

El Paso Electric Company Energy Wise Savings Program

Terms and Conditions

Thank you for your interest in participating in the El Paso Electric Company Energy Wise Savings Program (the "Program"). The Program is offered by El Paso Electric Company ("EPE") and is implemented by Uplight, Inc. ("Uplight"). These Terms of Use (these "Terms") are a legal agreement between you and EPE 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.

- 1.1. *Description.* The Program is available on a voluntary basis to residential customers taking service under Texas or New Mexico Rate 01 (each a "Customer") from EPE and who have central refrigerated air conditioning controlled by an installed eligible smart thermostat (a "Smart Thermostat"). In exchange for an annual participation incentive, determined annually by EPE, the Customer agrees that through the Program, the possibility exists that the Company will remotely communicate with Customer's Smart Thermostats in order to control Customer's central refrigerated air conditioning thermostat (such occasions are each referred to as an "Event"). Events are an attempt to reduce electric demand on the electrical grid during times of peak demand. The Event may be continuous or segmented throughout the week-day, with any segment lasting a maximum four (4) hours in duration during the peak demand season ("Season"). EPE may call an event on non-holiday weekdays during the hours of 1:00 PM through 8:00 PM MDT. The Season would commence annually on June 1 and continue through September 30.
- 1.2. *Devices.* By participating in the Program, you hereby grant to EPE 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 "Device 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.
- 1.3. *Control.* As part of this Program, Uplight will 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.
- 1.4. *Changes.* EPE reserves the right, in its sole discretion, to modify or to discontinue the Program at any time.

2. Eligibility. In order to register for the Program, you agree to provide to Uplight and EPE information to verify your eligibility for the Program. You agree that the information that you provide to Uplight or EPE 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. Incentives. In connection with the Program, EPE may offer certain rebates, offers, or other incentives ("Incentives"). EPE 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 during an Event on a

regular basis may disqualify you from Incentives. In particular, EPE reserves the right to eliminate Incentives if you opt out of three (3) or more Events in any twelve (12) month period (doesn't apply to Nest thermostats).

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 EPE for the purpose of providing the Program. In addition, you hereby authorize Uplight to access your information maintained by EPE 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 EPE at Help@EPEEnergyWiseSavings.com.
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.** EPE and Uplight are not responsible for providing the systems necessary to participate in the Program, such as Devices or Internet access.
7. **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. EPE 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. EPE AND UPLIGHT MAKE NO WARRANTIES THAT THE OPERATION OF THE PROGRAM WILL BE UNINTERRUPTED OR ERROR-FREE.
8. **Indemnification.** You agree to indemnify, and hold Uplight and EPE, 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.
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 EPE BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, ARISING IN CONNECTION WITH THE PROGRAM, EVEN IF UPLIGHT OR EPE 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 EPE HAS BREACHED THESE TERMS, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE PARTICIPATION IN THE PROGRAM.
 - 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 EPE.* EPE 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 Help@EPEEnergyWiseSavings.com.
 - 10.3. *Rights at Termination.* Upon termination, all rights granted to you by these Terms will immediately cease. EPE 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 Sections 4, 7, 8, 9, and 11.1 which 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 the EPE service territory where the Customer is located, 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 EPE has not adhered to these Terms, please contact us by e-mail at Help@EPEEnergyWiseSavings.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 or you may contact the Public Utility Commission of Texas, Office of Customer Protection/New Mexico Public Regulation Commission Consumer Relations Division at Public Utility Commission of Texas, Office of Customer Protection, P.O. Box 13326, Austin, Texas 78711-3326, (512)936-7120 or in Texas (toll-free) 1-888-782-8477, fax (512)936-7003, e-mail address: customer@puc.state.tx.us, internet address: www.puc.state.tx.us, TTY (512)936-7136, and Relay Texas (toll-free) 1-800-735-2989/New Mexico Public Regulation Commission Consumer Relations Division, 1120 Paseo De Peralta, P.O. Box 1269 Santa Fe, NM 87504, (toll-free) 1-888-4ASK-PRC (1-888-427-5772), fax (505)827-4463, e-mail address: crd.complaints@state.nm.us, internet address: www.nmprc.state.nm.us.
- 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 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.
- 11.3. *Entire Agreement.* These Terms are the entire and exclusive agreement between EPE or 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 EPE. Any purported assignment or delegation by you without the appropriate prior written consent of EPE 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 EPE 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 EPE at Help@EPEEnergyWiseSavings.com.
- 11.7. *Communications.* By participating in this Program, you agree to receive emails from Uplight or EPE or its partners at the email address provided for this Program. These emails may contain information about EPE'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 EPE at (toll-free) 1-855-924-2904, email address: Help@EPEEnergyWiseSavings.com, internet address: <https://epeenergywisesavings.com> for opting out; however, it may take up to 10 days for your opt-out request to take effect.
- 11.8. *Consent to Automated Text Messages.* You authorize the Program and its service providers to contact you at any mobile number you provide to the Program, including text messages that may be sent using an automatic telephone dialing system (ATDS). Message frequency will vary based upon event frequency and service or program use. Message and data rates may apply. You may revoke your consent at any time by contacting the Program by phone at (toll-free) 1-855-924-2904 or by email at Help@EPEEnergyWiseSavings.com; however, it may take up to 10 days for your opt-out request to take effect.