

Last updated as of December 6th, 2024.

These terms and conditions (“Agreement”) create an agreement between the City of San José, a California municipal corporation (“City”), administrator of San José Clean Energy (“SJCE”), and you, as a SJCE customer (“Participant”). This Agreement shall govern Participant’s eligibility and participation in the behavioral demand response program option (“Peak Rewards for Business”), which is a part of SJCE’s Peak Rewards program (the “Program”), managed by Uplight, Inc. (“Uplight”).

By participating in Peak Rewards for Business, Participant acknowledges and accepts the terms of this Agreement. Participant further acknowledges that this agreement applies only to participation in Peak Rewards for Business and that any of the other options under the Program would require the Participant to agree to and be bound by a separate agreement and potentially unenroll from Peak Rewards for Business.

## Peak Rewards Program

The Program is designed to reduce the overall electrical load within SJCE’s territory during specific periods of high demand, as designated by SJCE through the issuance of a Peak Rewards alert (individually, “Peak Event” or collectively, “Peak Events”). All Peak Events shall be determined by SJCE in accordance with SJCE’s sole and absolute discretion. Participant shall be eligible for, but not entitled to, incentives, as determined by the City in City’s sole and absolute discretion, so long

as Participant reduces its electrical energy consumption (“Electricity Consumption”) during Peak Events, in accordance with the terms set forth herein.

## Term

This Agreement shall govern Participant’s participation in Peak Rewards for Business under the Program for the period commencing on the date of the City’s approval of Participant’s enrollment until the termination of Participant’s enrollment in Peak Rewards for Business, in accordance with this Agreement (“Term”).

## Eligibility for Peak Rewards for Business

Participant hereby represents that it is eligible to enroll in Peak Rewards for Business and that Participant has met all of the following eligibility requirements as set forth below:

- Participant is an existing SJCE business rate customer with an account in good standing;
- Participant has an active business rate account served by SJCE (individually, “Account” or collectively, “Accounts”);
- Participant must be able to receive event notifications either via email or SMS text message (data rates may apply); however, Participant does not need a specific device. Participants who

opt out of receiving alerts or provide invalid contact information will be disqualified from participating and receiving Rewards for reducing energy use;

- Participant's Account has a Pacific Gas and Electric Company ("PG&E") SmartMeter™; and
- Participant's Account must not be enrolled in any other demand response program administered by another load-serving entity or third-party, e.g., PG&E Power Saver Rewards, Voltus, or Leap. If Participant is currently enrolled in another demand response program, Participant acknowledges that participation in Peak Rewards for Business will require unenrolling from the conflicting program.

Participant agrees that it shall maintain all eligibility requirements during the Term. Participant's failure to maintain all eligibility requirements during the Term shall result in the termination of Participant's enrollment in Peak Rewards for Business and risk forfeiting any Rewards (as defined below) earned. If, at any time during the Term, Participant fails to meet any of the above eligibility requirements, Participant shall deliver the City written notice by emailing [peak-rewards@sanjoseca.gov](mailto:peak-rewards@sanjoseca.gov).

The City as administrator of SJCE reserves the right to exclude any eligible SJCE customer from participating in Peak Rewards for Business, including any eligible SJCE customer having an Account with a delinquent balance. Eligibility requirements for Peak Rewards for Business are subject to change, as determined by the City in its sole and absolute discretion.

# Enrolling in Peak Rewards for Business

Participant agrees to provide the City with all information necessary in order to be evaluated for enrollment in Peak Rewards for Business, including completing SJCE's online interest form and responding to any follow-up requests from SJCE or Uplight. Participant hereby represents and certifies that: (i) it has all necessary authorization to enroll in Peak Rewards for Business; and (ii) all information provided to the City to determine Participant's eligibility to enroll in Peak Rewards for Business is true and accurate.

Participant acknowledges that enrollment in Peak Rewards for Business is limited and that the City, in its sole and absolute discretion, determines enrollment.

Participant's enrollment in Peak Rewards for Business does not obligate Participant to reduce its Electricity Consumption during Peak Events. Participant acknowledges that participation in both Peak Rewards for Business and in efforts to reduce Electricity Consumption during Peak Events is entirely voluntary.

## Incentives

Participant acknowledges that the City may receive all credits, rebates, environmental attributes, or other payments or offsets (the "Benefits") that are attributable to Peak Rewards for Business. All Benefits will be the sole property of and transferable by the City.

