

## PROGRAM TERMS AND CONDITIONS

**Welcome to the Los Angeles Department of Water and Power (LADWP) Power Savers Program (“Program”).** 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, subject to these Terms and Conditions (“**Terms**”). To become a Participant in the Program, you must (A) have an installed an operational Device from Nest and (B) submit an application to, and have it accepted by, Sponsor and the Program Administrator . Capitalized words will have the meaning set forth below in the “Definitions” section.

**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 (as defined below) and the Program Administrator; provided, however, in the event your application is not accepted or approved, you will not be subject to data collection or ongoing participation requirements 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. The Sponsor Parties reserve the right in their discretion 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.** Participants who fully comply with these Terms may be eligible to receive the Reward, which will be provided by the Program Administrator. To receive the Reward, you must be accepted as a Participant by the Program Administrator and your participation must not be withdrawn or terminated.

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

- **“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”** means an applicant that has been accepted into the Program by the Program Administrator.
- **“Program”** means the LADWP Power Savers Program.
- **“Program Administrator”** means the Los Angeles Department of Water and Power, or LADWP.
- **“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. The Program will run until terminated.
- **“Reward”** means an enrollment incentive of \$65 per household. You also may be eligible for an annual participation incentive, defined by the percentage of your participation in the total demand response events in one season, as defined below. Both the enrollment and annual incentives are limited to one device per account.
  - Less than 24% participation is not eligible for an annual participation incentive
  - 25% - 74% participation earns a \$60 annual participation incentive
  - Greater than 75% participation earns a \$120 annual participation incentive
- **“Sponsor”** means EnergyHub, Inc., 41 Flatbush Ave. Suite 400A Brooklyn, NY 11217.

- **“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 data related to your identity, your Adjustment Event opt-in or opt-out status, your energy usage by your Devices, your Program Administrator account, 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 Program Administrator (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; 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 DER Vendor platform (“Service”) and compatible with the Program design;
- Maintain an active account in good standing on the Service and a continuous connection between your enrolled Devices and the Service;
- Assist Sponsor Parties’ support personnel in troubleshooting and resolving connectivity, firmware and other Device-related issues; and
- Have an active electric account with your Program Administrator.

**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 withdraw from the Program at any time, by following the steps set forth in the **“How to Withdraw”** section of these Terms, included below.

**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, contacting Program Administrator at [powersaversprogram@ladwp.com](mailto:powersaversprogram@ladwp.com) or contacting the DER Vendor.

**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. Sponsor and Program Administrator

may accept or reject your application in the event you fail to meet the eligibility criteria established above.

**How To Withdraw.** Once you are accepted as a Participant in the Program, you may withdraw by emailing the Program Administrator's contact address, [powersaversprogram@ladwp.com](mailto:powersaversprogram@ladwp.com) or through your Thermostat Partner's account web portal or mobile app. The Program Administrator will promptly notify the Sponsor of your request to withdraw in order to allow the Sponsor to complete the withdrawal process. 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 terminated by the Program Administrator), or if the Program is declared unlawful, the Program and Reward will be terminated. 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, LADWP will provide notice at [www.ladwp.com/powersaversprogram](http://www.ladwp.com/powersaversprogram).

**Disqualification.** Sponsor may terminate your participation in the Program and Reward 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 your Program Administrator declares you ineligible for the Program, if your account with Sponsor 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, Program Administrator or Sponsor (with authorization from Program Administrator) 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. LADWP's privacy policy is located at <http://rates.ladwp.com/PrivacyPolicy.aspx> and Sponsor's privacy policy is located at: <http://www.energyhub.com/privacy-policy>.

**Changes in Your Electricity Costs.** Sponsor Parties are not responsible for any changes in your electricity costs during the Program. Your participation in the Program is not a guarantee that your electricity costs will go down.

**Information.** You represent and warrant to the Sponsor Parties that the information you provide while applying for and during the course of the Program is accurate and complete, and you agree to promptly notify the Program Administrator of any information you provided during your application for the Program has changed. Subsequently, the Program Administrator shall promptly notify the Sponsor of any such change in information.

**General Conditions.** This Program is governed by the laws of the State of California 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 respective successors and assigns, and Participant. Participant may not assign these Terms without the written consent of Sponsor and Program Administrator whereas Sponsor or Program Administrator 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.

**Changes to the Terms.** The Sponsor Parties 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, LADWP, DER Vendor and the Sponsor.

**Additional Program Details.** Additional program details are available at the following website address: [www.ladwp.com/powersaversprogram](http://www.ladwp.com/powersaversprogram). Program Administrator's contact information for the program is: [powersaversprogram@ladwp.com](mailto:powersaversprogram@ladwp.com). Also, the following details apply to the Program.

### **Incentive Information**

- Participants will receive a \$65 virtual prepaid Mastercard® (one per customer accepted into the program).
- Participants may also be eligible for an annual participation incentive (one per customer account), depending on the percentage of their participation in the total demand response events in the season, as defined below:
  - Less than 25% participation is not eligible for an annual participation incentive
  - 25% - 75% participation earns a \$60 annual participation incentive
  - Greater than 75% participation earns a \$120 annual participation incentive

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