

## PROGRAM TERMS AND CONDITIONS

**Welcome to the Power Savers Texas program ("Program").** By becoming a Participant of the Program, you may save energy and reduce stress on the grid in your electricity service area. By participating in the Program, you are automatically entered into the sweepstakes promotion ("**Promotion**") described below, subject to the [Official Rules](#) for the Promotion. To become a Participant in the Program, you must (A) have an installed and operational Vivint Thermostat and (B) submit an application to, and have it accepted by EnergyHub.

**Binding Agreement.** By applying for the Program, you (sometimes referred to as "**Participant**") agree to comply with and be bound by these Program Terms and Conditions ("**Terms**") and the Official Rules for the Promotion. Notwithstanding the foregoing, you will not become a "Participant" in the Program until your application has been accepted and approved by Sponsor. Failure to comply with these Terms may result in your unenrollment from the Program. You further agree to comply with and be bound by the decisions of the Sponsor regarding your eligibility to participate, which are final and binding in all respects. Sponsor reserves the right in its sole discretion to unenroll any Participant it finds to be: (1) tampering or attempting to tamper with the operation of the Program; or (2) violating the Terms, conditions of use, or Terms 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 Power Savers Texas Program ("Program").** Participants whose applications to participate in the Program are accepted by Sponsor ("**Participants**", "**you**", and "**your**") and who fully comply with these Terms may receive a reward, as described below ("**Reward**").

**Sponsor.** The Program is provided by EnergyHub, Inc., 41 Flatbush Avenue, Suite 400A, Brooklyn, NY 11217 ("**Sponsor**" or "**EnergyHub**").

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

- "**Adjustment Events**" mean times during the Program Period when Vivint 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.
- "**Vivint**" means Vivint Incorporated.
- "**Device**" means your Vivint thermostat.
- "**FAA**" means the Federal Arbitration Act.
- "**Participant**" mean an applicant that has been accepted into the Program by the Program Administrator.
- "**Program**" means the Power Savers Texas Program.
- "**Program Administrator**" means your electric utility provider, TDSP and/or the Electric Reliability Council of Texas ("**ERCOT**").
- "**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, which runs from January 1<sup>st</sup> through December 31<sup>st</sup>.
- "**Provider**" means your authorized provider, reseller or representative of Vivint or Vivint's affiliates who provides your Vivint system.
- "**Sponsor**" means EnergyHub, Inc.
- "**Sponsor Parties**" means Sponsor, Vivint, Program Administrator, and their respective affiliates, agents, providers, directors, officers, employees, successors, and assigns.
- "**Terms**" means these Program Terms and Conditions.

**Application Consent.** By submitting an application to enroll, you authorize:

- Sponsor, Vivint, and Provider to send you emails and other notifications related to your application for the Program; and
- Sponsor, Vivint, Provider, Program Administrator, and their respective agents (including, without limitation, the qualified scheduling entity) to exchange data related to your identity and your energy usage, solely for the purposes of determining your eligibility for the Program.

**Participation Consent.** By submitting an application to enroll as a Participant, you authorize:

- Sponsor and Vivint to automatically adjust your Device, as required by the Program at times indicated by Program Administrator (as described below) or for general system testing purposes;
- Sponsor, Vivint, and Provider to send you emails and other notifications related to the Program, including about your enrollment status and Program-related adjustments to your Device settings;
- Sponsor, Vivint, Provider, and Program Administrator to send you emails and other notifications related to surveys about the Program and to share your responses to such surveys among themselves. Such surveys may include questions about topics, such as your experience in the Program and your willingness to participate in future energy saving programs;
- Sponsor, Vivint, Provider, Program Administrator, and their respective agents (including, without limitation, the qualified scheduling entity) to collect and exchange data related to your identity, your Device operation and your energy usage, for the purposes of fulfilling their obligations under the Program; and
- Sponsor, Vivint, and Program Administrator to summarize the results of the Program in publicly-available studies, provided that any data included in such studies will be anonymous such that you are not individually identifiable.

**Eligibility.** 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 Vivint platform ("**Service**");
- Maintain an active account in good standing on the Service;
- Maintain the connection between your enrolled Device(s) and the Service;
- Maintain (i.e., always on) internet service;
- Assist Sponsor's, Vivint's, Provider's, and Program Administrator's support personnel in troubleshooting and resolving connectivity and other Device-related issues; and
- You must complete your application for the Program before 11:59:59 PM Central Time on August 31<sup>st</sup> of the program year.

