

# SMUD My Energy Optimizer

## Program Terms and Conditions

### Introduction

Thank you for your interest in participating in the SMUD My Energy Optimizer program (the “Program”). The Program is offered by SMUD and is implemented by Uplight, Inc. (“Uplight”). These Terms of Use (these “Terms”) are a legal agreement between you, SMUD, and Uplight 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.

Please print a copy and keep this information for your reference.

### 1. The Program.

- 1.1. *Description.* The Program is an optional way for you to help reduce demand on electricity resources during times when energy demand is at its highest or there are emergency conditions with the power system. By participating in the Program, you will enroll one or more smart devices installed at your service locations to respond automatically to up to 50 hours of peak events each summer (June 1 to September 30). Peak events last 1 to 4 hours each and no more than one can be scheduled daily. The Program is part of SMUD’s efforts to reduce the need to buy electricity from more expensive, less environmentally friendly sources and avoid or delay building more power plants. You may receive an enrollment incentive as well as ongoing savings and/or other incentives for successful participation.
- 1.2. *Devices.* By participating in the Program, you hereby grant to SMUD 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 enroll a Device in the Program, 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 enrolling a Device in the Program, you understand and agree that you are enabling SMUD and Uplight to control that Device in connection with the Program.
- 1.3. *Control.* As part of this Program, upon a peak event, SMUD or Uplight will automatically adjust functions of the enrolled Devices, which can subsequently be overridden, according to following:

	Smart Thermostats	Smart EV Charger	Battery Storage System
Peak Event	Adjustment of temperature setpoints on the smart thermostat to facilitate pre-conditioning prior to the event and pausing cooling during the event	Pausing of charging on the electric vehicle charger	Discharge battery

Participant Override	Turning your Device to a different temperature or using the other methods enabled by the Device Manufacturer	Charging capabilities started through the charger mobile application	Turning your Device to a different setting or using the other methods enabled by the Device Manufacturer
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- 1.4. *Program Changes.* SMUD reserves the right, in its sole discretion, to modify or to discontinue the Program at any time.
- 1.5. *Safety.* You understand that you are at all times responsible for your own safety, the safety of anyone using the Device, and protection of the Device against damage, overuse, or misuse while you participate in the Program. You expressly agree and promise to accept and assume all of the risks existing in the Program. Your participation in the Program is purely voluntary, and you elect to participate despite the risks.
- 1.6. *Equipment.* You are responsible for the selection, acquisition, and installation of your Device and other related equipment to participate in this Program. You will install, own, and maintain the Device and related equipment.
- 1.7. *Monitoring.* You agree that the data, telemetry, facts, records and other information related to this Program belongs to and is owned by SMUD and Uplight, and you have no claim or right to that information. You authorize the use of your personal information to SMUD and Uplight or its contractors as required for installation, data analysis and/or Program evaluation. You acknowledge and agree that SMUD and Uplight may use such information for the purposes specified herein and may publish the results of the Program. SMUD and Uplight will maintain the confidentiality of your personal information in any publication, unless explicitly waived.
2. **Eligibility.** In order to register for the Program, you agree to provide to Uplight and SMUD information to verify your eligibility for the Program. You agree that the information that you provide to Uplight and SMUD 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.
  - 2.1. Customers who are enrolled in SMUD’s Medical Equipment Discount (MED) Rate, Budget Billing program, or Peak Conserve program are not eligible to participate in this Program.
3. **Incentives.** In connection with the Program, SMUD may offer certain rebates, offers, or other incentives (“Incentives”). SMUD 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, SMUD reserves the right to eliminate Incentives if you opt out of three (3) or more peak events in any twelve (12) month period (does not apply to Nestthermostats).
4. **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 SMUD for the purpose of providing the Program. In addition, you hereby authorize Uplight to access your information maintained by SMUD and/or Device Manufacturer solely for Uplight to provide the Program. You understand and agree that by authorizing Uplight to control your Device in connection with the Program, Uplight may receive access to data from your Device directly, including data collected from its sensors. For more information on the particular data that Uplight will receive access to, please contact Uplight at (877) 882-1170.
5. **Personal Non-Commercial Use.** The Program is offered for your own personal non-commercial use. Any commercial participation in the Program is expressly prohibited.
6. **Costs.** SMUD and Uplight are not responsible for providing the systems necessary to participate in the Program, such as Devices, related equipment, or Internet access.

