

## PROGRAM TERMS AND CONDITIONS

Welcome to the Entergy Mississippi **Flexible Load Management Smart Thermostat Program** (“Program”). The Entergy Mississippi Smart Thermostat Program seeks to engage Entergy Mississippi residential customers with qualifying thermostats. Participants may reduce stress on the grid in their electricity service area, and may be eligible to receive an incentive, subject to these Terms and Conditions (“Terms”). These terms constitute the entire agreement between the Sponsor Parties and Participants relating to the subject matter hereof and supersedes all other such prior or contemporaneous oral and written agreement and understanding. The Sponsor or a Sponsor Party’s failure to enforce any term of these Terms shall not constitute a waiver of that provision. 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 its successors and assigns, and Participants.

**Program Description.** Participants will authorize Entergy Mississippi to adjust their Devices on days when electricity demand is high, helping to reduce demand when it counts most, as further described below in “Adjustment Events.”

**Program Application:** If Participant is eligible to participate in the Program and agrees in writing to participate (including via electronic signature), Participant shall comply with the Terms as they are outlined, below, even if a Participant’s application is not accepted or approved by the Sponsor Parties. Participant’s failure to comply with these Terms may result in a Participant’s disqualification from the program, which is in the sole discretion of Sponsor or Sponsor Parties and is final and binding in all respects. Sponsor reserves the right in its sole discretion to disqualify 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 of use of any Sponsor Parties’ property or services. Any false information provided within the context of the application to the Program by a Participant is a violation of these Terms and may result in the immediate disqualification from the Program and up to the forfeiture of the program incentive. A Participant’s application must be accepted by the Sponsor and Entergy Mississippi, and such application must not be withdrawn or terminated, and a Sponsor Party reserves the right to deny acceptance to the Program or incentives if a Participant’s application and all required information are not complete or accurate. Such acceptance of a Participant’s application is at the sole discretion of Sponsor and Entergy Mississippi.

**Acceptance of Agreement.** The use of an electronic signature process to accept and sign these Terms, including Participant’s indication of acceptance of these Terms by a click-through or click-wrap process presented on the enrollment website, shall constitute effective execution and delivery of these Terms, and shall form a binding agreement between Participant and the Sponsor.

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

- The Program is provided by EnergyHub, Inc., 41 Flatbush Ave Ste 400A, Brooklyn, NY 11217 (**Sponsor**).
- “**Adjustment Events**” mean times during the Program Period when Sponsor will control Participant’s Device(s) (on behalf of the Program Administrator) 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 or provider of the Participant’s Device.
- “**Device**” means a device that can be monitored and controlled during the Program through the Vendor cloud platform or other communications pathway.
- “**FAA**” means the Federal Arbitration Act.
- “**Participant**” means an applicant that has been accepted into the Program by the Program Administrator.
- “**Program Administrator**” means your utility, namely Entergy Mississippi.
- “**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 electric bill, and operational data about your Device(s).
- “**Program Period**” means the duration of the Program. This is a full year program, from Jan 1<sup>st</sup> through Dec 31<sup>st</sup>.
- “**Reward**” means \$50 per electric account for your first year enrolled, and up to \$25 in bill credits per device per year.
- “**Sponsor Parties**” means Sponsor, Vendor, and Entergy Mississippi, LLC., their respective successors and assigns, and each of their respective affiliates, agents, directors, officers, employees, Program implementor (ICF), or otherwise determined as applicable.

**Application Consent by Participant.** By submitting an application to enroll, the applicant authorizes the Sponsor Parties to 1) collect and exchange data related to the applicant's identity, opt-in or opt-out status, energy usage and/or energy production, Entergy Mississippi account, electric bill, and operational data about the applicant's Devices (collectively, **Program Data**), solely for the purposes of determining the applicant's eligibility for the Program and operating the Program; 2) review and analyze 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 their Devices, as required by the Program at times indicated by Entergy Mississippi (as described below) or for general system testing purposes; 4) send them notifications such as emails, in-mobile application messages, on-Device messages and other notifications related to the Program, or other relevant programs, including about enrollment status and Program-related adjustments to Devices; 5) send them emails and other notifications related to surveys about the Program and to share their responses to such surveys among themselves; 6) summarize your Program Data and the results of the Program in reports submitted to the Mississippi Public Service Commission or publicly-available studies, provided that any Program Data included in such studies will be anonymous such that Participants are not individually identifiable. Sponsor Parties will treat all other information gathered in evaluations as confidential, and the information in the reports will be in the aggregate, where practicable.

**Privacy Notice.** By participating in the Program, Participant agrees that the Sponsor Parties may collect personal information or data, and that if they cannot collect the required information or data, Participant may not be eligible to participate in the Program. Sponsor Parties will protect 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>

**Eligibility and Enrollment.** Funds are limited, and the Program is available in select geographic areas on a first-come, first-served basis. Customers may apply and become Participants in the Program if they meet the following eligibility criteria:

- Must be at least 18 years of age
- Must maintain an active account in good standing on the Service and a continuous connection between your enrolled Devices and the Service
- Must assist Sponsor Parties' support personnel in troubleshooting and resolving connectivity, firmware and other Device-related issues
- Must be an Entergy Mississippi residential customer with active electric service and a qualifying HVAC system (i.e., central air conditioning or electric heat pump)
- Must reside at a premise with Wi-Fi service
- Participation in other Entergy Mississippi demand response programs may preclude your participation in the Program
- Must remain enrolled in the Program, if accepted, for a minimum of twelve (12) months to be eligible for the Annual Participation Bill Credit

**Program Period.** The Program is effective as of January 1, 2021, and will be renewed at the discretion of Entergy Mississippi (the **Program Period**). Participants in the Program may be automatically re-enrolled in subsequent Program Periods at Sponsor's discretion, subject to the then-current Terms for the Program.

