

Efficiency Works Flex Thermostat Program Terms and Conditions

PROGRAM TERMS AND CONDITIONS

Welcome to the Efficiency Works Flex Thermostat Program. By becoming a Participant in the Program, you may reduce stress on the grid in your utility service area and be eligible to receive the Reward described below, subject to these Program Terms and Conditions. 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. 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you must be accepted as a Participant by the Sponsor and Program Administrator, and your participation must not be withdrawn or terminated.

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; 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 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. Sponsor and Program Administrator reserve the right in their sole 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.**

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 mode, setpoint, or other settings, as applicable.
- **"DER Vendor"** means the third party manufacturer of the Participant's Device.
- **"Device"** means your DER Vendor's product, which can be monitored and operated in the Program by DER Vendor's network operations center.
- **"Equipment"** means physical residential or commercial assets controlled, monitored, or impacted by the Device, including but not limited to HVAC equipment such as central air conditioning, heat pump, or baseboard electric heaters.
- **"FAA"** means the Federal Arbitration Act.
- **"Participant"** means an applicant that has been accepted into the Program by the Program Administrator. Participant may also be referred to as **"you"** or **"your"** in these Terms.
- **"Program"** means the Efficiency Works Flex Thermostat Program.
- **"Program Administrator"** means Platte River Power Authority ("Platte River") as the manager of Efficiency Works branded programs, including the Program. Efficiency Works is a regional utility collaboration between Platte River and its owner communities of the Town of Estes Park, the City of Fort Collins, the City of Longmont, and the City of Loveland ("Owner Communities").
- **"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, and operational data about your Device(s).
- **"Program Period"** means January 1st through December 31st.
- **"Program Website"** means the website designated by the Program Administrator for the Program, as updated from time to time, currently located at <https://greatergrid.com/enroll/programs/thermostats/efficiencyworks>.
- **"Reward"** means a one-time enrollment incentive after enrollment approval. If new Participants enroll before the annual enrollment deadline and annual participation requirements are met,

Participants may also be eligible to receive an annual incentive. Exact incentive values and deadlines are subject to change at any time. Find the most up to date incentive values and annual participation requirements on the Program Website.

- **“Service”** means the connection between your Device(s) and the DER Vendor platform.
- **“Sponsor”** means EnergyHub, Inc. with an address of 41 Flatbush Avenue, Suite 400A, Brooklyn, NY 11217. Sponsor may also be referred to as **“We”** in these Terms.
- **“Sponsor Parties”** means Sponsor, DER Vendor, and Program Administrator, their respective successors and assigns, and each of their respective affiliates, agents, representatives, 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 data indefinitely, solely for the purposes of determining your eligibility for the Program, operating the Program, and for record keeping; 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 other Program Administrator offerings and surveys about the Program and to share your responses to such surveys among the Sponsor Parties; and 6) 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 (or your Device(s)) meet the following eligibility criteria and you 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 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;
- Own or lease the Device and be authorized to make decisions for the enrolled address (location) and are authorized to consent to the disclosure of the data as specified;
- The location of the Device must be served by a participating electric utility of Estes Park Power and Communications, Fort Collins Utilities, Longmont Power & Communications or City of Loveland Utilities. The Program may not be available to all Devices in all utility service areas. To view more information and additional eligibility criteria and participation requirements, visit the Program Website; and
- Participating Devices must control Equipment. Customers that have Devices connected only to natural gas furnaces are not eligible to participate.

Program Period. The initial period for participation in the Program will begin the date your enrollment is approved and will end on December 31st. You may be automatically re-enrolled in subsequent Program Periods at Sponsor's or Program Administrator'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 the Program Period. Adjustment Events may signal the Device to change

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 a current or future Adjustment Event at any time by directly adjusting the Device or contacting Sponsor at efficiencyworks@energyhub.com.

How to Apply. You can apply to participate in the Program through your DER Vendor mobile app or at the Program’s enrollment website found here: <https://greatergrid.com/enroll/programs/thermostats/efficiencyworks>. 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 at efficiencyworks@energyhub.com. Withdrawal will not affect the other services provided by the Sponsor Parties. By withdrawing, you may render yourself ineligible to receive the Reward or participate in the Program in the future.

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.

Disqualification. The Sponsor Parties 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 Program Administrator 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, Sponsor may terminate your participation in the Program without liability and without notice. Disqualification from 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.

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. Sponsor’s privacy policy is located at: <http://www.energyhub.com/privacy-policy>. Program Administrator’s privacy policy is located at: <https://efficiencyworks.org/privacy-policy/>.

Customer Data Sharing. By participating in the Program, you acknowledge and agree that your customer data may be shared among the Sponsor Parties, Owner Communities and third parties implementing the Program for a variety of purposes. Customer data may include, but is not limited to, name, address, contact information, account number, and utility usage data, as well as details regarding your participation in the Program or other programs and services offered by the Program Administrator or the Owner Communities. These details may include, but are not limited to, audit results, rebate amounts, and products purchased

related to participation. Purposes for which your customer data may be shared or used include, but are not limited to, determining your eligibility for the Program, Program administration, marketing, quality control, providing you with products or services you request, offering you products or services that may be of interest to you, or analyzing your utility usage. The Program Administrator and the Owner Communities may not have control over your customer data and cannot guarantee that it will remain confidential.

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

Information. You represent and warrant to Sponsor that the information you provide to Sponsor while applying for and during your participation in 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.

Environmental Attributes. Program Administrator reserves the right to claim and own any environmental attribute credits ("**Credits**") resulting from the Participant receiving a Reward. Credits include any credits, credit certificates, efficiency credits, white tags, carbon or greenhouse gas credits, offsets, or allowances, and environmental air quality credits, offsets, allowances. Credits do not include any state tax credits, investment tax credits, and any other tax credits or tax benefits that are or will be generated by or related to the Device in the Program.