**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 Sponsor, Vivint, and Program Administrator to control his or her or their Device to reduce demand during the Program Period by adjusting the current setpoint or scheduled target temperature setpoint to temporarily reduce normal operating patterns in order to reduce electrical demand.

- These adjustments may be preceded by "pre-cool" or "pre-heat" periods, wherein the current or scheduled target setpoint is temporarily decreased to prepare the premises for the subsequent adjustment. The change is measured relative to the Device heating or cooling setpoint defined by the programmed Device schedule as set with Vivint or, if no schedule is set with or automated by Vivint, relative to the set point of your Device at the beginning of an adjustment period.

- In addition to the specific periods listed below, Sponsor, Vivint, and Program Administrator may adjust your Device at any time for general system testing and maintenance.
- Participant's enrolled Device(s) may be adjusted:
  - Monday through Friday, 1PM-7PM Central time;
  - At any time for system testing, as described above; and
  - At any other times during system emergencies (as determined in the Sponsor Parties' discretion).
- Furthermore, for certain types of services offered by Sponsor, Vivint and/or Program Administrator, your Device may be adjusted even if the Device is in hold mode at the start of an event.
- EnergyHub estimates that there will be up to eight (8) demand response events through November 30 though there is no limit to the number of adjustments per season and no limit to the adjustments for system testing.

Participant may opt out of an Adjustment Event at any time from your Device or through components of the Service, such as the web portal and smart phone applications. Participants may opt out of the Program in its entirety through the web portal.

**Promotion and Reward.** As more fully described in the Official Rules and subject to the terms of such Official Rules, as a Participant in the Program you are eligible to earn entries into a random drawing for the chance to win a one-time payment of \$5,000.

**How To Apply.** Eligible Participants can apply to participate in the Program by clicking "Sign Me Up" on the Program webpage after signing into his or her Vivint web or mobile account. Sponsor may accept or reject an applicant's application in its sole discretion. All entries become the property of Sponsor.

**How To Withdraw.** Once you are accepted as a Participant in the Program, you may withdraw by emailing [texas@energyhub.com](mailto:texas@energyhub.com) or through the web portal. Withdrawal will not affect the other services provided by Sponsor and Provider to you. By withdrawing, you may render yourself ineligible to participate in the Promotion, participate in the Program in the future, or participate in other programs offered by Sponsor or Provider.

**Program Termination.** Sponsor's ability to offer the Program is contingent on receiving certain approvals and acceptances from electric utilities and electricity grid governing bodies, including ERCOT and applicable Program Administrator. Should Sponsor fail to obtain such approvals and acceptances or if the Program is declared unlawful, the Program will be terminated along with the Promotion, and any advertised prize will not be awarded. 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, Vivint may provide notice to you by email, and Sponsor may provide notice at [www.energyhub.com](http://www.energyhub.com).

**Disqualification.** Sponsor reserves the right to terminate your participation in the Program and Promotion at any time and without liability upon notice via email if you violate these Terms, any Official Rules, applicable law, any reasonable request from Sponsor or Provider, if ERCOT or your Program Administrator declares you ineligible, or if your account with Sponsor or Provider is no longer in good standing. If you enroll in a conflicting energy program through Sponsor, Provider, or your Program Administrator, Sponsor may terminate your participation in the Program without liability and without notice.

**Privacy Notice.** By participating in the Program, you agree that Sponsor, Vivint, Provider, and Program Administrator can 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, Vivint, Provider, and Program Administrator 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>

**Changes in Your Electricity Costs.** Sponsor, Vivint, and Provider are not responsible for any changes in your electricity costs during the Program.

**Information.** Participant represents and warrants that the information Participant provides while applying for and during the course of the Program is accurate and agrees to promptly notify Sponsor if any changes occur.

**General Conditions.** This Program is governed by the laws of the State of New York. All federal, state and local laws and regulations apply. The Sponsor Parties are not responsible for any typographical or other error in the printing of the offer or administration of the Program. The Sponsor Parties' failure to enforce any term of these Terms shall not constitute a waiver of that provision.

