



My Energy Optimizer[®] Partner+ Participant Agreement Terms and Conditions

Welcome to the My Energy Optimizer Partner+ Program.

To enroll your home in the program, it is necessary to read, understand, and sign this My Energy Optimizer Partner+ Program Agreement ("**Agreement**"). This Agreement describes the My Energy Optimizer Partner+ Program ("**Program**"), and its importance for Sacramento Municipal Utility District's (SMUD) service territory 2030 Zero Carbon Plan.

This Agreement is between SMUD and you and sets forth the terms and conditions governing your participation in the Program. In the case of inconsistencies between this Agreement and information included in any other materials related to the Program (e.g., promotional materials and mailers) this Agreement will always govern and take precedence.

The Program is an optional way for you to help reduce demand on electricity resources during times when energy demand is at its highest or there are emergency conditions with the power system. By participating in the Program, you will enroll Eligible Equipment. The eligible equipment at your Property constituting, as applicable, the battery system ("**Battery System**"), solar generation system ("**PV System**") and other smart load control devices ("**Load Control Devices**"), are collectively referred to herein as the equipment ("**Equipment**" or "**Eligible Equipment**"). The Program is part of SMUD's efforts to reduce the need to buy electricity from more expensive, less environmentally friendly sources and avoid or delay building more power plants.

1. My Energy Optimizer Partner+ Program Goals

The Program is one of the most advanced efforts in California to use Equipment to reduce carbon emissions and make the electric grid more renewable, resilient, and reliable. Your location will operate in concert with many others to help balance all sources of renewable energy in the Sacramento region. Since your Equipment will benefit the entire SMUD electric grid, SMUD will provide incentive compensation in exchange for participating in the Program. The Program is a six-year program that will run from January 1, 2023, until the program end date of December 31, 2028 (unless the Program terminates before this date or is extended).

2. Program Incentives

The Program provides for an Enrollment Incentive ("**Enrollment Incentive**") and a quarterly Recurring Incentive payment ("**Recurring Incentive**") based on the quantity of enrolled battery systems. The incentive values associated with signing this Agreement are shown below. Both of these incentives are paid directly to you from SMUD after your Program start date and within 30 days of successful enrollment verification.

a. One-Time Enrollment Incentive

The one-time Enrollment Incentive value associated with participating in the Program is shown below:

Interconnection Application Date - Energy Storage	1 Tesla Battery	2 or More Tesla Batteries
On or after 4/1/2024	\$5,000	\$10,000
Prior to 4/1/2024	\$2,500	\$2,500

- The one-time Enrollment Incentive will be available to new battery storage customers of SMUD interconnected on or after March 1, 2022 and existing SMUD battery storage customers interconnected prior to March 1, 2022 who move from SMUD’s Net Energy Metering (NEM) rate onto SMUD’s Solar and Storage Rate (SSR). Any person who participated in the Program within the last concurrent three (3) years is not considered a new battery storage customers and is ineligible for the Enrollment Incentive.
- Customers upgrading from a lower incentive provided through a different SMUD program will be eligible for the incremental incentive value.
- The Enrollment Incentive will be paid via check or electronic or physical debit card issued to you by SMUD.
- Customers must commit to the Program for a minimum of 1-year to qualify for the Enrollment Incentive. Un-enrollment from the Program before meeting the minimum time requirement will require prorated repayment of the Enrollment Incentive by you. SMUD will invoice you for the prorated repayment amount and you will remit payment within thirty (30) days.
- Income-qualified customers whose Equipment costs are fully covered by SMUD are not eligible for the Enrollment Incentive. These customers will be auto enrolled in the initial three (3) year term of the Program and are required to remain enrolled for a minimum of 3 years.
- Enrollment incentives are limited and subject to change by SMUD at any time and for any reason.

b. Recurring Incentive

The Recurring Incentive value associated with installing battery storage under the Program for 2024 period is shown below:

Table – 2024 Recurring Incentive*:

* The Recurring Incentive may be adjusted annually at SMUD’s sole discretion.

