

Consumers Energy – Peak Power Savers Smart Thermostat Program – Customer Terms and Conditions

Thank you for your interest in participating in the Consumers Energy Peak Power Savers® Smart Thermostat Program (the “Program”). The Program is offered by Consumers Energy (“Consumers Energy”) and is implemented by Uplight, Inc. (“Uplight”). These Terms of Use (these “Terms”) are a legal agreement between you and Consumers Energy governing your participation in the Program.

BY CLICKING [“I AGREE”] OR BY OTHERWISE USING THE SERVICE, YOU AGREE TO BE BOUND BY THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS YOU MAY NOT PARTICIPATE IN THE PROGRAM.

In the case of inconsistencies between these Terms and information included in any other materials related to the Program (e.g., promotional materials and mailers), these Terms will always govern and take precedence.

1. The Program. The Program will include customers who have a central air conditioner and/or gas furnace and Wi-Fi enabled Smart Thermostat. Uplight, on behalf of Consumers Energy, will control the customer’s thermostat during demand response events called by Consumers Energy and measure the energy load shift that Consumers Energy will be able to utilize for the company’s Michigan Public Service Commission demand reduction requirements.

1.1 Devices. By participating in the Program you hereby grant to Consumers Energy and Uplight the right to remotely access and control one or more smart thermostats at the address you are enrolling (each, your “Device”). When you authorize a Device, you may be presented with additional terms from the Device manufacturer (the “Manufacturer”). These Terms are in addition to, and are not replaced by, those terms. By authorizing a Device, you understand and agree that you are enabling Uplight to control that Device in connection with the Program.

1.2 Control. As part of this Program, Uplight may automatically change the temperature setpoint on your Device without any manual intervention by you. At any time that you desire, you may override this temperature setpoint simply by turning your Device to a different temperature or using the other methods enabled by the Device Manufacturer.

1.3 Changes. Consumers Energy reserves the right, in its sole discretion, to modify or to discontinue the Program at any time.

1.4 Eligibility. In order to register for the Program, you agree to provide to Uplight and Consumers Energy information to verify your eligibility for the Program. You agree that the information that you provide to Uplight or Consumers Energy in connection with the Program (“User Data”) will be true, accurate, current and complete, and you further agree that you will maintain and promptly update the User Data to ensure that it remains true, accurate, current and complete. This Program is available to full service residential or business customers served on a residential or business rate and who have the required equipment and infrastructure installed. Customers must have a participating Wi-Fi enabled thermostat (supported models: Emerson Sensi, Sensi Touch, Nest, Nest E, ecobee4, and ecobee3 lite), or be willing to purchase one. Customers must have a central air conditioning unit for Summer participation and a natural gas furnace for Winter participation and an always-on Wi-Fi network. If Customer is a residential tenant, Customer assumes responsibility of obtaining permission from the landlord or property owner to participate in the Program. Customer eligibility to participate in the Program is determined solely by Consumers Energy and participating customers may be disenrolled at any time at Consumer’s Energy’s discretion. The Customer will be required to provide contact information needed to receive mandatory program communications, as described below.

2. Enrollment & Disenrollment. After enrollment is requested, Customer will be enrolled in the Program at the point eligibility is confirmed. Enrollment is voluntary; however, once enrolled you must commit to a minimum of 12 months. Customers are required to authorize the Program software onto their thermostat to receive the program incentive.

- 2.1 *Energy Savings Days.* Participating customers agree to participate in Peak Events called “Energy Savings Events” or “Energy Savings Days”. During an Energy Savings Event the Customer agrees that Consumers Energy may control the resident’s thermostat and shall be authorized to adjust the thermostat setting. If the Customer adjusts the thermostat during the Program they may be ineligible to receive the full program incentive. “Energy Savings Days” may be implemented for, but not limited to, maintaining system integrity, making an emergency purchase, economic reasons, or when there is insufficient system generation available to meet anticipated system load.
- 2.2 *Summer Energy Savings Events.* May occur Weekdays with no more than one event per day as directed by Consumers Energy. Events will be schedule between the hours of 1:00 PM to 7:00 PM. Consumers Energy may call up to 14 Energy Savings Events from June through September on non holiday weekdays.
- 2.3 *Critical Energy Savings Events* may occur any day of the week including weekends between the hours of 7:00 AM and 8:00 PM in Summer for no more than an eight hour period in any one day during a declared emergency event as directed by Midcontinent Independent System Operator (“MISO”).
- 2.4 *Winter Energy Savings Events.* May occur Weekdays with no more than one event per day as directed by Consumers Energy. Consumers Energy may call up to 10 Energy Savings Events from November through March on non holiday weekdays.

