

PARTICIPATION AGREEMENT

This Participation Agreement (the “Agreement”) is effective as of the date you agree to its terms, by accepting them on the Constellation NewEnergy, Inc. (“Constellation”) website, <https://www.constellationhome.com/tx/promotions/mm/simple-thermostat-installation/> through the duration of the Testing Period.

1. **Definitions.** The following terms shall have the definitions set forth below when used in this Agreement:

- a. **“Activation”** shall mean the completion of the installation of the Test Product in the Participant’s residence and start-up of the Test Product for the Participant’s use.
- b. **“Energy Supply Agreement”** shall mean the existing agreement between the Participant and Constellation whereby Constellation provides Energy Supply to the Participant.
- c. **“Participant”** shall mean the authorized Constellation NewEnergy, Inc. customer who is participating in the Technical Assessment and accepted the terms of this Agreement.”
- d. **“Testing Period”** shall mean up to 120 days from the Activation of the Test Product.
- e. **“Test Product”** shall mean the test version of the Simple™ smart thermostat and mobile application.

2. **Technical Assessment Program and Term.** This program is for Participant to receive the Test Product for use during the Testing Period in Participant’s residence and in order to provide periodic assessment and feedback as requested by Constellation (the **“Technical Assessment”**). This Agreement sets forth the rights and obligations of the Parties to each other regarding the Technical Assessment including the disposition of the Test Product at the end of the Technical Assessment. Unless cancelled as provided in this Agreement, the term of this Agreement shall terminate 120 days after Activation. **For the avoidance of doubt the Energy Supply Agreement will remain otherwise unaffected, including any payment obligations by the Participant.**

3. **Constellation Responsibilities.**

a. Constellation will pay for the cost of the Test Product it will provide to Participant for use with the Technical Assessment. Any warranties, license agreements, and terms of use for the Test Product shall be as set forth in Test Product documentation given to Participant and shall be solely between the Participant and the Test Product manufacturer.

4. **Participant’s Responsibilities.**

a. Participant must be an existing Constellation customer throughout the Testing Period with authority for her/his residence at the service address where the Test Product will be installed and operated by THRESHOLD. Participant will own the service address with full rights to have the Test Product installed there. Participant must allow THRESHOLD to install the Test Product at the service address where the services are performed.

b. Participant must download the Simple™ application.

c. Throughout the Testing Period, Participant will operate and use the Test Product in compliance and accordance with the Test Product documentation.

d. Participant authorizes Constellation or its designee(s) to access and use data collected from the Test Product during the Testing Period.

e. Participant agrees to complete periodic surveys or other similar requests for feedback from Constellation, regarding his or her experience with the Test Product during and at the conclusion of the Test Period.

5. **Warranty Disclaimers.** PARTICIPANT ACKNOWLEDGES THAT THE TEST PRODUCT IS BEING PROVIDED BY THRESHOLD “AS IS.” CONSTELLATION DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE.

6. **Termination.**

a. This Agreement may be terminated by either Constellation or Participant without cause or reason upon giving the other party fifteen days prior written notice (“Termination for Convenience”).

i. Should Constellation Terminate for Convenience, Participant will have no further obligations through the duration of the Testing Period and Constellation will make no claim to the Test Product. As of and after the date of Constellation’s Termination for Convenience, should Participant want to continue use of the Test Product. Participant will be solely responsible to engage directly with Test Product organization

ii. Should Participant Terminate for Convenience, Participant will have no further obligations through the duration of the Testing Period.

7. **Title and Ownership.** During the Testing Period and thereafter, Participant shall be the sole owner of the Test Product. During the Testing Period, Participant agrees to do nothing inconsistent with the use of the Testing Product, including transferring, loaning, selling, assigning, pledging or otherwise disposing, or encumbering them.

8. **RELEASE OF CONSTELLATION.** IN CONSIDERATION OF PARTICIPATING

IN THE TECHNICAL ASSESSMENT, I, FOR MYSELF, MY HEIRS, PERSONAL REPRESENTATIVE OR ASSIGNS, DO HEREBY RELEASE, WAIVE, DISCHARGE, AND COVENANT NOT TO SUE CONSTELLATION, ITS AFFILIATES, EMPLOYEES, DIRECTORS, OFFICERS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS, AND THOSE ACTING WITH ITS PERMISSION, (COLLECTIVELY "CONSTELLATION PARTIES") FOR LIABILITY ARISING FROM OR IN ANY WAY CONNECTED WITH ANY AND ALL CLAIMS FOR PERSONAL INJURY, BODILY INJURY, ACCIDENTS, ILLNESSES OR DEATH OR PROPERTY DAMAGE OR LOSS ARISING FROM, BUT NOT LIMITED TO, PARTICIPATION IN THE TECHNICAL ASSESSMENT AND USE OF THE TEST PRODUCT, REGARDLESS OF WHETHER SUCH DAMAGE, LOSS OR INJURY IS CAUSED OR ALLEGED TO BE CAUSED BY THE NEGLIGENCE OR FAULT OF THE THRESHOLD PARTIES.

9. **Limitation of Liability.** IT IS UNDERSTOOD THAT THE TEST PRODUCT IS PROVIDED FOR LIMITED TESTING AND FEEDBACK PURPOSES. IN NO EVENT SHALL EITHER PARTY HAVE LIABILITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES NOT ARISING OUT OF ITS PERFORMANCE OF OBLIGATIONS UNDER THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION), HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10. **Survival.** Those provisions of this Agreement which by their nature are intended to survive the expiration or other termination of this Agreement shall so survive.

11. **Assignment.** Participant may not assign any of its rights or obligations under this Agreement, without the prior written consent of Constellation.

12. **Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of the State of Maryland, exclusive of its choice of law principles.

13. **Miscellaneous.** Participant's participation in the Technical Assessment and entering into this Agreement is wholly voluntary.

14. **Entire Agreement.** This Agreement contains the entire understanding, and supersedes any and all prior agreements (oral or written), between the Parties regarding this subject matter. This Agreement will not be modified, and no provision will be waived, except by a writing that both Parties sign.