Battery Product	Battery Quantity	Quarterly Recurring Incentive
Powerwall 2	1 Battery	\$110
Powerwall + Powerwall 3	2 Batteries	\$221
Powerwall 3 with DC Expansion	3 Batteries	\$332

- The values in the table above reflect the additional recurring payments you’ll receive based on your individual enrolled battery quantity.
- Your first quarterly payment will be prorated based on the month of enrollment verification into the Program.
- SMUD will not charge you any fees or other charges for participating in the Program.
- Managing your Equipment to support the Program may increase your utility bill compared with if you did not participate. By participating in the Program, however, you will receive the Enrollment Incentive and the Recurring Incentive.
- Recurring Incentives will be paid on a quarterly basis via check or electronic or physical debit card issued to you by SMUD.
- Recurring Incentives are taxable. SMUD will report Recurring Incentives greater than \$600 to the IRS. You are encouraged to consult a tax advisor concerning the taxability of the Recurring Incentives. You are responsible for any taxes imposed as a result of the receipt of Recurring Program Incentives.

SMUD expressly reserves the right to modify or amend the Program Incentives in whole or in part, at any time and for any reason without prior notice.

3. Grid Services

Your Equipment will provide Grid Services to the Program managed by SMUD’s Service Provider. The Grid Services are described below.

Grid Service Event	Grid Service Description	Average Monthly Events	Max Annual Events	Duration	Time of Day
Capacity Reduce	<p>When paired with solar generation, your batteries charge through the midday, with solar energy. During the weekday Peak period between 5 PM and 8 PM, your Equipment may dispatch to meet the evening energy needs of the grid. Occasionally during all other Non-Peak periods, your equipment may dispatch and you may be additionally compensated for Non-Peak dispatches.</p>	20	<p>240 annually</p> <p>30 events each summer month (June – Sept)</p> <p>15 events all other months.</p>	Up to 4 Hours	Any

4. Optimization Services

After you have enrolled in the Program, you will never need to manage your Equipment to receive the benefits of the Program and deliver the Grid Services from your Equipment to SMUD. SMUD’s Service Provider will manage your Equipment’s operations to balance the value of the Program and existing utility bill savings and backup energy.

5. Term

Your Agreement will be effective on the date that it is signed by both you and SMUD (the “**Effective Date**”). Your Program start date is the date your enrollment is completed with SMUD. The Agreement shall end at the earlier of (i) when termination is allowed under this Agreement or (ii) 36 months from the Program start date (the “**Term**”).

At the end of the Term, you may be given the option by SMUD to renew your enrollment in the Program for up to an additional 36 months (depending on your original effective date). When you renew, your recurring Program incentives may change. You may also decide not to renew without any penalties.

6. Purpose

Under this Agreement, you authorize SMUD’s Service Provider to act as your Program **Grid Service Provider** (as defined in Section 8) so that your Eligible Equipment can provide Grid Services to SMUD. SMUD’s Service Provider will use the Equipment already installed in your location or the Equipment included in your signed solar and energy storage contracts to meet the requirements of the Program. No other additional Equipment needs to be installed by you to meet the requirements of the Program. Your Equipment will continue to be owned by their current owners. If you do not already have Eligible Equipment, you have separately arranged for some or all the Equipment to be installed by a licensed contractor at the address set forth below your signature (your “**Property**”).

The ownership of your newly installed Equipment will be determined by the home improvement contracts you enter into.

7. Grid Programs

SMUD's Service Provider and you are participating in the "**My Energy Optimizer Partner+ Program**" specified in Section 1, which we also call a "**Grid Program**". By entering into this Agreement, you agree to cooperate with these efforts in exchange for the benefits specified in Section 2 ("**Program Incentives**"). Specifically, you agree that SMUD's Service Provider may remotely manage the Equipment at your Property to modify energy usage at specific times and meet other goals of the Program as specified in Section 4 (the "**Optimization Services**"). SMUD's Service Provider will monitor and manage the capabilities of the Equipment to allow it to provide the grid services set forth in Section 3 (the "**Grid Services**"). In addition to the Program for SMUD, other Grid Programs may from time to time become available. Before one of these other Grid Programs begins, we will provide you with program details and give you an opportunity to opt-in to the program. If you do not opt-in by written notice to SMUD within thirty (30) days of receiving the details, you may lose your chance to participate in and receive the benefits of the new Grid Program.

