

ClimateResponse Participation Agreement

THIS DOCUMENT (CALLED THE “AGREEMENT”) IS A LEGALLY-BINDING CONTRACT BETWEEN YOU AND OLIVINE, INC. PLEASE REVIEW IT CAREFULLY.

By accepting this Agreement (by clicking “I AGREE” to confirm your acceptance), you acknowledge that you have reviewed this Agreement in full, and that it creates a binding contract between you and Olivine, Inc., a California corporation (“Olivine,” “us,” “we,” “our”).

1. **You select us to be your demand response provider (“DRP”). You hereby authorize us to inform the appropriate entities (including your electric utility) that you have selected Olivine as your DRP. You agree that we may provide you with demand response services (“Services”). You also agree that if you have previously selected a different DRP that you intend to change your DRP to us.** Once we have verified that we have become your DRP, we will notify you.
2. You understand that, as your DRP, we have the authorization to obtain your energy usage information from your electricity provider. We will collect and use this data in accordance with our Privacy Policy, which is available at <https://olivineinc.com/privacy-policy>.
3. The Services may include aggregating your energy and capacity reductions with those of other of our subscribers and selling such aggregate reductions on energy markets. You acknowledge that we will receive revenue from such sales, and that we will be solely responsible for any credit or collateral associated with your participation in the energy markets. Olivine reserves the right to terminate at any time. If terminated by us, we will provide you notice via email to the email address we have on file.
4. You will be participating in certain ClimateResponse™ program options offered by us. If an option requires you to allow us to remotely monitor or send remote commands to devices installed at your service location, you will be required to agree that we may remotely monitor or send remote commands to such devices as set forth in the program terms and conditions.
5. Upon receipt of a dispatch instruction for a Resource, Olivine will notify you as soon as reasonably possible via SMS, email or Olivine’s API, but no later than 5 p.m. for day-ahead awards and no later than five (5) minutes upon receipt of the dispatch instructions from the CAISO for Residual Unit Commitment (RUC) or real time market awards.
6. You will defend, indemnify and hold harmless Olivine against any third party or governmental or regulatory claim, action, or penalties, and all damages payable to third parties arising therefrom, to the extent such claim or action is based on an allegation that the performance for a Resource bid into the CAISO market was inadequate.

7. THE SERVICES ARE PROVIDED “AS IS.” This means that we are not providing any warranties or guarantees, stated or implied, relating to the Services. For instance, we do not guarantee that the Services will operate without interruption or that they will always work as intended.
8. We are providing the Services to you under a limitation of liability, meaning that there is a cap on what you may recover from us in any lawsuit. Specifically, EXCEPT FOR CLAIMS RESULTING FROM A DISCLOSURE OF YOUR DATA, OUR MAXIMUM LIABILITY TO YOU FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT SHALL BE \$1,000.
9. If you are classified as a small business or residential customer, this Agreement shall be in effect until terminated by either you or us. If you are classified as a medium business or, commercial or industrial or agricultural customer, this Agreement shall be in effect for three (3) years and automatically renewed after that annually unless terminated by the customer through written notice to Olivine.
10. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, excluding any choice of law provisions.
11. We are providing Services to you under your and our agreement that any dispute is heard in arbitration, not the court system. Any dispute arising out of or related to this Agreement shall be finally settled by binding arbitration in San Francisco County, California under the commercial arbitration rules of JAMS. Judgment on the award rendered by the arbitral panel may be entered in any court having jurisdiction thereof. The arbitral panel shall have the authority to award any and all available remedies, including legal and equitable relief. The parties may apply to any court of competent jurisdiction for a temporary restraining order, preliminary injunction, or other interim or conservatory relief, as necessary, without breach of this arbitration agreement and without any abridgment of the powers of the arbitrator. The prevailing party in any action brought to enforce or interpret this Agreement or for relief for its breach shall be entitled to recover its costs and its reasonable attorneys’ fees incurred to prosecute or defend such action. THE PARTIES AGREE THAT ANY CLAIMS WILL BE ADJUDICATED ON AN INDIVIDUAL BASIS, AND EACH WAIVES THE RIGHT TO PARTICIPATE IN A CLASS, COLLECTIVE, OR OTHER JOINT ACTION WITH RESPECT TO ANY CLAIMS HEREUNDER.