



SMUD Peak Conserve **Terms and Conditions**

Introduction

Thank you for your interest in participating in the SMUD Peak Conserve (the “Program”). The Program is offered by SMUD. These Terms of Use (these “Terms”) are a legal agreement between you and SMUD 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 affirm that you are the customer of record for this service address and agree to the installation of an air conditioning cycling device (Device) at your service address. The program is designed to allow you to help reduce demand on our grid during times when energy demand is at its highest or there are emergency conditions with the power system.
- 1.2 *Peak Events.* The Device will respond automatically to SMUD-sent peak events during the summer season (June 1 to September 30). Events last 1 to 4 hours each and can occur on both weekdays and weekends. Typically, events will occur on weekdays between the hours of noon to midnight. No more than one event can be scheduled daily. Although there is no limit on how many 1–2 hour events SMUD can call during a typical season, it's anticipated that a maximum of 15 events could be called each season, depending on weather and grid conditions. SMUD will strive to provide as much notice as possible in consideration of your awareness and comfort but you may receive an event notification at any time (day ahead and up to 10 minutes prior to an extreme grid conditions or an emergency peak event start).

- 1.3 *Devices.* To participate in the Program, you will agree to the installation of an air conditioning cycling device at the address you are enrolling for this Program (each, your “Device”).
 - 1.4 *Control.* As part of this Program, upon a peak event, SMUD will automatically activate the functions of the enrolled Devices, which can subsequently be overridden. The Device will cycle off the compressor of an air conditioning unit from 40 minutes per hour during the event. You may contact SMUD at PeakConserve@smud.org at least 15 minutes prior to an event to override device control. Note that during extreme grid conditions or in an emergency the event cannot be overridden.
 - 1.5 *Program Changes.* SMUD reserves the right, in its sole discretion, to modify or to discontinue the Program at any time and for any reason or no reason.
 - 1.6 *Safety.* You expressly agree and promise to accept and assume all the risks existing in the Program. Your participation in the Program is purely voluntary, and you elect to participate despite the risks.
 - 1.7 *Equipment.* SMUD is responsible for the selection, acquisition, and installation of your Device and other related equipment to participate in this Program. SMUD will install, own, and maintain the Device and related equipment.
 - 1.8 *Ownership.* SMUD owns the Device and related equipment. You agree not to take any action to sever or attempt to sever SMUD’s security interest or otherwise adversely impact SMUD’s ownership rights.
 - 1.9 *Access to Premises.* You grant to SMUD and/or its contractor(s) the right to reasonable access to the service address enrolled under the Program to install, maintain, monitor, and remove the Device and related equipment. This right of ingress and egress continues indefinitely until such time as SMUD may decide to remove the Device and related equipment.
 - 1.10 *Monitoring.* You agree that the data, telemetry, facts, records, and other information related to this Program belongs to and is owned by SMUD, and you have no claim or right to that information. You authorize the use of your personal information to SMUD as required for installation, data analysis and/or Program evaluation. You acknowledge and agree that SMUD may use such information for the purposes specified herein and may publish the results of the Program. SMUD will maintain the confidentiality of your personal information in any publication, unless explicitly waived.
- 2. Eligibility.** To register for the Program, you agree to provide SMUD with information to verify your eligibility for the Program. You agree that the information that you provide to 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 My Energy Optimizer Partner (smart thermostat) program or SMUD’s Medical Equipment Discount (MED) Rate are

not eligible to participate in the Peak Conserve program.

3. **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 SMUD for the purpose of providing the Program. You understand and agree that by authorizing SMUD to control the Device in connection with the Program, SMUD may receive access to data from the Device directly, including data collected from its sensors.
4. **Personal Non-Commercial Use.** The Program is offered for your own personal non-commercial use. Any commercial participation in the Program is expressly prohibited.
5. **Costs.** There is no cost to you for your participation in the Program. SMUD is responsible for providing the systems necessary to participate in the Program, such as Devices and related equipment.
6. **No Warranty; Disclaimer.**
 - 6.1 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 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.
 - 6.2 SMUD make no warranties that the operation of the Program will be uninterrupted or error free. SMUD will not be liable for any damages or changes to the useful life or condition of a customer’s air conditioning unit.
 - 6.3 SMUD is not responsible in contract, tort or under any other theory of liability with respect to the goods and services provided under this Program.
 - 6.4 SMUD does not guarantee that energy measures or services provided through this Program will result in energy and cost savings.
7. **Indemnification.** You agree to indemnify, and hold 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.
8. **Limitation of Liability.**
 - 8.1 Limitation of Liability. You agree that, to the fullest extent permitted by applicable law, under no circumstances shall SMUD be liable for any indirect, incidental, special or consequential damages, arising in connection with the program, even if 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 SMUD has breached these terms, your sole and exclusive remedy is to discontinue participation in the program. You agree that SMUD’s limitation of liability: (i)

will not apply to damages resulting from its gross negligence, willful misconduct, or fraud, and (ii) will be capped at \$500 per program participant, up to an aggregate liability to all program participants equal to \$5000. Notwithstanding the foregoing, you agree that SMUD will not be liable for any damages or liability resulting from your participation in the program.

- 8.2 **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.

9. Termination.

- 9.1. *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.
- 9.2. *Termination By You.* You may terminate your participation in the Program at any time and for any reason by sending an email to peakconserve@smud.org.
- 9.3. *Rights at Termination.* Upon termination, all rights granted to you by these Terms will immediately cease. SMUD is not liable to you or any third party for termination of the Program or your participation in the Program.
- 9.4. *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.

10. General.

- 10.1. *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 has not adhered to these Terms, please contact us by e-mail at peakconserve@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.
- 10.2. *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 co-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.
- 10.3. *Entire Agreement.* These Terms are the entire and exclusive agreement between SMUD and you regarding the Program and supersede and replace any prior agreements regarding the same.
- 10.4. *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. Any purported assignment or delegation by you without the appropriate prior written consent

of SMUD will be null and void.

- 10.5. *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 to enforce any right or provision of these Terms will not be deemed a waiver of such right or provision.
- 10.6. *Questions.* If you have questions about these Terms, please contact SMUD at peakconserve@smud.org
- 10.7. *Communications.* By participating in this Program, you agree to receive emails from SMUD or its agents 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; please allow up to 10 business days for the opt-out request to take effect.