



PEAK SMARTPHONE APP PROGRAM – PROGRAM PARTICIPATION AGREEMENT

Participant Name:

Participant Location:

Street Address:

City:

Province:

Postal Code:

Email Address:

OPUCN Account Number:

Tenant/Lessee

☐

Owner

☐

(check one)

*References to “you” or “your” in this Program Participation Agreement (this “**Agreement**”) are to the Participant. “Including” or “includes” means including or includes without limitation.*

You have applied to participate in the Peak Smartphone App Pilot Program (the “**Pilot Program**”) administered by Oshawa PUC Networks Inc., your local distribution company (the “**LDC**”). This Agreement is entered into by you and the LDC and will govern the terms and conditions of your participation in the Pilot Program.

If the LDC accepts your participation in the Pilot Program, in accordance with Section 2 of this Agreement, you will be entitled to download the Peak Smartphone application onto your smart phone (the “**Peak App**”). You will be required to review and accept the terms and conditions of the Peak App before you can download it to your smart phone.

You understand and acknowledge that, through the Peak App, the LDC, either directly or through its contractors or third party service providers (collectively, the “**Pilot Program Representatives**”), will provide you with information about your current and past electricity usage, electricity pricing information, and other information to assist you in managing your electricity usage throughout the Term.

YOU ACKNOWLEDGE AND AGREE THAT, WHILE THE PEAK APP IS DESIGNED TO CREATE OPPORTUNITIES TO REDUCE YOUR ELECTRICITY COSTS, YOU ARE NOT GUARANTEED TO SAVE ENERGY OR REDUCE COSTS THROUGH YOUR USE OF THE PEAK APP. THE LDC ENCOURAGES YOU TO REVIEW YOUR MONTHLY STATEMENTS, AS WELL AS THE USAGE AND OTHER REPORTS AND

INFORMATION PROVIDED TO YOU THROUGH THE PEAK APP. A CAREFUL AND FREQUENT REVIEW OF THAT INFORMATION WILL HELP YOU TO UNDERSTAND HOW THE PILOT PROGRAM IS IMPACTING YOUR BILL, AND TO UNDERSTAND HOW YOUR USE OF ELECTRICITY IS IMPACTING YOUR ELECTRICITY COSTS.

By entering into this Agreement, and in consideration for the LDC enrolling you in the Pilot Program and giving you access to the Peak App, you agree to abide by the terms and conditions set out below.

1. Eligibility

You represent and warrant to the LDC that:

- (a) you are a residential electricity distribution customer of the LDC;
- (b) you are an individual 18 years or older;
- (c) you are either:
 - (i) the owner of the premises; or
 - (ii) the tenant or lessee of the premises; andthe account holder for the purposes of the LDC;
- (d) your account with the LDC, as set out above:
 - (i) is an account governed by time-of-use rates as set by the Ontario Energy Board;
 - (ii) relates to a single family home;
 - (iii) is individually smart metered, with no special calibration or adjustments;
 - (iv) is not net metered (meaning it does not take into account and compensate you for electricity you produce);
 - (v) is in relation to your primary residence, as determined by the LDC in its sole and absolute discretion; and
 - (vi) has been in existence for a minimum of two full years;
- (e) you do not have an account or contract with an energy retailer in respect of your electricity usage and pricing;
- (f) you are not currently a participant in either of the Ontario Electricity Support Program or the Homebeat Pilot Program; and

- (g) you own or have access to a smart phone for the purposes of downloading and using the Peak App, and there are no restrictions on your use of the smartphone that would restrict your use of, or prevent you from downloading, the Peak App.

2. Acceptance and Verification

This Agreement takes effect when you electronically sign it. This Agreement is conditional upon your verification, if required, and the LDC's acceptance of it. The LDC's acceptance of your online enrollment in the Pilot Program is dependent on your ability to meet the Eligibility Requirements set out in Section 1 of this Agreement, and, given the LDC will limit the number of participants in the Pilot Program, is subject to the LDC's continued enrollment of customers in the Pilot Program.

3. Peak App

You agree to download the Peak App, and agree to abide by the terms and conditions governing the use of the Peak App, as provided to you when downloading the Peak App.

4. LDC Feedback

You agree to participate in any follow up surveys, studies, audits, evaluations or verifications conducted by the LDC or the Pilot Program Representatives in connection with the Pilot Program, including feedback through three separate surveys with respect to the Peak App and your involvement in the Pilot Program.

One survey will be administered prior to the LDC providing you with access to the Peak App. The second survey will be administered by the LDC or the Pilot Program Representatives during the term of the Pilot Program. The third survey will be administered by the LDC or the Pilot Program Representatives following completion of the Pilot Program. This Section 4 shall survive the termination of this Agreement.

5. Non-Pricing Treatment

You acknowledge and agree that, for the duration of the Term of the Pilot Program, your consumption of electricity will be continue to be governed by the time-of-use prices per kilowatt hour set by the Ontario Energy Board, and you agree to pay such prices accordingly as billed by the LDC.