In exchange and as full satisfaction for Participant's enrollment and participation in Peak Rewards for Business, the following rewards may be offered (the "Reward" or "Rewards"), until Program funds are exhausted and only during the Term of this Agreement: Participant will receive a bill credit as communicated in the Alert/Event Notification, in exchange for each kilowatt hour reduced during the Event window. Rewards offered for each Event may vary based on a number of factors, including the Season (defined below) or urgency of the Alert. The Rewards will be paid in lump sum following the conclusion of each Program Quarter. Each Program Quarter shall be 3 months long, the start of each Program Quarter approximately coinciding with the start of January, April, July, and October ("Program Quarter"). Any Enrollment Rewards Participant is eligible for will be made within six (6) weeks of Participant's participation approval from the California Independent System Operator ("CAISO"). The participation incentive payments will be received thereafter and will be made after results are calculated following each Program Quarter. Participants must have an active SJCE account at the time of payment processing to receive any Rewards. Event performance and incentive will be calculated against Participant's historical energy use as provided to SJCE by PG&E. To qualify for incentives, Participant's data must show a net energy reduction compared to Participant's historical energy use per CAISO requirements. Missing data from PG&E may prevent participation in the Program. Participants whose energy reduction cannot be calculated due to missing or incomplete time-based metering data from PG&E or from another unspecified issue may not receive Rewards. The City has the

discretion to issue a Reward, if any, to such participants and/or unenroll any Participant if PG&E does not provide time-based metering data. The City reserves the right to withhold Rewards at any time for any Participant deemed to be violating the terms, conditions, and restrictions of the Program. If Participant fails to promptly satisfy an indemnity obligation described below, the City will have the right to withhold issuance of Rewards under this Agreement to offset that amount. Incentive payments will be made in the form of a bill credit applied to the Participant's PG&E bill in the "Details of San Jose Clean Energy Electric Generation Charges" section of the bill. The City in its sole and absolute discretion may elect to issue credits at the end of the Program Quarter to Participants that unenrolled from Peak Rewards during the Program Quarter. In this instance, Participant shall only be eligible to receive Rewards earned up until the unenrollment request was submitted. In the event that the City is unable to apply a bill credit, for example if Participant closes their SJCE account, Participant shall forfeit any and all credits owed. The Reward will not be exchangeable for cash. Participant is solely responsible for compliance with federal, state, and local tax and other laws, and any costs associated with accepting and using the Reward. Participant will not be reimbursed for any expenses for participation in Peak Rewards for Business, unless expressly provided for in this Agreement or authorized in writing by the City in advance.

## Notice of Peak Events

A Peak Rewards Alert triggering a Peak Event may be issued on any day and at any time, typically between 4:00 p.m. PPT and 10:00 p.m. PPT, typically for no longer than 4 hours, until Peak Rewards for Business is terminated by the City, whose termination shall be in accordance with the City's sole and absolute discretion ("Program Period"). Peak Event frequency may vary based on the Season (defined below). Events are likely to be more frequent during the Season occurring over the Summer, as described below, but will be limited to 6 events per month, unless there is a CAISO emergency alert issued, including a CAISO Flex Alert or EEA Watch/Alert, at which point the City may elect to also issue a Peak Rewards Alert and offer participants an incentive. Peak Events may vary from participant to participant. The City, under its sole and absolute discretion, may elect to issue a Peak Rewards Alert to some or all Program participants.

Peak Rewards Seasons ("Season" or "Event Seasons") are defined as follows:

Winter: November 1<sup>st</sup> – April 30<sup>th</sup>

Summer: May 1<sup>st</sup> – October 31<sup>st</sup>

During the Program Period, SJCE intends to deliver notice to Peak Rewards for Business participants, including SMS text message, or email notice, to inform Participant of a Peak Event and Participant's ability to earn Rewards by reducing its Electricity Consumption ("Notice").

Each Notice delivered by SJCE to Participant shall, at minimum:

- Clearly identify SJCE, or Uplight, as the sender of the Notice;
- Clearly state the purpose for the Notice;
- For Notice delivered via email or text message, an opt-out function for Participant to opt out of future email or text message Notice shall be included. Participant acknowledges that opting out of both text and email communications may result in becoming ineligible for Peak Rewards for Business and forfeit any credits earned.

The frequency at which SJCE intends to deliver Participant Notice of each Peak Event, whether via email, or text message shall vary during the Program Period. To receive both email and text message Notice, Participant must provide SJCE with both a true and accurate email address or mobile telephone number. Failure to provide SJCE with such information may prevent SJCE from providing Participant with Notice of any Peak Event.

## Email and Text Message Notice

Participant may receive Notice via email from peak-rewards@sanjoseca.gov

Participant may receive Notice via SMS text messages from 1-888-655-3991.

# Opting Out of Text Email or Text Message Notice

Participant may opt out at any time to stop receiving Notice via email related to the Program by clicking the link provided in any Notice delivered via email or by emailing SJCE at [peak-rewards@sanjoseca.gov](mailto:peak-rewards@sanjoseca.gov). Opting out will result in unenrollment of Participant from Peak Rewards.

