

APS Smart EV Rewards Program

Terms and Conditions

Last Updated: February 28, 2023

Thank you for your interest in participating in the APS Smart EV Rewards program (the “**Program**”). The Program is offered by Arizona Public Service Company (“**APS**”) and is implemented by Generac Grid Services LLC (“**GGs**”). These Terms of Use (these “**Terms**”) are a legal agreement between you and APS governing your participation in the Program.

BY CLICKING [“I AGREE“], BY DOWNLOADING, USING, OR ACCESSING ANY DEVICES, SOFTWARE, SERVICES, OR OTHER PRODUCTS PROVIDED BY OR ON BEHALF OF GGS IN CONNECTION WITH THE PROGRAM (COLLECTIVELY “**PRODUCTS**”), OR BY OTHERWISE PARTICIPATING IN THE PROGRAM, 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 any 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.

1. The Program.

- 1.1. *Description.* The Program is an electric vehicle (“**EV**”) data collection program intended to provide APS with valuable data and information about the EVs that are being charged in its service territory, so that APS can maintain and improve its service offerings.
- 1.2. *Enrolled EVs.* If you are selected to participate in the Program, you will *either*: (a) be provided with a device by or on behalf of GGS (“**Connected Car Device**”) for installation in the on-board diagnostics port of your EV or (b) be prompted to connect your EV manufacturer account (your “**EV Account**”) to the Program. GGS will provide instructions for installing a Connected Car Device and/or linking your EV Account to the Program, but you are solely responsible for completing the installation and/or linking your EV Account. Each EV that is connected to the Program via a Connected Car Device or an EV Account is an “**Enrolled EV**”. By participating in the Program, you hereby grant to APS and GGS the right to remotely access the Connected Car Devices and/or your EV Account relating to each Enrolled EV. You may be presented with additional terms from the manufacturer of your Enrolled EV. These Terms are in addition to, and are not replaced by, those terms. By enrolling an Enrolled EV in the Program, you understand and agree that you are enabling GGS to access, collect, and share data from that Enrolled EV in connection with the Program.
- 1.3. *EV Account.* To connect your EV Account to the Program without the need of a physical Connected Car Device you will be asked to input your EV Account username and password (“**Credentials**”) into an interface within your Program account portal. This information will be used to retrieve an authentication token unique to you. The authentication token will be stored and used to retrieve your EV data (including, without limitation, your Participant Information, as defined below). The Credentials are not saved within the Program portal. EV Account authentication tokens can be revoked at any time by changing your EV Account password. This will result in the Program no longer being able to access your EV data unless and until you input the new Credentials into the applicable Program interface to retrieve a new EV Account authentication token. You accept all responsibility for safeguarding your Credentials and abiding by any agreed upon contractual obligations between you and your EV Account.
- 1.4. *Changes.* APS reserves the right, in its sole discretion, to modify or to discontinue the Program at any time.

2. **Eligibility.** In order to register for the Program, you agree to provide to GGS and APS information to verify your eligibility for the Program. You agree that the information that you provide to GGS or APS in connection with your enrollment in the Program (including the enrollment of any Enrolled EVs) (collectively “**Participant Data**”) will be true, accurate, current, and complete, and you further agree that you will maintain and promptly update your Participant Data to ensure that it remains true, accurate, current, and complete.