Taxes and Other Incentives. Incentive payments provided by Program Administrator to commercial entity Participants may in some circumstances be considered as (partially) taxable income by the Internal Revenue Service (IRS). Participants or their assigns receiving incentive payments totaling \$600 or more during an applicable calendar year and who are not organized as a corporation may receive a 1099-MISC in January or February of the subsequent year from Program Administrator or its designated vendor. Sponsor Parties are not responsible for tax payment obligations or tax advice and Participant (or their assigns) who receive incentives should consult a tax advisor on this matter.

Program Administrator is not responsible for errors in or misrepresentations of the incentive amount by third parties. Sponsor Parties are not responsible for the calculation, collection, or distribution of any tax credits, tax deductions, or third-party rebates that you may be eligible to receive, and neither Sponsor nor Program Administrator has provided any advice regarding federal or state tax consequences.

Responsibilities and Disclaimers of Warranty. You acknowledge and agree that the Program is a remote, software-based optimization service. Neither Sponsor nor Program Administrator sells, provides, installs, inspects, or maintains your Device or any underlying residential or commercial Equipment. You are solely responsible for ensuring your hardware is compatible, safely installed by qualified personnel, properly maintained, and operating in accordance with manufacturer specifications. The Sponsor Parties make no warranties for materials provided by or work performed by Participant's contractors, vendors, consultants, or Participant's own employees. The Sponsor Parties also do not provide any warranties or guarantees that Program participation will result in any impacts to energy usage or utility costs. For clarity, Sponsor does not own, operate, generate, transmit, distribute, or maintain the electrical grid, utility infrastructure, or the delivery of electricity to your property.

Grid Outages, Power Adjustments, and System Emergencies. You acknowledge and agree that the Program involves remote interactions with your local electrical grid. By participating in the Program, you explicitly release and hold harmless the Sponsor Parties from any and all liability, claims, actions, demands, losses, or damages incurred by you or any third party arising out of or related to grid instability, utility service disruptions, brownouts, blackouts, or any power surges, drops, fluctuations, or spikes that occur concurrent with, or subsequent to, any Adjustment Events, telemetry signals, or system tests sent to your Devices.

General Conditions.

Governing Law. This Program and these Terms are governed by the laws of the State of Colorado without regard to its applicable principles of conflicts of law.

Entire Agreement. These Terms constitute the entire agreement between the Sponsor Parties and a Participant relating to the subject matter hereof and supersede all other prior or contemporaneous oral and written agreements and understandings.

No Waiver. The Sponsor Parties' failure to enforce any term of these Terms shall not constitute a waiver of that provision.

Severability. 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. The parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.

Assignment. These Terms will be binding on the Sponsor Parties and their respective successors and assigns, and the Participant. Participant may not assign these Terms without the prior written consent of Sponsor and Program Administrator, whereas Sponsor and Program Administrator may assign these Terms to any third party.

Limitation of Liability. EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW OR ARISING SOLELY FROM SPONSOR'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR FRAUDULENT MISREPRESENTATION, IN NO EVENT SHALL THE SPONSOR PARTIES (AND EACH OF THEIR RESPECTIVE AFFILIATES, AGENTS, DIRECTORS, OFFICERS, AND EMPLOYEES) BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, OR FOR ANY PERSONAL INJURY, DEATH, PROPERTY DAMAGE, OR PROPERTY DESTRUCTION ARISING FROM OR RELATED TO YOUR PARTICIPATION IN THIS PROGRAM, THE OPERATION OR DISPATCH OF THE SOFTWARE PLATFORM, OR THE FAILURE, MALFUNCTION, OR OVERHEATING OF ENROLLED DEVICES, REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE SPONSOR PARTIES ASSUME NO RESPONSIBILITY FOR TYPOGRAPHICAL ERRORS, TECHNICAL PROBLEMS, TELEPHONE OR INTERNET SERVICE INTERRUPTIONS, COMMUNICATIONS LINE FAILURES, HARDWARE AND/OR SOFTWARE FAILURES, TAMPERING, OR ANY LOSS OF INCOME DUE TO DEVICE CONTROL OR PARTICIPATION IN THE PROGRAM. PARTICIPANT ASSUMES ALL RISK OF PARTICIPATION IN THE PROGRAM. IF ANY PORTION OF THIS LIMITATION OF LIABILITY IS FOUND INVALID OR UNENFORCEABLE UNDER APPLICABLE LAW, THE TOTAL CUMULATIVE LIABILITY OF THE SPONSOR PARTIES TO YOU FOR ALL CLAIMS OF ANY KIND SHALL BE STRICTLY LIMITED TO FIFTY DOLLARS (\$50.00).

Participant Indemnity. TO THE MAXIMUM EXTENT PERMITTED BY LAW, YOU AGREE TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE SPONSOR PARTIES (AND EACH OF THEIR RESPECTIVE AFFILIATES, AGENTS, DIRECTORS, OFFICERS, AND EMPLOYEES) AT ALL TIMES FROM AND AGAINST ANY THIRD-PARTY LIABILITY, CLAIMS, DEMANDS, LOSSES, DAMAGES, COSTS, AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) THAT ARISE FROM OR ARE RELATED TO ANY ACT, DEFAULT, OMISSION, OR BREACH OF THESE TERMS OR RELATED WARRANTIES BY YOU.

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 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.

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 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 and the Program Administrator reserves the right to change Rewards or discontinue the Program 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 Parties.

Additional Program Details. Additional program details are available at the following website address: <https://greatergrid.com/enroll/programs/thermostats/efficiencyworks>. EnergyHub contact information for the program is: efficiencyworks@energyhub.com.

Customer Signature

Customer Name

Date