

## PROGRAM TERMS AND CONDITIONS

**Welcome to the Tucson Electric Power Company (“TEP”) Smart Rewards Program (“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, Sponsor and the Program Administrator (as each is defined below). You must have an installed and operational thermostat from DER Vendor 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 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 reserves the right in its 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.**

**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 the incentive set forth below (“**Reward**”), to be provided by the Sponsor following the conclusion of the active Program Period. 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you must be accepted as a Participant by the Sponsor and Program Administrator and your participation must not be withdrawn or terminated.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 Ave. 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 its setpoint, or other settings, as applicable. Participants may opt out of Adjustment Events at any time by adjusting the Device.
- “**DER Vendor**” means Nest, the-third party manufacturer of the Participant’s thermostat.
- “**Device**” means your DER Vendor thermostat.
- “**FAA**” means the Federal Arbitration Act.
- “**Participant**” means an applicant that has been accepted into the Program by the Program Administrator.
- “**Program**” means the TEP Smart Rewards 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 number and address, your contact information, and operational data about your Device(s).
- “**Program Period**” means the duration of the Program from June 1st through September 30<sup>th</sup> (i.e. the Summer season when Adjustment Events may occur).
- “**Program Administrator**” means Tucson Electric Power Company.
- “**Reward**” means a \$50 one-time e-gift card enrollment incentive for each eligible, installed thermostat (up to 2 per household; and a \$40 e-gift card after the conclusion of each annual Program Period, up to 2 per household) as long as you remain in the program through the end of the season on September 30th.

- **“Service”** means the connection between your Device(s) and 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 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 number and address, your contact information, and operational data about your Devices (collectively, **“Program Data”**), and retain such data so long as it is needed to determine your eligibility for the Program and operate the Program; 2) review and analyze 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 periods; 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 requests to participate in 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, auditing or reporting 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. You further agree that Sponsor and Program Administrator may retain any Device-specific operational data and any de-anonymized personal information provided to them by DER Vendor for up to one (1) year from the date DER Vendor initially provides such data to Sponsor.

**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 Wi-Fi connection between your enrolled Devices and the Service;
- Assist Sponsor Parties’ support personnel in troubleshooting and resolving connectivity, firmware and other Device-related issues;
- Have an active utility account in good standing with your Program Administrator; and
- Provide a valid email address to receive your Rewards, and notify the Sponsor of any changes or updates.

**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 by contacting Sponsor at [tep@energyhub.com](mailto:tep@energyhub.com).

**Program Description.** Participant agrees to allow DER Vendor on behalf of the Sponsor Parties to control the Participant’s Devices during limited “Adjustment Events” occurring during the Program Period. Adjustment Events may signal the Device to change its setpoint, or other settings, as applicable. 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 by directly adjusting the Device. Additional Smart Rewards details are found at <https://www.thermostatrewards.com/tepbyot>, which are incorporated into these Program Terms and Conditions.

**How To Apply.** You can apply to participate in the Program through your DER Vendor mobile app or at the Program enrollment website found here: <https://www.thermostatrewards.com/tepbyot>. The Sponsor Parties may accept or reject your application in their sole 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 calling your DER Vendor. 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, 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 fails to receive necessary funding, the Program will be terminated along with any unearned Reward. Further, Sponsor's ability to offer the Program 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 any unearned Reward. In the event of such termination, DER Vendor or Sponsor will use commercially reasonable efforts to may provide notice to you by email, and Sponsor will also provide notice at [www.energyhub.com](http://www.energyhub.com). Termination of the Program will not affect any payment obligations you may have to your Program Administrator, or 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. Disqualification from the Program will not affect any payment obligations you may have to your Program Administrator, or 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>.

**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 the 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 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 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://www.thermostatrewards.com/tepbyot>. EnergyHub contact information for the Program is: [tep@energyhub.com](mailto:tep@energyhub.com).

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