3. **Reenrollment.** The Program is a successor to the APS SmartCharge Rewards™ program (the “**Legacy Program**”). If you participate in the Legacy Program, you will need to reenroll in this Program. If you have a Connected Car Device from the Legacy Program, we may direct you to continue using that Connected Car Device for this Program.
4. **Incentives.** In connection with the Program, APS may offer certain rebates, offers, or other incentives (including digital payments such as prepaid cards, digital gift cards or deposits such as PayPal deposits) (“**Incentives**”). PayPal deposits are subject to PayPal official Terms and Conditions. Incentives may be distributed or otherwise provided by GGS via a third-party payment or incentive processor. APS reserves the right to determine qualification for Incentives in its sole discretion. Failure to participate in the Program for its entire duration may disqualify you from Incentives. In particular, APS reserves the right to eliminate Incentives if you disconnect your EV Account or a Connected Car Device, if you operate your Enrolled EV primarily outside of APS’ service territory, or if you cease to be an APS customer.
5. **EV Data and Participant Information.**
 - 5.1. *EV Data.* By enrolling an Enrolled EV in the Program, you are permitting GGS to access, store, share with APS, and otherwise process data relating to the Enrolled EV (“**EV Data**”), including data made available through your EV Account and/or data collected from the Enrolled EV’s sensors. EV Data may include, without limitation, the following data elements:
 - Charge Energy by time of use
 - Average Daily Charging Sessions
 - Average Daily Charge Energy
 - Average Energy Tables
 - Rewards Earning by Month
 - Percentage of Participants Earning Rewards
 - Percentage of Earned Rewards by Rewards Type
 - User Key
 - Vehicle Key
 - Connected Car Device Name
 - Vehicle Make, Model, and Model Year
 - Charging Session ID
 - Latitude and Longitude Coordinates
 - Start Date and Time
 - End Date and Time
 - Charging Power Level (kW)
 - Total Charging Energy (total electricity consumed in kWh)
 - Starting and Ending Battery state of charge (when available)
 - 5.2. *Participant Information.* Without limiting the generality of the foregoing, GGS and APS may use EV Data made available to them in connection with the Program in order to (a) operate, administer, market, evaluate, analyze, change, or improve the Program, (b) calculate and distribute Incentives, (c) prepare and present general, aggregated or anonymized results and information about the Program to third parties, including governmental entities such as public service commissions, (d) share with third parties to administer the Program and provide Incentives; and/or (e) planning and forecasting. GGS and APS may also use and publish EV Data in an aggregated or anonymized format (i.e., in a manner that does not identify you). All EV Data that GGS provides or makes available to APS is collected and processed by GGS on APS’ behalf. GGS does not control, and is not responsible for, APS’ use of the EV Data.
 - 5.3. *Legacy Program Data.* If you participated in the Legacy Program and register for this Program, you authorize APS and/or the administrator of the Legacy Program to share with us your enrollment and other data relating to the Legacy Program so that we can combine it with the data we receive under this Program.

5.4. *Inquiries.* For more information on the particular data or information that GGS or APS will receive access to, please contact GGS at support@smartevrewards.com or call us at 720-452-8900. For more information on APS' privacy practices, please see [INSERT LINK TO APS PRIVACY POLICY].

6. Personal Non-Commercial Use. The Program is offered for your own personal non-commercial use. Any commercial participation in, or use of, the Program is expressly prohibited.

7. Costs. Except with respect to Connected Car Devices for which APS is responsible for providing through GGS's third-party logistics operator, APS and GGS are not responsible for providing the systems necessary to participate in the Program. Neither APS nor GGS are responsible for any costs that you may incur in connection with your participation in the Program.

8. 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. APS AND GGS EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND RELATING TO THE PROGRAM, WHETHER EXPRESS, IMPLIED, OR STATUTORY (INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT) AND ANY WARRANTIES OR CONDITIONS ARISING UNDER ANY OTHER LEGAL REQUIREMENT. APS AND GGS MAKE NO WARRANTIES THAT THE OPERATION OF THE PROGRAM WILL BE UNINTERRUPTED OR ERROR-FREE.

9. Indemnification. You agree to indemnify, and hold GGS and APS, and each of their officers, directors, employees, and agents, harmless from and against any claims, liabilities, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of or in any way connected with your participation in the Program. You further agree to hold GGS harmless, and waive any claims against GGS resulting from or relating to, APS' access to, use of, or processing of EV Data.

10. Limitation of Liability.

10.1. *Limitation of Liability.* YOU AGREE THAT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL GGS OR APS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE PROGRAM, THE INSTALLATION OR USE OF A CONNECTED CAR DEVICE IN YOUR EV, OR THE CONNECTION OF YOUR EV ACCOUNT WITH THE PROGRAM, EVEN IF GGS OR APS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT LIMITING THE FOREGOING, YOU AGREE THAT GGS AND APS SHALL HAVE NO LIABILITY FOR ANY DAMAGE CAUSED TO ANY ENROLLED EV OR BY A CONNECTED CAR DEVICE. WITHOUT LIMITING THE FOREGOING, YOU AGREE THAT GGS IS NOT RESPONSIBLE FOR APS' USE, ACCESS TO, OR PROCESSING OF ANY EV DATA. IF YOU ARE DISSATISFIED WITH THE PROGRAM OR WITH ANY OF THESE TERMS, OR FEEL GGS OR APS HAS BREACHED THESE TERMS, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE YOUR PARTICIPATION IN THE PROGRAM. IN NO EVENT WILL GGS' TOTAL, AGGREGATE LIABILITY TO YOU IN CONNECTION WITH THE PROGRAM EXCEED \$1,000.