# Consent to Receive Email and Text Message Notice

By entering into this Agreement, Participant represents that it is the authorized user of any email address and mobile telephone number that it provides to the City related to Participant's enrollment in the Program. Participant hereby authorizes the City, SJCE, and any third-party contractor, subcontractor, or affiliate ("Contractor"), to deliver Participant Notice, via email and text message, at the email address and mobile telephone number Participant has provided to the City in connection with Participant's enrollment in the Peak Rewards Program. Participant provides the City, SJCE, and any Contractor with its express written consent to receive email and text message Notice, in accordance with this Agreement, irrespective of Participant's email address or mobile telephone number being included on any state or federal "do not contact"

list or on any similar list or registry that may otherwise impede the City's, SJCE's, or any Contractor's ability to provide Participant with Notice. Where possible, the Program may send notifications differing from Participant selection as needed, including times of email or carrier outages or if Participant is not receiving either an email or SMS notification.

## Termination of Enrollment

Participant can terminate its enrollment in Peak Rewards for Business at any time by providing the City with 30 days' prior notice through Contacting the Program administrator at Phone: (844) 326-5217 or email [peak-rewards@sanjoseca.gov](mailto:peak-rewards@sanjoseca.gov). Termination Notice contemplated hereunder shall be deemed to have been validly served, given, or delivered at the time indicated by the time stamp upon delivery, except that if received after 5:00 p.m. PPT, Termination Notice shall be deemed received on the next business day. Any validly delivered Termination Notice shall become effective within 30 days of the City's receipt of such notice.

## Participant Covenants

In connection with this Agreement, Participant agrees that it shall not:

- Use the Program for any unlawful purpose;

- Take any action that imposes or may impose (in the City's or SJCE's sole discretion) an unreasonable or disproportionately large load on our (or our third-party providers') infrastructure or that otherwise interferes with the proper working of the Program;
- Infringe or violate the intellectual property rights or any other rights of the City or SJCE, and its members, employees, and agents;
- Use the Program in a manner that is harmful, fraudulent, deceptive, threatening, harassing, defamatory, obscene, or otherwise objectionable;
- Decompile, reverse engineer, or otherwise attempt to obtain the source code or underlying ideas or information of or relating to the Program; or
- Utilize unauthorized back-up generation resources, e.g., diesel generators or other polluting generators, to achieve reductions in Energy Consumption during Peak Events beyond what is permissible by law.

Violation of any of the foregoing covenants is grounds for termination of Participant's enrollment in the Program or may alter Participant's ability to receive Rewards credit earned.

## Changes in Terms and Conditions

The terms, conditions, and provisions of this Agreement are subject to change as determined exclusively by the City, whose determination shall be made in accordance with the City's sole and absolute discretion.

Participants shall be notified, via email, of any updates to this Agreement. Any updates to this Agreement will also be available on the Peak Rewards for Business website

<https://sanjosecleanenergy.org/peak-rewards-for-business/>

SJCE encourages Participant to check this Agreement regularly for any updates or changes. Participant's acceptance of Notice delivered, via email or text message, after this Agreement has been updated and posted to the Peak Rewards for Business website serves as Participant's acceptance of the updated version of this Agreement.

## Peak Rewards for Business Communications and Notices

Uplight will serve as the Program's administrator and the principal point of contact for the Program. Participant may contact Uplight by emailing customer support at [peak-rewards@sanjoseca.gov](mailto:peak-rewards@sanjoseca.gov) or by calling (844) 326-5217. Participant is responsible for keeping Participant's email address updated with the City and Uplight by emailing customer support at [peak-rewards@sanjoseca.gov](mailto:peak-rewards@sanjoseca.gov) or by calling (844) 326-5217. In the event that Participant's email address has changed, is not functioning

properly, or is no longer valid, Participant might not receive Program communications. Failure to receive alerts will disqualify Participant from Peak Rewards for Business and any potential Rewards for reducing energy use. Disclaimer: the City, SJCE and Uplight make no representations or warranties with respect to the Program or their services hereunder, and the City, SJCE, and Uplight expressly disclaim any and all representations and warranties, express or implied, with respect to the same, including, without limitation, merchantability and fitness for a particular purpose.

## Governing Law

California law governs the construction and performance of this Agreement.

## Assignment

Participant has no right to assign any part of this Agreement without the City's prior written consent, which consent may be withheld in the City's sole and absolute discretion.

## Disputes

Any litigation resulting from this Agreement will be filed and resolved by either the Superior Court of California for the County of Santa Clara, or the San José Division of the Northern District of California.

## Survival of Provisions

If a court finds any part of this Agreement unenforceable, all other parts shall remain enforceable.

## Headings

The section headings are for convenience only and are not to be used in its construction.

## Entire Agreement

As a participant in the Program, Participant acknowledges and agrees that Participant's participation in the Program is subject to this Agreement as it is amended from time to time.

