Alabama Power Smart Peak Rewards Thermostat Program

Terms and Conditions

Thank you for your interest in participating in the **Alabama Power Smart Peak Rewards Thermostat Program** (the "Program"). The Program is offered by Alabama Power Company and its partners ("APC") and is implemented by Uplight, Inc. ("Uplight"). These Terms and Conditions (these "Terms") are a legal agreement between you and APC and Uplight governing your participation in the Program.

BY CLICKING ["I AGREE"] OR BY OTHERWISE PARTICIPATING IN THE PROGRAM, 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.

1.1. *Description.* The Program is a voluntary year-round event-based demand response program that allows participating customers who own qualifying smart thermostats to reduce their electric heating or cooling usage during designated peak periods. Prior to a designated demand response event, your thermostat may be automatically adjusted to pre-heat or pre-cool your home. Then, your thermostat setpoint will be automatically adjusted so that your heating/cooling system runs less throughout the demand response event. You can temporarily override pre-heating or pre-cooling and/or demand response events at any time, but overriding pre-heating or pre-cooling and/or demand response events may impact your continued participation in the Program.

1.2. *Devices.* By participating in the Program, you hereby grant to APC and Uplight the right to remotely access and control one or more smart thermostats at the address you are enrolling each smart thermostat (a "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 the Manufacturer's terms. By authorizing a Device, you understand and agree that you are enabling Uplight to control that Device in connection with the Program.

1.3. *Control.* As part of this Program, Uplight may automatically change the temperature setpoint on your Device without any manual intervention by you during pre-heating or pre-cooling and/or demand response events. At any time that you desire, you may temporarily override this temperature setpoint simply by turning your Device to a different temperature or using the other methods enabled by the Device Manufacturer.

1.4. *Changes.* APC reserves the right, in its sole discretion, to modify or to discontinue the Program at any time.

1.5. *No Guarantee.* APC makes no representations or warranties, and you disclaim any reliance or expectation that, the presence, use, or operation by either you or APC of the Device and your participation in the Program will result in greater energy efficiency, increased reliability, or lower electric bills.

2. Eligibility. In order to register for the Program, you agree to provide to Uplight and APC information to verify your eligibility for the Program. You agree that the information that you provide to Uplight or APC 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.

3. **Term.** Participation in the Program will continue until terminated pursuant to Section 11 herein ("Term"), unless service is terminated or suspended in accordance with Alabama Power's Rules and Regulations for Electric Service. At the end of the Term, absent a different selection by the customer, service will automatically continue under currently enrolled residential rate.

4. **Incentives.** In connection with the Program, APC may offer certain rebates, offers, or other incentives ("Incentives"). APC reserves the right to determine qualification for Incentives in its sole discretion. You are not eligible for more than one Incentive for enrolling in the Program, regardless of your continued participation in the Program for greater than twelve (12) months. Additional incentives may be offered at the end of each season (summer and/or winter) you participate in the Program. APC reserves the right to modify these Incentives at any time and will communicate any modifications on the Program website. Failure to participate in the Program for its entire duration, failure of the Device to be connected to the Internet and able to be accessed by Uplight and/or APC, failure to use an eligible Device, or overriding automatic Device control on a regular basis may disqualify you from Incentives. In particular, APC reserves the right to eliminate Incentives if you override three (3) or more pre-heating or pre-cooling and/or demand response events in any twelve (12) month period.

5. **Your Information.** By submitting User Data and any other data, materials, content, or other information in connection with the Program, you are licensing such information to Uplight and APC for the purpose of providing the Program. In addition, you hereby authorize Uplight to access your information maintained by APC 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 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 APC at productssolutions@alabamapower.com.

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.** APC 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. APC 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. APC AND UPLIGHT MAKE NO WARRANTIES THAT THE OPERATION OF THE PROGRAM WILL BE UNINTERRUPTED OR ERROR-FREE.

9. **Indemnification.** You agree to indemnify, and hold Uplight and APC, their 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 APC BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, ARISING IN CONNECTION WITH THE PROGRAM, EVEN IF UPLIGHT OR APC 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 APC HAS BREACHED THESE TERMS, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE PARTICIPATION IN THE PROGRAM.

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 APC.* APC 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. *Termination By You.* You may terminate your participation at any time and for any reason by sending an email to productssolutions@alabamapower.com or by calling 1-800-990-2726.

11.3. *Rights at Termination.* Upon termination, all rights granted to you by these Terms will immediately cease. APC 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. *Applicable Law and Dispute Resolution.* These Terms shall be governed by the laws of the State of Alabama, 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 APC has not adhered to these Terms, please contact us by e-mail at productssolutions@alabamapower.com. 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. If you and APC are unable to reach a resolution to the dispute, you and APC will settle the dispute exclusively under the rules of the American Arbitration Association (www.adr.org) at its Atlanta, Georgia office. Any election to arbitrate by one party will be final and binding on the other. YOU ACKNOWLEDGE AND AGREE THAT YOU AND APC ARE EACH WAIVING THE RIGHT TO PARTICIPATE AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION OR REPRESENTATIVE PROCEEDING. Further, unless both you and APC otherwise agree in writing, an arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of any class or representative proceeding. 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.

12.2. *Consent and Capacity.* You are over 19 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 Services will be provided. You are solely responsible for any failure to receive necessary consents and approvals. Your participation is completely voluntary, and you can decide to withdraw at any point in the Program.

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

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

12.5. *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 APC to enforce

any right or provision of these Terms will not be deemed a waiver of such right or provision.

12.6. *Questions*. If you have questions about these Terms, please contact APC at productssolutions@alabamapower.com.

12.7. By participating in this Program, you agree to receive emails from Uplight or APC or its partners at the email address provided for this Program. These emails may contain information about APC'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 clicking the "Unsubscribe" link located at the bottom of the email.