10.2. *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" SECTION SHALL ATTEMPT TO EXCLUDE LIABILITY THAT CANNOT BE EXCLUDED UNDER APPLICABLE LAW.

11. Termination.

11.1. *Termination By APS or GGS.* APS may terminate the Program at any time, with or without cause, by providing you with written notice of such termination, which may be via email. APS and/or GGS may terminate your participation in the Program, at any time, with or without cause, by providing you with written notice of such termination, which may be via email. In addition, may cease to operate the Program at any time, subject to our contractual obligations to APS. If we cease to operate the Program, we will have no further obligation to you under these Terms or otherwise.

11.2. *Termination By You.* You may terminate your participation at any time and for any reason by sending an email to the Program at support@smartevrewards.com.

11.3. *Rights at Termination.* Upon termination, all rights granted to you by these Terms will immediately cease. APS and GGS are not liable to you or any third party for termination of the Program or your participation in the Program.

11.4. *Survival.* Any suspension, termination, or cancellation of the Program will not affect your obligations under these Terms which by their nature and context are intended to survive such suspension, termination, or cancellation.

12. General.

12.1. *Applicable Law and Dispute Resolution.* These Terms shall be governed by the laws of the State of Arizona, without giving effect to any conflict of laws or principles that may require the application of the law of another jurisdiction. If you believe that GGS has not adhered to these Terms, please contact GGS by email at support@smarteve_rewards.com. GGS will do its best to address your concerns. If you feel that your complaint has been addressed incompletely, GGS invites you to let it know for further investigation. If you and GGS are unable to reach a resolution to the dispute, you and GGS will settle the dispute exclusively under the rules of the American Arbitration Association (www.adr.org) at its Phoenix, Arizona office. Any election to arbitrate by one party will be final and binding on the other. YOU ACKNOWLEDGE AND AGREE THAT YOU AND GGS 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 GGS 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.

12.2. *Consent and Capacity.* YOU ARE RESPONSIBLE FOR NOTIFYING EVERYONE WHO OWNS OR USES (AS A DRIVER, PASSENGER, OR OTHER USER) AN ENROLLED EV THAT THE INFORMATION DESCRIBED IN THESE TERMS WILL BE COLLECTED AND AVAILABLE TO YOU, APS, AND GGS. By participating in the Program, you represent and warrant to GGS that you are at least 18 years of age and have the necessary legal capacity to enter into these Terms and that you have received all necessary consents and approvals from (a) all applicable registered vehicle owners, passengers, and the users of each Enrolled EV, and (b) all applicable operators of the EV Account(s) through which you enroll an Enrolled EV. For purposes of subparts '(a)' and '(b)', this includes, without limitation, all necessary consents and approvals to (i) install each applicable Connected Car Device in the applicable Enrolled EV, (b) connect each applicable EV Account, and (c) permit you, APS, and GGS to view and use the data and information collected by each installed Connected Car Device or through each connected EV Account, as applicable. You are solely responsible for any failure to receive necessary consents and approvals. Your participation is completely voluntary, and you can decide to withdraw at any point in the Program.

12.3. *Entire Agreement.* These Terms are the entire and exclusive agreement between GGS and you regarding the Program and supersede and replace any prior agreements regarding the same.

12.4. *No Assignment.* You may not assign or otherwise transfer 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 GGS. Any purported assignment or delegation by you without the appropriate prior written consent of GGS will be null and void.

12.5. *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 GGS to enforce any right or provision of these Terms will not be deemed a waiver of such right or provision.

12.6. *Modifications.* We may modify these Terms at any time by providing notice to you using the contact information you provided upon enrollment in the Program or other contact information we have on file for you (including email). We will use reasonable efforts to provide at least 7 days notice before any modification becomes effective. If you do not agree with the modification, your sole remedy is to cease participation in the Program.

12.7. *Third Party Beneficiary.* GGS is a third-party beneficiary with rights to enforce these Terms.

12.8. *Questions.* If you have questions about these Terms, please contact GGS at support@smartevrewards.com.

12.9. *Communications.* By participating in the Program, you agree to receive emails from GGS or APS or either of their partners at the email address you have provided for the Program. These emails may contain information about GGS's or APS' products and services; other energy related products, services, and programs; as well as energy related legislative and environmental issues. You may opt out of receiving these emails at any time by contacting GGS at support@smartevrewards.com or call as at 720-452-8900 ; however, it may take up to 10 days for your opt-out request to take effect.