8. Appointment of Grid Services Provider.

You acknowledge and agree that you are hereby appointing SMUD's Service Provider, or another party designated by SMUD, to act on your behalf as your sole and exclusive agent and provider for all Grid Services related to the Program ("**Grid Services Provider**"). You hereby authorize us, as your Grid Services Provider, subject to the opt-in provisions in Section 7, to act on your behalf and to enroll, register, or otherwise cause the participation of the Equipment in any Grid Program in which you have opted in, including: (i) receiving notices from SMUD and any other third parties regarding any such Grid Program, (ii) payments to and from the utility sponsoring the Grid Program (if allowed by the Grid Program) and any other third parties regarding any such Grid Program, and (iii) unenrolling or de-registering you from any other programs that conflict with or prevent your participation in the Grid Programs. You grant to us all rights to use the Equipment to provide Grid Services and to otherwise participate in any Grid Program. You understand that such use of the Equipment by SMUD's Service Provider may override other Equipment operating modes while preserving key capabilities, such as, for example, providing back-up power. You agree to cooperate with us to give effect to the authorizations and granting of rights in this Section 8, including by promptly signing and returning documents and otherwise assisting us as reasonably required. None of the foregoing prevents you from declining to opt-in (or opt-out of) individual Grid Program opportunities pursuant to Section 7 above. You shall not enroll in (and if enrolled, you shall, within fifteen (15) days, unenroll from) any other demand response or Grid Program through SMUD or another provider that, at SMUD's discretion, conflicts with you providing Grid Services to SMUD. This includes but is not limited to SMUD's other programs listed at www.smud.org/en/Going-Green/Battery-storage/Homeowner. If you have questions, please contact myenergyoptimizer@smud.org. You agree to execute any forms or enact any utility tariff changes required by SMUD for the Program. If you are in another program that conflicts with the Program, you agree to take any action and execute any form required to end your participation in such other program. By signing this Agreement, you hereby appoint SMUD's Service Provider to act as your demand response aggregator for the Program. You agree to move to a different rate schedule if the Grid Program requires that you receive electrical service from SMUD on a different rate schedule from your current one.

9. Access to Data & Equipment.

You agree to provide the Equipment with a reliable, always-on, broadband internet connection at your cost. We recommend a wired internet connection to your Equipment. You agree to provide SMUD with available electrical design information about the Equipment, your Property, and other electrical hardware attached to your Property, including single-line diagrams and permits. You agree to allow SMUD and our contractors, employees, representatives, Service Provider, Grid Services Provider, and governmental bodies, (collectively, "**Grid Services Entities**") to come to your Property at agreed-upon times to inspect your Equipment and other electrical devices, including, as agreed-to by you, installing additional hardware on or around and modifying the Equipment, as required to comply with any Grid Program in which you are participating. Specifically, you agree that SMUD, including the Grid Services Entities, may enter the Property to install a smart meter and otherwise access the Equipment as needed to further SMUD's rights under the Agreement. You agree to participate in and complete all surveys received from SMUD and the Grid Services Entities.

10. Moving from Your Property.

If you move from your Property during the Term, you may: (i) request that we perform Grid Services at your new property if your new property is eligible for Grid Services, (ii) transfer this Agreement to your Property's new owner(s) if the new owner(s) assume your obligations hereunder and are deemed eligible, at SMUD's discretion, for Grid Services, or (iii) terminate this Agreement.

11. Termination Rights.

- a. SMUD may suspend or terminate this Agreement if you fail to perform any obligation under this Agreement.
- b. You may terminate this Agreement if SMUD fails to perform any obligation under this Agreement.
- c. To the fullest extent permitted under applicable law, your termination of this Agreement shall be the exclusive remedy for any SMUD default. Subject to the other provisions of this Agreement, SMUD will indemnify you for all claims that flow from a breach of SMUD's representations under this Agreement.
- d. With exception to the terms described above in Section 2 pertaining to the Enrollment Incentive, you may terminate this Agreement at any time with no penalty and will be removed from the Program within 60 days after SMUD receives your notice.
 - i. There are no penalties associated with termination, though if you terminate this Agreement within the first year, you will be required to prorate repayment of the Enrollment Incentive received, if any.
 - ii. SMUD will automatically prorate your Recurring Incentive from the un-enrollment date and stop your future Recurring Incentives.
- e. SMUD may terminate this Agreement at any time without cause. If SMUD terminates this Agreement without cause within your first year of enrollment, then your repayment obligation will

be forgiven. SMUD expressly reserves the right to terminate the Program Incentive in whole or in part, at any time and for any reason without prior notice.