**DISCLAIMER:** 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 (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) ENTRIES WHICH ARE LATE OR LOST.

**LIMITATIONS OF LIABILITY:** PARTICIPANTS ASSUME 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 INCLUDING WITHOUT LIMITATION RESULTING FROM OR IN RELATION TO ANY BREACH, NON-OBSERVANCE, ACT OR OMISSION WHETHER NEGLIGENT OR OTHERWISE, PURSUANT TO THESE TERMS BY YOU. 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. 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.

**Texas Consumer Protection Disclosures and Provisions.** The following disclosures are made and provisions are included in accordance with Public Utility Commission of Texas Substantive Rule §25.181, subsection (u) (the "Rule").

(A) You have the right to a cooling-off period of three business days, in which these Terms may be canceled. Additionally, you may opt out of the program at any time;

(B) EnergyHub is the energy efficiency services provider for purposes of the Rule. Its street address is: 41 Flatbush Avenue, Suite 400A, Brooklyn, NY 11217, and its telephone number is (718) 522-7051; no subcontractors will be performing any services at your home or business on behalf of EnergyHub in connection with these Terms;

(C) incentives are made available to EnergyHub programs funded by a Program Administrator or through the bidding of your load reduction in the ERCOT Emergency Response Service Weather-Vivintive Loads (ERS WSL) program; the amount of the incentive provided by these programs to EnergyHub varies between approximately \$12/kW and \$40/kW;

(D) the incentives that will be provided to you will consist of a potential reduction in your utility bill for electricity, and the chance to enter into the sweepstakes described in these Terms;

(E) you will not be required to enter into any additional agreements in connection with your participation in the Program;

(F) EnergyHub does not measure or report to the Program Administrator the energy and peak demand savings from the energy efficiency measures associated with the Program;

(G) EnergyHub does not carry liability insurance to cover property damage to your property because EnergyHub will not enter onto your property as a part of the Program, and will not otherwise install anything onto your property;

(H) no payment will be due to you from EnergyHub, or from you to EnergyHub in connection with the services described in these Terms; these Terms do not constitute an installment sales agreement;

(I) EnergyHub is not part of or endorsed by the Public Utility Commission of Texas or the Program Administrator; and

(J) if you wish to file a complaint, please contact your applicable Program Administrator, or contact EnergyHub and we will assist you in contacting your applicable Program Administrator; you may also contact the Office of Customer Protection of the Public Utility Commission of Texas (1-888-782-8477) or the Office of Attorney General's Consumer Protection Hotline (1-800-621-0508).

We further inform you of the following, and you agree that:

(A) given the nature and scope of the Program, there are no relevant work activities, completion dates, and terms and conditions that protect residential customers in the event of non-performance by EnergyHub;

(B) waiver of consumer protection statutes, performance warranties, and false claims of energy savings and reductions in energy costs are prohibited;

(C) your consumption data may be disclosed to the Evaluation, Measurement and Verification (EM&V) contractor for evaluation purposes; and

(D) if you wish to file a complaint to address performance issues by EnergyHub, please contact EnergyHub at [texas@energyhub.com](mailto:texas@energyhub.com), (718) 522-7051, or 41 Flatbush Avenue, Suite 400A, Brooklyn, NY 11217.

**Third Parties.** 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. All Participant applications are subject to review by and require approval from Sponsor.

**Severability.** If any provision(s) of these Terms are held to be invalid or unenforceable, all remaining provisions hereof will remain in full force and effect.

**Assignment.** These Terms (including the Official Rules) will be binding on the Sponsor Parties and Participant and their successors and permitted assigns. Participant may not assign these Terms without the written consent of Sponsor whereas Sponsor may assign these Terms to any third party.

**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: <https://enrollmythermostat.com/faqs/texas-faq/>, and encourage you to check this site frequently.

**Execution of Agreement.** The use of an electronic signature to sign these Terms, including the use of portable document format (PDF), shall constitute effective execution and delivery of these Terms as to the parties. Signatures of the parties transmitted in electronic form shall be deemed to be their original signatures for all purposes.

**Entire Agreement.** These Terms, together with any Official Rules applicable to a Reward, constitutes the entire agreement between Sponsor and a Participant relating to the subject matter hereof and supersedes all other such prior or contemporaneous oral and written agreements and understandings.

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