

# SMUD's Managed EV Charging Pilot

## Customer Agreement - Optiwatt Enrollments

### Introduction

As your community-owned, not-for-profit electric service, SMUD is piloting a new Managed Charging offering for residential customers that helps electric vehicle ("EV") drivers charge during times of the day that help the energy grid operate more efficiently and utilize more renewable energy. For this Managed Charging Pilot ("Pilot"), SMUD has partnered with Optiwatt. Each time a participant plugs in to charge within SMUD's service territory, Optiwatt will automatically schedule the participant's car charging at the best time for the energy grid based on when the participant next needs the vehicle. This Customer Agreement for SMUD's Managed EV Charging Pilot ("Agreement") sets forth the terms and conditions for your participation in the Pilot. Please keep this information for your reference. If you have any questions, email [EVCharge@smud.org](mailto:EVCharge@smud.org) or call SMUD at 1-888-742-7683.

### Terms & Conditions

#### 1. Program Participation

Participant agrees that enrollment in the program authorizes Optiwatt to charge all Participant's enrolled vehicles on an optimized charging schedule designed to have the vehicle charged when needed, and at time periods when energy costs less for both the Participant and for SMUD.

Participant must complete a Pilot program application through Optiwatt and enroll at least one eligible EV in the Pilot. Customers may enroll more than one eligible EV per home address and are eligible to receive incentives for each enrolled vehicle. Participants are encouraged to participate in SMUD's residential EV Discount Rate, but it is not required.

#### 2. Eligibility

Participant agrees that the Pilot is an optional program for SMUD customers who own or lease an EV. To be eligible for this Pilot, Participant must meet, and continue to meet throughout the duration of the Pilot, all the following requirements:

- Own or lease an eligible EV (see list below).
- Have an active SMUD residential account.
  - If Participant no longer has an active SMUD residential account, or ownership of the enrolled EV changes, or Participant wishes to unenroll for any reason, Participant shall immediately notify SMUD by email to [EVCharge@smud.org](mailto:EVCharge@smud.org).
- Download and actively use the Optiwatt enrollment software application ("App") to manage charging preferences.
- Actively use either Level I or Level II charging.

The following is a list of currently eligible makes and models of EVs:

- Tesla
  - Model 3
  - Model S
  - Model X
  - Model Y

Note: This list is subject to change at any time at Optiwatt's and SMUD's discretion.

### 3. EV Charging Schedule and Ability to Override

- A. Participant agrees to ensure all enrolled vehicles remain plugged in when the vehicle is within SMUD's service territory and charging is available.
- B. Participant acknowledges and fully understands that as part of the Pilot, Optiwatt will control Participant's EV charging for all enrolled vehicles through a cloud service that optimizes the charging schedule of each vehicle to meet power grid needs. The charging schedule is customized for the Participant by Optiwatt based on numerous factors such as Participant's driving needs, which the Participant communicates through Optiwatt's App. The charging schedule may change each time the EV is plugged in, depending on the needs of Participant and the power grid. It is Participant's responsibility to set their desired schedule through the App to allow enrolled vehicle(s) to be fully charged when needed.
- C. Participant may override the Optiwatt charging schedule any day of the year when Participant needs more immediate EV charging than the Pilot program schedule affords. Overriding the schedule during the Pilot will not affect the compensation reward offered to Participant; however, SMUD requests that the Participant only override if absolutely necessary, so that SMUD can gather the necessary data from the customer's participation.

### 4. Compensation

- A. Once the vehicle has been successfully connected to the on-board vehicle communication platform, and SMUD has verified eligibility, Participant will be eligible to receive Pilot participation rewards as follows:

Charging Level	Description	One-time Initial Incentive	Quarterly Reward
Level 1 or 2	Use a standard 120-volt or 208/240-volt electrical plug and charging cord or unit	\$150	\$20

- B. For Optiwatt customers (Tesla), you can select different payment options in the Optiwatt app. If at any time during the term of the Pilot Participant becomes ineligible or their participation in the Pilot is otherwise terminated for any reason, Participant will not receive quarterly rewards scheduled for payment after the first date of ineligibility or termination.