This Agreement, as amended, is the final, complete, and exclusive understanding of the parties as to the matters contained herein. This Agreement supersedes all prior communications and understandings regarding such matters.

## Limitation on Liability

Participant shall defend, indemnify and hold harmless the City, SJCE, and Uplight and their officers, employees, representatives, and agents (collectively, the "Indemnitees") against all claims, losses, damages, injuries, expenses or liabilities that – directly or indirectly, or in whole or

in part – arise out of, pertain to, or relate to any of the following: (i) Participant’s enrollment and participation in the Program; and (ii) any breach of this Agreement.

For the avoidance of doubt, Participant acknowledges and agrees, to the maximum extent permissible by law, that: (i) Participant assumes full responsibility for any loss that results from Participant’s enrollment and participation in the Program; and (ii) neither the City, SJCE, nor Uplight shall be liable for any indirect, punitive, special, or consequential damages, including any loss of data, profits, revenues, business opportunities, goodwill, or anticipated savings under any circumstances, even if such losses are based on negligence and regardless of whether the City terminates Participant’s enrollment or participation in the Program or any of the options under the Program, such as Peak Rewards for Business. The City and Uplight, and each of them, reserve the right, at their own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by Participant (without limiting Participant’s indemnification obligations with respect to that matter), and in that case, Participant agrees to cooperate with the City’s and/or Uplight’s defense of those claims. Participant must contact Uplight within one (1) year of the date of the occurrence of the event or facts giving rise to a dispute, or waive the right to pursue any claim based upon such event, facts, or dispute. Claims against the City may be subject to the California Government Tort Claims Act, California Government Code section 900 et seq., including that Act’s presentation of claims procedures.

## Costs and Data Rates

There are no charges to Participant for enrolling or participating in the Peak Rewards Program. However, standard message and data rates may apply for any email or SMS text message Notice delivered by the City, SJCE, or Uplight to Participant. Such charges will be charged by Participant's mobile and/or internet service provider(s) and paid by Participant. As such SMS text message and email delivery are subject to Participant's mobile and/or internet service provider(s), access and delivery to any such Notice is not guaranteed.

**Data Usage and Disclosure:** By participating in the Program, Participant is permitting Uplight and the City to share data about Participant's account and devices ("Data") with one another. This Data may include but is not limited to: email, address, energy use, associated account and billing data, and device telemetry data. Participant also agrees that Uplight may use Data for the following purposes (in each case, to the extent permitted by applicable law): (1) to operate, maintain, provide, and enhance the Program; (2) for Uplight's internal purposes, including, without limitation, research and development, improvement of Uplight's product and service offerings, and creation of new product and service offerings; (3) to customize content and communications Uplight may provide to Participants; and (4) for other purposes so long as the Data does not contain personally identifiable information (including where

Data has been deidentified). Uplight will not disclose Data to any third parties other than in furtherance of the above purposes and in the following circumstances: (1) where the Data does not contain personally identifiable information (including where Data have been deidentified); (2) in order to provide Uplight products or services to Participant (including working with third-party service providers who may assist Uplight in collecting, hosting, maintaining, analyzing, or otherwise processing Data for Uplight); (3) if required to do so by any law or regulation, in response to a court order, judicial or other government subpoena or warrant, or to otherwise cooperate with law enforcement or other governmental agencies; (4) if Uplight believes, in good faith, disclosure is appropriate or necessary to (a) take precautions against its own liability, (b) protect Uplight or others from fraudulent, abusive, or unlawful uses or activity, (c) investigate or defend against any thirdparty claims or allegations, (d) protect the security or integrity of Uplight's services and any facilities or equipment used to make such services available, or (e) protect Uplight's property or other legal rights (including, but not limited to, enforcement of Uplight's agreements), or the rights, property, or safety of others; (5) to Uplight's assignees, affiliates, actual or prospective lenders, financing parties, investors, insurers, and acquirers; (6) disclosure to contractors, service providers, and other third parties Uplight uses to support its business and who are bound by contractual obligations to keep personal information confidential and use it only for the purposes for which Uplight discloses it to them; and (7) for any purpose for which Participant has provided Participant's express

consent. Likewise, by participating in the Program, Participant is permitting the City and SJCE to share necessary customer information including name, account details, contact information, energy usage, billing data and premise location required to enroll and participate in the Program, with Uplight, which information Uplight shall keep confidential. This data is used to verify that customers are eligible to participate in the Program and to evaluate historical energy use and energy use during Peak Events. The City and SJCE will handle the collection and use of Customers' data in compliance with SJCE's privacy policy. Participant agrees to provide access to its data during the entirety of the Participant's participation in the Program.

## Customer Privacy Policy

Please read San José Clean Energy's Customer Confidentiality Policy or call us at 833-432-2454.