



## **Lumbee River EMC – Connect to Save Program – Member Terms and Conditions**

Thank you for your interest in participating in the Lumbee River EMC’s Connect to Save program (the “Program”). The Program is offered by Lumbee River EMC and the service providers, including North Carolina Electric Membership Corporation and Franklin Energy, LLC. These Terms of Use (these “Terms”) are a legal agreement between you and Lumbee River EMC governing your participation in the Program.

BY CLICKING [“ACCEPT”] 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.

You certify that all information entered into this site for enrollment into the Program is accurate and complete. This offer is valid for Lumbee River EMC residential electric members. In order to qualify, members must live in single-family or multi-family homes and not participate in a time of use rate, or net metering. You understand that the program is available until fully subscribed and that incentive amounts are subject to change without notice. You authorize Lumbee River EMC to share information about your account including your name, street address, account number, electrical usage and billing information with its service providers and approved contractors hired to implement and measure the performance of the program. Member information will be kept confidential by Lumbee River EMC as well as its service providers and contractors, and used solely to facilitate your participation in the Program.

### **1. The Program.**

- 1.1. *Description.* The Program will continue until it is either terminated by Lumbee River EMC or the member withdraws from the Program.
- 1.2. *Devices.* By participating in the Program, you hereby grant to Lumbee River EMC, through its service providers, the right to remotely access and control one or more smart thermostats and/or one water heater controller (“Device”) at the address you are enrolling. When you authorize a Device, you may be presented with additional terms from the Device manufacturer (the “Manufacturer”). These Terms are in addition to, and are not replaced by, those terms. By authorizing a Device, you understand and agree that you are enabling Lumbee River EMC, through its service providers, to control that Device in connection with the Program. You also agree to allow Lumbee River EMC, through its service providers, to dispose of existing thermostats that contain hazardous materials in conjunction with applicable environmental laws and regulations.
- 1.3. *Device Limits.* There is a strict limit of two thermostats and one water heater controller per electric service address for the life of this Program.
- 1.4. *Events.* As part of this Program, Lumbee River EMC, through its service providers, will make changes to the operation of your Device (temperature setpoint of thermostats and heating element operation of water heaters) without any manual intervention by you (“Events”). The target thermostat setpoint adjustment will be 3 degrees. You may override an Event, simply by turning your thermostat Device to a different

temperature or using the other methods enabled by the Device Manufacturer. Frequent overriding an event may result in the reduction or elimination of the incentives as described in section 3 of these Terms. Events will be no longer than 4 hours, and Lumbee River EMC will call no more than 48 thermostat events per year with a minimum of 1 event per month. Events will be limited to no more than 3 consecutive days.

- 1.5. *Program Commitment Period.* You agree to participate in the Program for a minimum of three years.
- 1.6. *Changes.* Lumbee River EMC reserves the right, in its sole discretion, to modify or to discontinue the Program at any time.
2. **Eligibility. This program is available to Lumbee River EMC residential electric members only.** In order to register for the Program, you agree to provide to Lumbee River EMC information to verify your eligibility for the Program. You agree that the information that you provide to Lumbee River EMC in connection with the Program (“User Data”) will be true, accurate, current, and complete. You further acknowledge that you have WIFI and agree to maintain adequate WIFI to enable operation of the Device(s) while participating in the Program. Additional eligibility requirements are listed at [www.connecttosavenc.com](http://www.connecttosavenc.com).
3. **Incentives.** In connection with the Program, Lumbee River EMC may offer certain rebates, offers, or other incentives (“Incentives”). Lumbee River EMC reserves the right to determine qualification for Incentives in its sole discretion. Failure to participate in the Program for its entire duration or overriding automatic Device control on a regular basis may disqualify you from Incentives. In particular, Lumbee River EMC reserves the right to discontinue Incentives if your Device fails to participate in 6 or more Events in any 12-month period.
4. **Your Information.** By submitting User Data and any other data, materials, or information in connection with the Program, you are granting Lumbee River EMC, and its service providers, permission to use such information for the purpose of providing the Program. In addition, you hereby authorize Lumbee River EMC, through its service providers, to access your information including meter data maintained by Lumbee River EMC and/or the Device Manufacturer solely in order for Lumbee River EMC to provide the Program. You understand and agree that by authorizing Lumbee River EMC, through its service providers, to control your Device in connection with the Program, Lumbee River EMC, and its service providers, may receive access to data from your Device directly, including data collected from its sensors. For more information on the particular data that Lumbee River EMC, and its service providers, will receive access to, please contact Lumbee River EMC via email to [service@connecttosavenc.com](mailto:service@connecttosavenc.com).
5. **Personal Non-Commercial Use.** The Program is offered for your own personal non-commercial use. Any commercial participation in the Program is expressly prohibited.
6. **Costs.** Lumbee River EMC is not responsible for costs associated with providing the systems necessary to participate in the Program, such as Internet access.
7. **No Warranty; Disclaimer.** 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. Lumbee River EMC, AND ITS SERVICE PROVIDERS, 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. Lumbee River EMC, AND ITS PARTNERS, MAKE NO WARRANTIES THAT THE OPERATION OF THE PROGRAM WILL BE UNINTERRUPTED OR ERROR-FREE.
8. **Indemnification.** You agree to indemnify, and hold Lumbee River EMC’s, and its service providers’, officers, directors, employees and agents, harmless from and against any 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.
9. **Limitation of Liability.**