- C. Quarterly reward payments for both treatment and control groups will be issued as follows:

<b>Enrollment Date*</b>	<b>1<sup>st</sup> Reward Payment Date</b>
Jan 1 – Mar 31	By April 30
Apr 1 – Jun 30	By July 31
Jul 1 – Sept 30	By Oct 31
Oct 1 – Dec 31	By Jan 31
*Enrollments any time during a quarter will qualify for quarterly payment that quarter and subsequent payments on a quarterly basis	

**5. Pilot Terms and Termination**

- A. SMUD intends to run this Pilot through December 1, 2024. SMUD reserves the right to modify the term or cancel the Pilot at any time. Participant intends to remain eligible and fully participate in the Pilot for the term of the Pilot.
- B. Subject to the foregoing compensation provisions, either party may terminate this Agreement by providing thirty (30) days prior written notice to the other party. Please send termination communication to SMUD at [EVCharge@smud.org](mailto:EVCharge@smud.org).
- C. If Participant withdraws from the Pilot, fails to adhere to the Pilot terms and conditions set forth in this Agreement, fails to meet the Pilot requirements, or is no longer eligible to participate in the Pilot, SMUD shall have the right to terminate Participant from the Pilot immediately.
- D. Upon termination of this Agreement, SMUD will notify Optiwatt of disenrollment.

**6. General Terms**

- A. A fraction of participants will be randomly assigned to a control group. Although control group participants will also receive both the one-time initial payment and ongoing quarterly payments, we ask that control group participants do not alter their charging behavior.
- B. Participant agrees to download the Optiwatt App and any additional software application required by the OEM to connect to the OEM’s on-board vehicle communication platform designed for Participant’s enrolled vehicle(s).
- C. Participant understands that Participant is always responsible for Participant’s own safety as well as the safety of anyone using the vehicle and EV charger while participating in the Pilot. Participant’s participation in the Pilot is purely voluntary.

**7. Data Sharing and Monitoring**

- A. Participant understands and agrees that Optiwatt will have access to data regarding Participant, Participant’s EV, and Participant’s operation of the EV, as well as other personal data related to the Optiwatt’s control of the Participant’s EV charging schedules. Such data may include but not be limited to Participant’s email and phone contact information, and information regarding the EV make, battery size and on-board charger maximum, plug in and out times, charging session start and stop times, energy use, state of charge, App availability and usage, charge schedules and overrides, and EV locations. Optiwatt will be sharing Participant’s customer information with SMUD, and SMUD will confirm Participant’s SMUD account association with Optiwatt.

- B. Participant agrees that the EV, plug-in, charging, battery, location, and other data obtained by Optiwatt during the Pilot belongs to, and is owned by, Optiwatt and that Participant has no claim or right to that information. Participant authorizes the release of that information to SMUD and agrees that SMUD, and its employees, consultants, contractors, and agents, may use that information for various purposes associated with the Pilot, which may include SMUD's system planning, marketing administrative, customer service, analytical and other purposes, including but not limited to surveys and communication with SMUD customers regarding Electric Vehicle ("EV") programs, EV charging patterns, rebates, efficiency and rate options and discounts, data analysis and program evaluation, and any other legally permissible purpose. Participant understands and agrees that SMUD may publish the results of its research, analysis and Pilot without use of Participant's name.
- C. Participant's personal Information will also be used to administer the Pilot, including but not limited to facilitate rebate payments, conduct accounting and verifications relating to the Pilot, and for legal and regulatory purposes. The use of this personal information is governed by the Optiwatt's privacy policy. SMUD's use of personal information is governed by SMUD's [privacy policy](#).
- D. SMUD is a public agency and some information disclosed to SMUD in connection with the Pilot may be subject to public disclosure pursuant to a request under the California Public Records Act. Information that may be disclosed includes but may not be limited to name, address, electronic mail address (email), vehicle make, model, and model year, including but not limited to battery capacity, EV Manufacturer's Suggested Retail Price, EV Vehicle Identification Number, EV charging locations and schedules, and other terms of the Pilot.
- E. Participant hereby consents to the use the provided information for the purposes described in this Agreement. Participant confirms that Participant is an authorized user of the email account provided to SMUD and that any communication sent by SMUD to this email is authorized by Participant and shall not be in violation of any "do not contact" list or other customer communication restriction, even if the email address or other information provided to Retailer is on such a list or subject to such restriction.