## **7. No Warranty; Disclaimer.**

- 7.1. 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. SMUD 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.
- 7.2. SMUD and Uplight make no warranties that the operation of the Program will be uninterrupted or error-free. Neither SMUD nor Uplight will be liable for any damages or changes to the useful life or condition of the Device. Operation by SMUD or Uplight may result in changes to the timing and frequency of charging & discharging cycles for the Device. The Device is subject to the warranty terms as established by the Device manufacturer.
- 7.3. SMUD and Uplight make no representations, expressed or implied, regarding the design, construction, reliability, operation, efficiency, sizing or performance of your Device or other equipment, or any other aspect of the equipment. Any decisions regarding the selection, design, purchase, installation, use and operation of the Device is at your sole discretion and is your responsibility.
- 7.4. SMUD and Uplight are not responsible in contract, tort or under any other theory of liability with respect to the goods and services provided under this Program.
- 7.5. SMUD and Uplight do not guarantee that energy efficiency measures or services provided through this Program will result in energy and cost savings. SMUD and Uplight do not guarantee or endorse the energy efficiency services provided by any specific contractor participating in the Program.

**8. Indemnification.** You agree to indemnify, and hold Uplight and SMUD, their officers, directors, employees and agents, harmless from and against any and all 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 and these Terms

## **9. Limitation of Liability.**

- 9.1. *Limitation of Liability.* YOU AGREE THAT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL UPLIGHT OR SMUD BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, ARISING IN CONNECTION WITH THE PROGRAM, EVEN IF UPLIGHT OR SMUD 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 SMUD HAS BREACHED THESE TERMS, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE PARTICIPATION IN THE PROGRAM.

YOU AGREE THAT UPLIGHT’S LIMITATION OF LIABILITY: (I) WILL NOT APPLY TO DAMAGES RESULTING FROM ITS GROSS NEGLIGENCE, WILLFULL MISCONDUCT, OR FRAUD, AND (II) WILL BE CAPPED FOR COVERED DAMAGES AT \$10,000 PER PROGRAM PARTICIPANT, UP TO AN AGGREGATE LIABILITY TO ALL PROGRAM PARTICIPANTS EQUAL TO \$2,000,000.

- 9.2. *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.

## **10. Termination.**

- 10.1. *Termination By SMUD.* SMUD 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.
- 10.2. *Termination By You.* You may terminate your participation at any time and for any reason by sending an

email to [myenergyoptimizer@smud.org](mailto:myenergyoptimizer@smud.org).

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

10.4. *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.

## 11. General.

11.1. *Applicable Law and Dispute Resolution.* These Terms shall be governed by the laws of the State of California, without giving effect to any conflict of laws or principles that may require the application of the law of another jurisdiction. If you believe that SMUD or Uplight has not adhered to these Terms, please contact us by e-mail at [myenergyoptimizer@smud.org](mailto:myenergyoptimizer@smud.org). We will do our best to address your concerns. If you feel that your complaint has been addressed incompletely, we invite you to let us know for further investigation. YOU ACKNOWLEDGE AND AGREE THAT YOU SMUD, AND UPLIGHT ARE WAIVING THE RIGHT TO PARTICIPATE AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION OR REPRESENTATIVE PROCEEDING. EACH OF THE PARTIES TO THESE TERMS IRREVOCABLY WAIVES ANY AND ALL RIGHT TO A JURY TRIAL IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THESE TERMS. Regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to the Program or these Terms must be brought, if at all, within one year from the accrual of the claim or cause of action or be forever barred.

11.2. *Consent and Capacity.* You are over 18 years of age and have the necessary legal capacity to execute this agreement and have received the necessary consents and approvals from the owner(s) or occupant(s) of any premises where the Devices are enrolled. You are solely responsible for any failure to receive necessary consents and approvals.

11.3. *Entire Agreement.* These Terms are the entire and exclusive agreement between SMUD, Uplight, and you regarding the Program, and supersede and replace any prior agreements regarding the same.

11.4. *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 SMUD or Uplight. Any purported assignment or delegation by you without the appropriate prior written consent of SMUD or Uplight will be null and void.

11.5. *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 SMUD or Uplight to enforce any right or provision of these Terms will not be deemed a waiver of such right or provision.

11.6. *Questions.* If you have questions about these Terms, please contact Uplight at

11.7. *Communications.* By participating in this Program, you agree to receive emails from Uplight or SMUD or its partners at the email address provided for this Program. These emails may contain information about SMUD's 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 SMUD during regular business hours (Monday to Friday, 7:00 a.m. to 7:00 p.m., closed holidays) at 1-888-742-7683, [myenergyoptimizer@smud.org](mailto:myenergyoptimizer@smud.org); please allow up to 10 business days for your opt-out request to take effect.