6. Opt Out

You have the right to terminate your participation in the Pilot Program at any time in accordance with this Agreement.

In order to opt-out and terminate your participation in the Pilot Program, you must submit a request in writing (in accordance with Section 18 of this Agreement) or by telephone to the LDC. The LDC will comply with any such request within ten (10) Business Days. Once your request has been completed by the LDC, your electricity pricing will return to time-of-use rates as set by the Ontario Energy Board. You acknowledge and agree that you are responsible for all electricity

charges incurred while you are a Participant in the Pilot Program, including those electricity charges incurred while the LDC is processing your opt out request.

7. **LDC Privacy Policy**

You consent to the collection, use and disclosure and other handling of any information provided by you to the LDC or the Pilot Program Representatives, including personal information such as your name, address, telephone number, account number, email address and records showing historical energy use and consumption (collectively, the foregoing is referred to as “**Participant Information**”) by the LDC and the Pilot Program Representatives for purposes relating to the operation, administration or assessment of the Pilot Program, and in connection with any reporting activities relating to the Pilot Program, which use will include: (i) sharing of Participant Information among the LDC and the Pilot Program Representatives; (ii) use by the LDC and the Pilot Program Representatives of the Participant Information provided by you to conduct, analyze and report on the results of the Pilot Program and to conduct surveys and modify the Pilot Program based on such surveys; (iii) disclosure to the Ontario Energy Board (the “**OEB**”), the Independent Electricity System Operator, the Ontario Ministry of Energy or the Ontario Environmental Commissioner and/or their respective successors, and (iv) otherwise in accordance with the LDC’s **Privacy Policy**. You hereby acknowledge that the Participant Information may be accessible to third parties under the *Freedom of Information and Protection of Privacy Act* (Ontario) or the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario). This Section 7 shall survive the termination of this Agreement.

8. **Environmental Attributes**

You transfer and assign, or to the extent transfer or assignment is not permitted, hold in trust for, or in favour of, the LDC in its capacity as agent for and on behalf of the Independent Electricity System Operator (the “**IESO**”), and not for the LDC’s own benefit, all right, title and interest in and to all benefits or entitlements associated with the electricity savings or demand savings attributable to the Pilot Program, and the right to quantify and register these, including any energy efficiency certificate, renewable energy certificate, credit, reduction right, offset, allocated pollution right, emission reduction allowance (collectively, the “**Environmental Attributes**”).

Until you are notified otherwise by the LDC, the LDC, in its own capacity or as agent, shall be entitled, unilaterally and without your consent, to deal with such Environmental Attributes on behalf of the IESO in any manner the LDC determines. This Section 8 shall survive the termination of this Agreement.

9. **No Warranty**

Except as specifically set forth or referenced in this Agreement, there are no representations, warranties, or conditions of either party to this Agreement, express, implied, statutory or otherwise, regarding any matter, including any implied warranties or conditions or quality, workmanship, safety, legal compliance or fitness for a particular purpose.

Without limiting the generality of the foregoing, you acknowledge that your participation in the Pilot Program is based upon your own assessment of the Pilot Program and not on any reliance on

anticipated or projected results, and that such participation may not result in the achievement of any electricity savings, which are expressly disclaimed by you.

10. Compliance with Laws

Each party to this Agreement will comply, in all material respects, with all laws and regulations required to be complied with in the performance of its obligations hereunder.

11. Liability and Indemnification

You acknowledge that certain services and products relating to this Agreement and your participation in the Pilot Program, including the Peak App, are provided by or dependent on third party providers (e.g. cellular operators, application developers). The LDC is not responsible for any act or omission or the availability or quality of any products or services provided by such third parties.

You agree and acknowledge that: (i) the Pilot Program Representatives, including the developers of the Peak App, are independent of the LDC and that the LDC makes no representation, warranty, endorsement or recommendation of any kind with regard to the Pilot Program or use of the Peak App; (ii) the LDC does not represent, warrant or assure energy cost savings or other benefits arising from the Pilot Program or the Peak App; (iii) the Peak APP may not display real time consumption and costing information, and (iv) none of the LDC, the IESO, the OEB, the Pilot Program Representatives, nor any of their respective successors, assignors, affiliates, employees, agents officers, directors, service providers and such affiliate's respective officers, directors or employees or any of their heirs, successors or assigns will be liable for any loss, damage or injury to persons or property, including any economic loss, loss of good will, loss of profit or any direct, indirect, special or consequential damages, and any costs or losses, expenses, fees, liabilities, allegations, causes of action, suits, proceedings, debts, penalties and demands arising therefrom or connected therewith of any nature or kind whatsoever arising from or related to your participation in the Pilot Program or use of the Peak App, including any act or omission of any Pilot Program Representative and you hereby release the LDC and the Pilot Program Representatives of, from and against any and all of the foregoing.

