

**DEMAND RESPONSE PROGRAM  
TERMS AND CONDITIONS FOR  
FLEX POWER**

**1. INTRODUCTION**

The Demand Response Program (the “**Program**”) offered by Public Service Electric and Gas Company (“**PSE&G**”) and operated by Uplight, Inc. (the “**Program Implementor**”) is designed to encourage PSE&G customers to reduce energy usage during times of high demand. The direct load control pathway (the “**Flex Power Pathway**”) provides residential and small industrial customers (collectively, the “**Customers**”) with incentives for permitting the Program Implementor to remotely control PSE&G-supported smart home devices that are compliant with the Program: smart thermostats, water heaters, electric vehicle chargers (each, a “**Compatible Device Category**”) in Customers’ homes within pre-defined parameters. A “**Compatible Device**” is a smart device within one of the Compatible Device Categories.

**2. PROGRAM TERMS AND CONDITIONS**

2.1 To be eligible for incentive under the Flex Power Pathway, Customers shall have: (i) a valid PSE&G electric or dual fuel account; (ii) installed one or more Compatible Devices, and (iii) installed an AMI or smart meter at their residence.

2.2 Customers who enroll in the Program agree to allow the Program Implementor to regulate the operation of the Compatible Devices during Peak Energy Events (as defined below).

2.3 Customers will receive one (1) performance incentive and one (1) sign-up incentive for each Compatible Device Category they enroll in the Program.

2.4 Incentives:

2.4.1 The value of incentives shall be capped, and in no event shall a Customer receive incentives that are more than the value of the incentives as set out below:

<b>Customer Type</b>	<b>Sign-Up Incentive</b>	<b>Performance Incentive</b>	<b>Maximum Incentive Payable (during first annual peak demand period)</b>
Residential	\$100 per Compatible Device Category (Up to \$300 total)	\$100 per Compatible Device Category (Up to \$300 total)	Up to \$600 total
Small Industrial	\$150 per Compatible Device Category (Up to \$450)	\$200 per Compatible Device Category (Up to \$600 total)	Up to \$1,050 total

2.4.2 PSE&G measures performance during the months in the calendar year that involve the highest load on the energy grid resulting in peak energy demand (the “**Peak Demand Period**”) ending on or about October 31 of every year. In a Customer’s first year of enrollment in the Program, Customers will be eligible to earn incentives of up to \$600 (for residential Customers), and up

to \$1,050 (for small industrial Customers). In the second year of enrollment, and for every year thereafter, the Customer will be eligible to only earn the performance incentives of up to \$300 (for residential Customers), and up to \$600 (for small industrial Customers).

2.4.3 Applicable incentives, if any, will be payable in the form of gift cards (virtual or physical) as follows: (i) gift cards for each sign-up incentive will be sent out within two (2) to four (4) weeks following the date of: (x) the Customer's sign-up for the Flex Power Pathway; (y) the Customer's enrollment of Compatible Devices; and (z) the Program Implementor's verification of Customer's successful enrollment for each Compatible Device Category; and (ii) gift cards for the value of the calculated performance incentives will be sent out within sixty (60) days following the end of the Peak Demand Period.

2.4.4 PSE&G reserves the right to add, remove, or modify Compatible Device Categories and supported Compatible Devices at any time. In addition, PSE&G may revise the value of incentives, at any time, and without prior notice to Customers. Revised incentives, if any, will be posted to these terms and conditions.

2.5 Customers shall only earn incentives if they permit the Program Implementor to regulate their Compatible Device to lower energy consumption during a weather-dependent event resulting in a high load on the energy grid, as determined by PSE&G and the Program Implementor (each, a "**Peak Energy Event**"). However, during a Peak Energy Event, Customers shall have the option to override the Program Implementor's remote regulation of their Compatible Device.

2.6 The availability of the incentives under the Flex Power Pathway is dependent upon, among other things, the availability of funds to support the Program as well as regulatory approvals. PSE&G's obligations under these terms and conditions are subject to funding and approval and PSE&G's election to participate in the Program. PSE&G may elect not to participate in the Program or may terminate the Program, in its sole discretion, in which case, these terms and conditions and the Program Implementor's obligations hereunder, shall automatically terminate.

2.7 Customers that: (i) purchase new Compatible Devices from [PSE&G Residential Marketplace](#); and (ii) sign up for the Flex Power Pathway by opting-in at the time of purchase of Compatible Devices shall install the Compatible Devices within sixty (60) days of purchase. If Customers do not install the Compatible Devices within the abovementioned time period, the Program Implementor shall charge the sign-up incentive to the same method of payment used by the Customer to purchase the Compatible Devices.

2.8 Customer may not participate in more than one Program pathway.

### **3. PARTICIPATION RELEASE**

Customers receiving incentives under the Flex Power Pathway from PSE&G authorize the release of all operational data and Customer energy consumption data to PSE&G and any contractor or other vendor providing services or support to PSE&G under any of its energy efficiency programs (the "**Regulated Programs**") authorized and regulated by the New Jersey Board of Public Utilities (the "**BPU**"). Customer receiving an incentive from PSE&G also agrees to allow PSE&G and/or its vendors, to contact Customer for purposes of implementing the Program and for Program evaluation studies.

### **4. CUSTOMER CONFIDENTIALITY**

PSE&G, Program Implementor, trade allies, or original equipment manufacturers of the Compatible Devices (an “OEM”) involved in collecting Customer information and usage data will consider all Customer information obtained under the Flex Power Pathway: (i) to be confidential; and (ii) will not use such information for any purpose other than in connection with the operation of the Program and the Flex Power Pathway, any other PSE&G program or service. Customer expressly understands and agrees that on a periodic basis, PSE&G, the Program Implementor and trade allies are required to report to the BPU: (i) Program data; and (ii) a Program evaluation report. Nothing contained herein shall prohibit disclosure of aggregated data as part of any regulatory reporting requirement.

