program enrollment website. The Sponsor Parties may accept or reject your application in their discretion.

How to Withdraw. Once you are accepted as a Participant in the Program, you may withdraw by emailing the Sponsor contact address specified below or through your Device account web portal or mobile app. 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, participate in the Program in the future, or participate in other programs offered by Sponsor.

Program Termination. Sponsor'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. Further, Sponsor's ability to offer the Program to you is contingent on Sponsor'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. In the event of such termination, DER Vendor may provide notice to you by email, and Sponsor may provide notice at www.energyhub.com. Termination of the Program will not affect any payment obligations you may have for your DER Vendor Device, and your DER Vendor customer agreement will remain in effect.

Participant Termination. The Sponsor Parties may terminate your participation in the Program and eligibility for the Reward (at their discretion) at any time and without liability if you violate these Terms or applicable law, if you tamper or attempt to tamper with the operation of the Program, if you do not comply with any reasonable request from a Sponsor Party in connection with this Program, if your Program Administrator declares you ineligible for the Program, if your account with Program Administrator or DER Vendor is no longer in good standing, if you do not maintain a continuous connection between your enrolled Device(s) and the Service, if you act in an obscene, threatening, hostile, abusive or otherwise derogatory or offensive manner or direct such behavior toward a Sponsor Party, or if you other violate any of these Terms or the terms and conditions of use of any of Sponsor Parties' property or service. If you enroll in a conflicting energy program through Sponsor Parties, Sponsor may terminate your participation in the Program without liability and without notice. Termination from the Program will not affect any payment obligations you may have for your Device, and your DER Vendor customer agreement will remain in effect.

Privacy Notice. By participating in the Program, you agree that the Sponsor Parties may collect your Program Data (including without limitation personal information) and that if they cannot collect the required Program 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. Sponsor's privacy policy is located at: http://www.energyhub.com/privacy-policy and Program Administrator's privacy policy is located at: https://www.duke-energy.com/legal/privacy.

Changes in Your Utility Costs. Sponsor Parties are not responsible for any changes in your utility costs during the Program.

Information. You represent and warrant to Sponsor that the information you provide to Sponsor while applying for and during the course of the Program is accurate and complete, and you agree

to promptly notify Sponsor 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 New York 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, (II) ANY ERROR, OMISSION, INTERRUPTION, DEFECT OR DELAY IN OPERATION OR TRANSMISSION AT ANY WEBSITE, (III) FAILURE OF ANY APPLICATION TO BE RECEIVED BY SPONSOR 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 OTHER THAN FOR: (1) DEATH OR PERSONAL INJURY ARISING AS A RESULT OF SPONSOR'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. 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 their respective successors and assigns, and Participant. Participant may not assign these Terms without the written consent of Sponsor whereas Sponsor 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. 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 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. If you and the Sponsor 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 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.

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 Parties 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. Sponsor 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 Sponsor's website, shall constitute effective execution and delivery of these Terms, and shall form a binding contract between you and the Sponsor, 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: https://thermostatrewards.com/dep Sponsor contact information for the program is: support@energywisetstat.com.

_____
Customer Signature

_____
Customer Name

_____
Date

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