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- 3 **Incentives.** In connection with the Program, Consumers Energy may offer certain rebates, offers, or other incentives (“Incentives”). Consumers Energy reserves the right to determine qualification for Incentives in its sole discretion. Failure to participate in the Program for its entire duration or overriding automatic Device control on a regular basis may disqualify you from Incentives. In particular, Consumers Energy reserves the right to eliminate Incentives if you opt out of 3 or more events in any 12 month period (does not apply to Nest thermostats).
- 4 **Communication.** Customer agrees to receive mandatory Program communications and to provide and maintain valid contact information for such communications. Customer accepts responsibility for the receipt of these communications and for any increased energy charges resulting from failure to receive them. By enrolling, Customer accepts Consumers Energy’s Electronic Communications Terms & Conditions, including but not limited to those provisions regarding live and automated voice notifications and text messages when the customer provides a phone number (both land line and wireless).
- 5 **Your Information.** By submitting User Data and any other data, materials, or information in connection with the Program, data, materials, content or other information in connection with the Program, you are licensing such information to Uplight and Consumers Energy for the purpose of providing the Program. In addition, you hereby authorize Uplight to access your information maintained by Consumers Energy and/or Device Manufacturer solely in order for Uplight to provide the Program. You understand and agree that by authorizing Uplight to control your Device in connection with the Program, Uplight and its partners may receive access to data from your Device directly, including data collected from its sensors. You agree that Consumers Energy may include customer’s name, address, Consumers Energy account number, Consumers Energy services and resulting energy savings in a database hosted by Uplight, and such information may be included in reports or other documentation submitted to Consumers Energy and/or the Michigan Public Service Commission. Consumers Energy will treat such information as confidential and the information in the reports shall only be in the aggregate. For more information on the particular data that Uplight will receive access to, please contact Consumers Energy at (877) 742-7150
- 6 **Personal Non-Commercial Use.** The Program is offered for your own personal non-commercial use. Any commercial participation in the Program is expressly prohibited.
- 7 **Costs.** Consumers Energy and Uplight are not responsible for providing the systems necessary to participate in the Program, such as Devices or Internet access.
- 8 **No Warranty; Disclaimer.** YOUR PARTICIPATION IN THE PROGRAM IS AT YOUR SOLE DISCRETION AND RISK. THE PROGRAM IS OFFERED “AS IS” AND “AS AVAILABLE” WITHOUT WARRANTIES OF ANY KIND. CONSUMERS ENERGY AND UPLIGHT EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND RELATING TO THE PROGRAM, WHETHER EXPRESS, IMPLIED OR STATUTORY (INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES FOR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OR

NON-MISAPPROPRIATION OR INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY) AND ANY WARRANTIES OR CONDITIONS ARISING UNDER ANY OTHER LEGAL REQUIREMENT. CONSUMERS ENERGY AND UPLIGHT MAKE NO WARRANTIES THAT THE OPERATION OF THE PROGRAM WILL BE UNINTERRUPTED OR ERROR-FREE. Participation in the Smart Thermostat Program is voluntary. Participating customers accept the risk that participation may add to monthly electric bills.

- 9 **Indemnification.** To the fullest extent allowed by the law you agree to indemnify, and hold Uplight and Consumers Energy, its officers, directors, employees and agents, harmless from and against any claims, liabilities, damages, losses, and expenses, including without limitation reasonable attorney's fees and costs, arising out of or in any way connected with your participation in the Program.

10 **Limitation of Liability.**

10.1 Limitation of Liability. YOU AGREE THAT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL UPLIGHT OR CONSUMERS ENERGY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, ARISING IN CONNECTION WITH THE PROGRAM, EVEN IF UPLIGHT OR CONSUMERS ENERGY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IF YOU ARE DISSATISFIED WITH THE PROGRAM OR WITH ANY OF THESE TERMS, OR FEEL UPLIGHT OR CONSUMERS ENERGY HAS BREACHED THESE TERMS, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE PARTICIPATION IN THE PROGRAM. CONSUMERS ENERGY'S LIABILITY IS LIMITED TO BILLING THE CUSTOMER AT THE APPROVED RATE.

10.2 Exclusions. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF INCIDENTAL, CONSEQUENTIAL OR OTHER TYPES OF DAMAGES, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU. NOTHING IN THESE TERMS AND IN PARTICULAR WITHIN THIS "LIMITATION OF LIABILITY" CLAUSE SHALL ATTEMPT TO EXCLUDE LIABILITY THAT CANNOT BE EXCLUDED UNDER APPLICABLE LAW.

11 **Termination.**

11.1 Termination By Consumers Energy. Consumers Energy may terminate the Program, or your participation in the Program, at any time, with or without cause, by providing you with written notice of such termination, which may be via email.

11.2 Your Termination. You may terminate your participation at any time after 12 months of program participation for any reason by sending an email to SmartThermostatSupport@ConsumersEnergyStore.com.

11.3 Rights at Termination. Upon termination, all rights granted to you by these Terms will immediately cease. Consumers Energy and Uplight are not liable to you or any third party for termination of the Program or your participation in the Program.

11.4 Survival. Any suspension, termination or cancellation of the Program will not affect your obligations under these Terms which by their sense and context are intended to survive such suspension, termination or cancellation.

12 **General.**

12.1 Consent and Capacity. You are over 18 years of age and have the necessary legal capacity to execute this agreement and enroll in this program, and have received the necessary consents and approvals from the owner(s) or occupant(s) of any premises where the Services will be provided. You are solely responsible for any failure to receive necessary consents and approvals. Your participation is completely voluntary.

12.2 Entire Agreement. These Terms are the entire and exclusive agreement between Consumers Energy or Uplight and you regarding the Program, and supersede and replace any prior agreements regarding the same.

12.3 No Assignment. You will not assign these Terms or assign any rights or delegate any obligations hereunder, in whole or in part, whether voluntarily or by operation of law, without the prior written consent of Consumers Energy. Any purported assignment or delegation by you without the appropriate

prior written consent of Consumers Energy will be null and void.

12.4 *Severability and Waiver.* In the event that any provision in these Terms is held to be invalid or unenforceable, the remaining provisions will remain in full force and effect. The failure of Consumers Energy to enforce any right or provision of these Terms will not be deemed a waiver of such right or provision.

12.5 By participating in this Program, you agree to receive emails from Consumers Energy or its partners at the email address provided for this Program. These emails may contain information about Consumers Energy products and services; other energy related products, services and Programs; as well as energy related legislative and environmental issues. You may opt out of receiving these emails at any time by contacting Consumers Energy at (855) 244-0588 or emailing SmartThermostatSupport@ConsumersEnergyStore.com; however, it may take up to 10 days to take effect.