## **5. PSE&G’S DISCLAIMER OF WARRANTIES**

5.1 PSE&G does not make any warranties or representations of any kind, whether statutory, expressed, or implied, including without limitations: (i) installation, performance or any resultant energy savings of any smart device; or (ii) any benefits that may be derived from the Program or the Flex Power Pathway (individually, or in the aggregate).

5.2 Customer acknowledges that nothing in these terms and conditions constitute an endorsement by PSE&G of any goods or services provided by the Program Implementor, a trade ally, contractor, an OEM, a retailer, or a distributor.

5.3 Customer will not hold PSE&G responsible for any pre-existing conditions, circumstances or events, including, but not limited to, the structural defects, or other environmental hazards existing at Customer’s residence or commercial facility.

## **6. ENERGY SAVINGS**

6.1 In consideration of the services provided by PSE&G as part of this Program, Customer agrees that PSE&G is entitled to 100% of the rights and benefits associated with the measures, including, without limitation, all other current or future attributes, credits or products associated therewith under any regional initiative or federal, state or local law, program or regulation, and the Customer waives, and agrees not to seek, any right to the same.

6.2 PSE&G may participate in markets operated by PJM Interconnection LLC through the demand reductions achieved by the Compatible Device installed as part of this Program. Customer acknowledges and agrees that, for purposes of participating in markets operated by PJM Interconnection LLC, PSE&G shall own the capacity rights or other rights derived from all such demand reductions without cost or obligation to Customer.

6.3 PSE&G’s ownership of such capacity rights does not affect Customer’s ownership of the Compatible Device nor the energy savings derived from the Compatible Device.

## **7. INDEMNIFICATION**

7.1 Customer shall indemnify, defend and save harmless PSE&G and each of its respective officers, directors, representatives, members, shareholders, employees, affiliates, agents and successors (each an “Indemnified Party”) from and against any and all damages, losses, liabilities, claims, lawsuits and expenses of any kind and nature (including reasonable attorney fees) arising out of or resulting from: (i) Customer’s actions or omissions in connection with these terms and conditions; (ii) failure of the Compatible Device to comply with any and all applicable warranties; and (iii) any and all claims based on product liability with respect to Compatible Device, including but not limited to product defects, deficiencies or nonconformities, product design and manufacturing issues.

7.2 If a third-party institutes a legal action or asserts a claim against an Indemnified Party for which an Indemnified Party may be entitled to a defense or indemnity or to be held harmless pursuant to this Section 7, then the Indemnified Party shall notify the Customer immediately of any such claims and shall permit Customer to defend or settle such claims and to select counsel for such defense. Customer shall pay the costs of such defense and any judgment or settlement resulting therefrom. Indemnified Party shall provide all reasonable assistance to Customer for the defense or settlement of all such legal actions or claims. Customer shall assume the defense and control of such claim or action but shall allow Indemnified Party reasonable opportunity to participate in the defense thereof with its own counsel and at its own expense.

## **8. DISPUTES/GOVERNING LAW**

8.1 These terms and conditions shall be governed by, and construed in accordance with, the laws of the State of New Jersey, without reference to the principles of conflicts of laws.

8.2 Any dispute arising out of, or in connection with the eligibility, applicability or availability of a incentive shall first be brought before the BPU. If the BPU does not have jurisdiction, any dispute against PSE&G shall be brought in the courts of the State of New Jersey, or in the United States District Court, District of New Jersey. As may be applicable, each of the parties hereby irrevocably consents to the jurisdiction of: (i) the BPU; or (ii) the courts of the State of New Jersey, or in the United States District Court, District of New Jersey in any such action or proceeding and service of process in any such action or proceeding may be accomplished by the mailing of copies thereof to it by registered or certified mail, postage prepaid, return receipt requested or by recognized overnight delivery service to each of the parties at its address set forth herein. Each of the parties hereby irrevocably waives any objection that it may now or hereafter have to the laying of venue of any such suit, proceeding, or action in such jurisdiction. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ALL RIGHT OF TRIAL BY JURY IN ANY SUIT, ACTION, PROCEEDING, OR COUNTERCLAIM ARISING OUT OF, RELATING TO, RESULTING FROM, OR IN CONNECTION WITH THESE TERMS AND CONDITIONS OR ANY MATTER ARISING HEREUNDER.

## **9. LIMITATIONS OF LIABILITY**

9.1 Customer hereby unconditionally and irrevocably releases and forever discharges, to the fullest extent permitted by applicable law, PSE&G, and each of its respective officers, directors, employees, agents, representatives, assigns, Affiliates, parents, subsidiaries, and successors, contractors, from any and all damages, demands, and liabilities arising in relation to these terms and conditions.

9.2 In no event shall PSE&G be liable to Customer for any consequential, indirect, exemplary, special, incidental or punitive damages including, without limitation, lost profits, even if such damages are foreseeable or the damaged party has been advised of the possibility of such damages and regardless of whether any such damages are deemed to result from the failure or inadequacy of any exclusive or other remedy, and, in no event shall PSE&G's liability to Customer exceed the total amount of incentives extended to Customer pursuant to the Program.

## **10. TERM AND TERMINATION**

10.1 These terms and conditions shall continue until terminated, amended or modified by PSE&G or Program Implementor. PSE&G may terminate these terms and conditions if Customer has received, or is receiving incentives from more than one pathway under this Program.

10.2 At any time, Customer may opt out of the Program by contacting the Program Implementor at +1 (855) 597-0634 or by emailing [support@comms.flexpower.pseg.com](mailto:support@comms.flexpower.pseg.com)