## 8. Acknowledgement, Waiver and Release

- A. The state of charge of an EV is contingent upon several factors and may be affected by reasons such as use of the EV, when the EV is plugged in, when the Participant needs to unplug, the type of charging equipment, the EV charger uptime, the state of the power grid and availability of power to the EV charger, operation of the Optiwatt App and related system conditions, and the effectiveness of the charging schedule managed by Optiwatt. Participant is responsible for ensuring that the state of charge is sufficient for the Participant's needs and intended use prior to using the EV. Participant acknowledges and fully understands that under the Pilot a vehicle may not be charging at all times it is plugged in, which could result in not having sufficient charge on the vehicle when needed. As such, Participant acknowledges and fully understands that enrolled vehicles may not have an adequate charge in unexpected, emergency or other urgent circumstance.
- B. Participant further acknowledges and fully understands that enrolled vehicles and vehicle batteries could malfunction or suffer damage during or as a result of participation in the Pilot.
- C. **Participant is aware and fully understands that insufficient charge or vehicle malfunction could occur during its participation in the Pilot and could pose risks of serious personal injury, illness, disability death, property damage, or other severe**

**social and economic losses to person or property**, as a consequence of not only Participant's own actions, inactions or negligence, but also the actions, inactions or negligence of SMUD, Optiwatt or others, or the condition of Participant's equipment, acts of nature, and other risks not known or reasonably foreseeable at this time. **PARTICIPANT KNOWINGLY AND VOLUNTARILY ASSUMES ALL SUCH RISKS, BOTH KNOWN AND UNKNOWN, EVEN IF ARISING FROM THE NEGLIGENCE OF OTHERS, and assumes full responsibility for their participation in the Pilot.**

Participant agrees that the above terms adequately represent Participant's understanding of the Agreement as it relates to all present, past, and future claims against SMUD, whether those claims are known or unknown and waives application of California Civil Code section 1542, which provides:

**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

## 9. Disclaimers

- A. SMUD makes no representation or warranty as to the reliability, operation, efficiency, sizing, or performance of Participant's vehicle, the OEM's communication equipment, the Optiwatt App or any other aspect of the EV or charging infrastructure.
- B. SMUD makes no representation warranty as to or guarantee of continuous power to any EV charging infrastructure or EV connected communications facility.
- C. SMUD makes no representation or warranty as to the security of information collected or used in connection with the Pilot, including but not limited to information tracked by or relayed through the Optiwatt App.
- D. SMUD makes no warranties, implied, or expressed with respect to goods and services provided in connection with the Pilot, including, but not limited to, the warranties of merchantability and fitness for a particular purpose. SMUD is not responsible in contract, tort or under any other theory of liability with respect to the goods and services provided under this agreement.
- E. SMUD makes no warranty or guarantee that the Participant's EV will have a full state of charge or have achieved the desired state of charge at any time the Participant needs to unplug the EV to begin using the EV.

## 10. Indemnification

- A. Participant, being of lawful age, in consideration of being permitted to participate in the Pilot, does hereby release and forever discharge SMUD, its officers, directors, employees, agents, administrators, or legal representatives, or other successors of interest ("SMUD Releasees"), of and from any and every claim, demand, action or right of action, of whatever kind or nature, either in law or equity, arising from or by reason of any bodily injury or personal injuries, known or unknown, death, loss or damage to property, or occurrence before, during, or after Participant's participation in the Pilot, whether caused by negligence of SMUD Releasees or otherwise.

- B. Participant for itself, and assigns, shall indemnify, defend, and hold harmless SMUD, its officers, agents and employees against loss, damage, expense and all liability resulting from injury to or death of any person or persons including but not limited to employees of SMUD or Participant, or damage to property, including but not limited to property of SMUD or Participant, resulting from or arising out of or in any way connected with Participant's participation in the Pilot or performance of this Agreement, the installation, inspection, assistance, maintenance, monitoring, testing and use of the Participant's EV or related equipment, or the communication of Participant information to SMUD and caused by the acts, omissions, intent or negligence, whether active or passive, of Participant, its agents, employees, and suppliers, and excepting only such loss, damage, or liability as may be caused by the intentional acts or the sole negligence of SMUD.

## **11. Miscellaneous**

- A. This Agreement shall be governed, construed and interpreted solely by and under the laws of the State of California without regard to conflict of laws provisions.
- B. No amendment, modification or supplement to this Agreement shall be binding unless it is in writing and signed by all parties. Participant shall not assign any rights, or delegate any obligations under this Agreement, without SMUD's prior written consent and any assignment without such consent shall be deemed null and void. This Agreement is for the sole and exclusive benefit of the parties and is not intended for the benefit of any other person.
- C. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the provision, covenant or condition determined to be invalid, void or unenforceable does not materially alter the essential terms of this Agreement.
- D. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

**In Witness Whereof**, Participant and SMUD hereby agree to the terms set forth in this Agreement.