You agree to indemnify the LDC and the Pilot Program Representatives if you or any members of your family, customer, occupant or guest seeks damages against any of them for any reason that is connected with this Agreement or your participation in the Pilot Program or use of the Peak App. The maximum liability of the LDC or Pilot Program Representatives for any matter, claim or damage in connection with this Agreement or your participation in the Pilot Program is limited to \$100.00.

12. Force Majeure

The LDC shall not be in default, and shall not be deemed to be in default, of this Agreement by reason of delay or the failure or inability to perform its obligations hereunder when the said delay, failure or inability is due solely to any cause which is unavoidable or beyond the reasonable control of the LDC, including any act of God or other cause which frustrates the performance of this Agreement.

13. **Term and Termination**

Subject to earlier termination rights set out in this Agreement, this Agreement shall remain in effect until the earlier of (i) the date you receive notice from the LDC terminating this Agreement and/or the Pilot Program, and (ii) August 31, 2019 (the “**Term**”). The LDC may terminate this Agreement and your participation in the Pilot Program if:

- (a) you cease to meet the eligibility requirements for the Pilot Program, as set out in Section 1 of this Agreement;
- (b) you move premises, as set out in Section 14; and
- (c) you breach any of your obligations under this Agreement.

In addition, the LDC may terminate this Agreement at any time and for any reason by sending you a notice.

14. **Moves**

You will give us 10 days prior notice if you plan to move or change your premises (each, a “**move**”). When you permanently move out of the premises to which your account relates, this Agreement will terminate along with your participation in the Pilot Program.

15. **Business Day**

If any action is required to be taken pursuant to this Agreement on or by a specified date which is not a Business Day, then such action shall be valid if taken on or by the next succeeding Business Day. For the purposes of this Agreement, “**Business Day**” means any day except Saturday, Sunday or a day that is a statutory holiday in the Province of Ontario.

16. **Entire Agreement**

This Agreement, along with the **Privacy Policy** and the Peak App terms and conditions, form the entire agreement between the LDC and the Participant.

17. **Governing Law, Assignment, Amendments**

This Agreement is governed by the laws of the Province of Ontario and the laws of Canada applicable therein. You may not assign this Agreement. This Agreement may be amended by the LDC with thirty (30) days written notice to you.

18. **Notice**

Any notice, demand or other communication (in this Section, a “**notice**”) required or permitted to be given or made in connection with this Agreement or the Pilot Program shall be in writing and shall be sufficiently given or made if:

- (a) delivered in person during normal business hours on a Business Day and left with a receptionist or other responsible employee of the relevant party at the applicable address set forth below;
- (b) sent by prepaid first class mail; or
- (c) sent by electronic means of sending messages, including facsimile transmission and email, (“**Electronic Transmission**”) during normal business hours on a Business Day;

In the case of the Participant, all notices will be sent to the address set out above. In the case of a notice sent to the LDC, all such notices will be addressed to it at:

Conservation Demand Management

Oshawa PUC Networks Inc.
100 Simcoe Street South
Oshawa, ON
L1H 7M7
Email: cdm@opuc.on.ca

19. Enurement

Except as provided in Sections 4, 7, 8, 11 and this Section 19, this Agreement is solely for the benefit of:

- (a) the LDC, and its successors and assigns, with respect to the obligations of the Participant under this Agreement; and
- (b) the Participant, and its successors, with respect to the obligations of the LDC under this Agreement;

and this Agreement will not be deemed to confer upon or give to any other person any claim or other right or remedy. The Participant appoints the LDC as the trustee for the IESO and the other Pilot Program Representatives of the applicable provisions set out in this Agreement, including Sections 4, 11, 19 and this Section 19. The LDC is the IESO’s agent for the purpose of Section 8 of this Agreement.

20. Further Assurances

Each of you and the LDC shall take (or cause to be taken) all reasonable steps, including the execution of all further documents, as the other party may in writing from time to time reasonably request be done in connection with the Pilot Program or as otherwise may be necessary or desirable to give effect to this Agreement.

21. **Waiver, Amendment**

Any waiver of, or consent to depart from, the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of either party to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

22. **English Language**

You and the LDC have expressly required that this Agreement and all documents and notices relating to this Agreement be drafted in English. Les parties aux présents ont expressément exigé que la présente convention et tous les documents et avis qui y sont afférents soient rédigés en anglais.

23. **Dispute Resolution**

If you have a question or concern regarding this Agreement, you agree to first contact us using our notice information in Section 18 of this Agreement. Both parties will, in good faith, use reasonable efforts to resolve disputes. If a dispute remains unresolved after 45 days, you can refer it to the OEB's Consumer Relations Center at 1-877-632-2727 and ask for details about its dispute resolution process. To avoid falling in default, you must still pay all undisputed sums by their due date.

- ☐ I agree to the collection, use and disclosure of my personal information in accordance with Section 7 hereof and the LDC's **Privacy Policy**.
- ☐ I have read and understood the information on the Pilot Program found on [website], and agree to abide by the terms and conditions of this Agreement, as well as, and agree to participate in the Pilot Program accordingly.