**How To Apply.** You can apply to participate in the Program through your Vendor mobile app or at the program enrollment website specified below. Sponsor and Entergy Mississippi may accept or reject your application in their sole discretion.

**Adjustment Events.** Participants agree to allow Sponsor Parties to adjust Devices, with such adjustments referred to as "**Adjustment Events**." Adjustment Events may change a Participant's 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 Event. 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 his/her device. Accepted Participants

may override adjustment events, recognizing that overriding adjustment events may reduce their Annual Participation bill credit.

**Authorization, Program Changes, Suspension or Cancellation.** The Sponsor Parties' ability to offer the Program is contingent on receiving certain approvals and acceptances from Entergy Mississippi. Entergy Mississippi may change the Program requirements, incentives or terms and conditions, including suspending acceptance of applications or terminating the Program, at any time without notice.

**Termination of Participation.** A Participant who is accepted into the Program must stay enrolled for a period of 12 months. After 12 months, a Participant may withdraw from the Program by emailing the Sponsor Parties contact address specified below. Withdrawal will not affect other services provided to a Participant by the Sponsor Parties.

If the Participant decides to terminate their participation in the Program after 12 months, they will no longer be eligible to earn an Annual Participation Bill Credit. After terminating their participation, the customer will be allowed to re-enroll in the Program or apply for participation in other Entergy Mississippi-sponsored demand response programs. After again becoming a Participant in the Program or after enrolling in another Entergy Mississippi-sponsored demand response program, a Participant is eligible to earn an Annual Participation Bill Credit but is not eligible for the One-Time Enrollment Incentive.

**Disqualification.** Sponsor Parties may terminate a Participant's participation in the Program at any time and without liability upon notice to a Participant via email if a Participant violates these Terms or applicable law; if a Participant does not comply with any reasonable request from a Sponsor Party in connection with this Program; if Entergy Mississippi declares a Participant ineligible for the Program; if a Participant's account with Vendor is no longer in good standing; if a Participant does not maintain a continuous connection between their enrolled Device(s) and the Service. If a Participant enrolls in a conflicting energy program through Entergy Mississippi, the Sponsor Parties may terminate the Participant's participation in the Program without liability and without notice.

**Changes in Your Electricity Costs.** The Sponsor Parties are not responsible for any changes to a Participant's electricity costs during the Program. Participant understands that Sponsor Parties assume no responsibility for the condition or repair of the Participant's central air conditioner or other equipment, and Participant shall be solely responsible for the repair and maintenance of the Participant's equipment.

**Information.** Participant represents and warrants to the Sponsor Parties that the information provided to the Sponsor Parties while applying for and during the course of the Program is accurate and complete. If a Participant is accepted into the Program, the Participant agrees to promptly notify the Sponsor Parties if any information provided on an application for the Program has changed.

**General Terms and 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's failure to enforce any term of these Terms shall not constitute a waiver of that provision. THE SPONSOR PARTIES 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 INCENTIVE, (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 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 HARMLESS FROM ANY INJURY OR DAMAGE CAUSED OR CLAIMED TO BE CAUSED BY PARTICIPATION IN THE PROGRAM AND/OR USE OR

ACCEPTANCE OF ANY INCENTIVE 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 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. By executing an enrollment, the customer voluntarily agrees not to hold Entergy Mississippi, ICF, its trade allies or any of its affiliates, directors, officers, employees, agents, or contractors liable for any illness or injury. Customer further agrees not to engage in any inappropriate actions or otherwise endanger the safety or health of same. 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 Sponsor and its 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 an incentive.

**Arbitration.** If Participant 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 facilitated by Judicial Arbitration and Mediation Services, Inc. (JAMS). Sponsor is 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. 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. Participant and the Sponsor 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, Participant agrees 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.** The Sponsor Parties may modify these Terms at any time. The Sponsor Parties will notify accepted Participants by email at the most current email address Sponsor has on record when any material changes to these Terms are made. Continued participation in the Program thereafter signifies acceptance to such modified Terms. Sponsor will also post the most current version of the Terms on its website and encourages Participants to check this site frequently.

**Additional Program Details.**

- Visit <https://www.entergy-mississippi.com/thermostat/> for more information
- Sponsor Parties contact information: EMLDR@icf.com
- Program Period: The Program is effective as of 1/1/2021 and will be renewed at the discretion of Entergy Mississippi

**Incentives.** The Incentives that Participants will receive in consideration for participation are as described below. Entergy Mississippi may, from time-to-time, modify the incentive structure. The Participant agrees to notify Entergy Mississippi immediately if the Participant disconnects or removes the equipment, an action which will terminate the Participant's eligibility for the Incentives. This Agreement is not assignable or otherwise transferable by the Participant.

Enrollment Path	One-Time Enrollment Incentive	Annual Participation Bill Credit
Bring Your Own Qualifying Device	\$50 per account	\$25 per device <i>(Participants that override their participation in more than three Adjustment Events in a given Program season may not be eligible to earn the Annual Participation Bill Credit)</i>

**Tax Liability.** Participant is responsible for declaring and paying any and all applicable federal, state, and local taxes that may be owed on any incentive. Sponsor Parties will not be responsible for any tax liability that may be imposed on the Participant as a result of the delivery of Energy Efficiency Measures (EEM). Please contact a tax professional for more information.