- 9.1. *Limitation of Liability.* YOU AGREE THAT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL Lumbee River EMC, OR ITS PARTNERS, BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, ARISING IN CONNECTION WITH THE PROGRAM, EVEN IF Lumbee River EMC, OR ITS PARTNERS, HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IF YOU ARE DISSATISFIED WITH THE PROGRAM OR WITH ANY OF THESE TERMS, OR FEEL Lumbee River EMC, OR ITS PARTNERS, HAVE BREACHED THESE TERMS, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE PARTICIPATION IN THE PROGRAM AND RETURN THE DEVICE(S).
- 9.2. *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.

## 10. Termination.

- 10.1. *Termination by Lumbee River EMC for Non-Participation.* If your Device fails to participate in 6 or more Events in any 12-month period, then Lumbee River EMC may terminate your participation in the Program for non-participation by providing you with written notice of such termination, which may be via email. If Lumbee River EMC terminates your participation in the Program prior to fulfilling the Program Commitment Period, you agree to pay Lumbee River EMC an Early Termination Fee, per Device, in the amount of \$350 minus \$10 for each full month of your Program Commitment Period that you complete. This fee may be collected by charging your credit card on file if permitted under the laws of your jurisdiction or by invoice. The Early Termination Fee is not a penalty, but rather a charge to compensate Lumbee River EMC for equipment purchased and installed to enable your participation in the Program.
- 10.2. *Your Termination.* You may terminate your participation after satisfactorily completing the Program Commitment Period for any reason by sending an email to [service@connecttosavenc.com](mailto:service@connecttosavenc.com) or by calling 844-577-SAVE (844-577-7283). If you terminate your participation in the Program prior to fulfilling the Program Commitment Period, you agree to pay Lumbee River EMC an Early Termination Fee, per Device, in the amount of \$350 minus \$10 for each full month of your Program Commitment Period that you complete. This fee may be collected by charging your credit card on file if permitted under the laws of your jurisdiction or by invoice. The Early Termination Fee is not a penalty, but rather a charge to compensate Lumbee River EMC for equipment purchased and installed to enable your participation in the Program. AFTER YOUR PROGRAM COMMITMENT PERIOD IS FULLFILLED, THIS AGREEMENT SHALL AUTOMATICALLY RENEW ON A MONTH-TO-MONTH BASIS UNTIL EITHER PARTY GIVES NOTICE TO TERMINATE.
- 10.3. *Rights at Termination.* Upon termination, all rights granted to you by these Terms will immediately cease.
- 10.4. *Survival.* Any suspension, termination or cancellation of the Program will not affect your obligations under these Terms which are intended to survive such suspension, termination, or cancellation.

## 11. General.

- 11.1. *Applicable Law and Dispute Resolution.* These Terms shall be governed by the laws of the State of North Carolina, without giving effect to any conflict of laws or principles that may require the application of the law of another jurisdiction. If you have any issues regarding these Terms, please contact us by e-mail at [service@connecttosavenc.com](mailto:service@connecttosavenc.com). 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. If you and Lumbee River EMC are unable to reach a resolution to the dispute, any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The place of arbitration shall be Raleigh, North Carolina. The arbitration shall be governed by the laws of the State of North Carolina. The arbitrators will have no authority to award punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute. The arbitrator(s) shall not award consequential damages in any arbitration initiated under this section. Any election to arbitrate by one party will be final and binding on the other. YOU ACKNOWLEDGE AND AGREE THAT YOU

AND Lumbee River EMC ARE EACH WAIVING THE RIGHT TO PARTICIPATE AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS ACTION OR REPRESENTATIVE PROCEEDING. Further, unless both you and Lumbee River EMC otherwise agree in writing, an arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of any class or representative proceeding. Regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to the Program or these Terms must be brought, if at all, within one year from the accrual of the claim or cause of action or be forever barred.

- 11.2. *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 owner(s) or occupant(s) of any premises where the Services will be provided. You are solely responsible for any failure to receive necessary consents and approvals for the installation of qualifying equipment within your residence and participation in the Program. Your participation is completely voluntary, and you can decide to withdraw at any point in the Program.
- 11.3. *Entire Agreement.* These Terms are the entire and exclusive agreement between Lumbee River EMC and you regarding the Program and supersede and replace any prior agreements regarding the same.
- 11.4. *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 Lumbee River EMC. Any purported assignment or delegation by you without the appropriate prior written consent of Lumbee River EMC will be null and void.
- 11.5. *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 Lumbee River EMC to enforce any right or provision of these Terms will not be deemed a waiver of such right or provision.
- 11.6. *Questions.* If you have questions about these Terms, please contact Lumbee River EMC at [service@connecttosavenc.com](mailto:service@connecttosavenc.com).
- 11.7. By participating in this Program, you agree to receive emails from Lumbee River EMC or its service providers at the email address provided for this Program. These emails may contain information about Lumbee River EMC 's products and services; other energy related products, services, and Programs; as well as energy related legislative and environmental issues. These emails may be sent by Lumbee River EMC or third parties.