- f. The Agreement shall end at the earlier of (i) when termination is allowed under this Agreement or (ii) 36 months from the Effective Date (the "Term")

12. Miscellaneous.

- a. **Limitation of Liability.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL SMUD BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, OR ANY OTHER INTANGIBLE LOSS) ARISING OUT OF, IN CONNECTION WITH, OR IN ANY WAY RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY ACT OR OMISSION OR EVENT OCCURRING IN CONNECTION THEREWITH, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT WE HAVE BEEN INFORMED OF THE POSSIBILITY OF DAMAGE.

YOU AGREE THAT SMUD'S LIMITATION OF LIABILITY: (I) WILL NOT APPLY TO DAMAGES RESULTING FROM ITS GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR FRAUD, AND (II) WILL BE CAPPED FOR COVERED DAMAGES AT \$1,000 PER PROGRAM PARTICIPANT, UP TO AN AGGREGATE LIABILITY TO ALL PROGRAM PARTICIPANTS EQUAL TO \$500,000.

- b. **Disclaimer of Warranties.** 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. SMUD EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR ANY OTHER AGREEMENT BETWEEN THE PARTIES, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, WE DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, RELATING TO THE GRID SERVICES, THE PERFORMANCE OF THE EQUIPMENT, ANY OTHER SERVICE OR GOOD PROVIDED BY US UNDER THIS AGREEMENT, OR ANY OTHER MATTER CONTEMPLATED HEREUNDER, INCLUDING: (I) ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, OR NON-INFRINGEMENT; AND (II) ANY WARRANTY ARISING OUT OF COURSE OF DEALING, USAGE, OR TRADE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM US OR ANY MATERIALS OR CONTENT AVAILABLE FROM US WILL CREATE ANY WARRANTY THAT IS NOT EXPRESSLY STATED IN THIS AGREEMENT. SMUD DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, RELATING TO ITS USE OF THE EQUIPMENT AND MAKES NO GUARANTEE REGARDING ENERGY SAVINGS OR PERFORMANCE OF THE EQUIPMENT.
- c. **Equipment Warranties.** THE EQUIPMENT IS SUBJECT TO THE WARRANTY(IES) TERMS AS ESTABLISHED BY THE EQUIPMENT MANUFACTURER(S). SMUD will ensure that all Equipment is operated within warranty parameters.
- d. **Indemnification.** You agree to indemnify, and hold SMUD, their officers, directors, employees and agents, harmless from and against any and all 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.

- e. **Our Assignment.** We may assign our rights and responsibilities (in whole or in part) under this Agreement without your consent, but we will provide you in advance of assignment with the contact information for the new party to whom we assign such rights and responsibilities. To avoid doubt, our obligations under this Agreement may be separated and assigned to different third parties. If an assignee (or multiple assignees, collectively) agree(s) in writing to assume all of our rights and obligations under this Agreement, we will have no further liability or obligation under this Agreement upon the effectiveness of such assignment(s).
- f. **Utility Incentive Payments.** You shall not cause or allow a disconnection of the Equipment from SMUD's electrical facilities, including because of non-payment of incentive payments from SMUD.
- g. **Non-Reliance for Medical Uses. If you are powering medical equipment using the Equipment, you are ineligible to participate in the Program.**
- h. **Authority to Sign.** You represent that you are the primary and rightful account holder of record with SMUD for the electrical service delivered to the Property. You represent that you possess the full right and authority to execute this Agreement on behalf of yourself and any other owners of the Property and Equipment.
- i. **Insurance.** You represent that you have and will maintain during the full Term, property and liability insurance (e.g., homeowner's insurance) that sufficiently covers damage to the Equipment.
- j. **Force Majeure.** Neither party shall be liable to the other party, nor be deemed to have breached this Agreement, for any failure or delay in performing any non-monetary obligation under this Agreement if such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of such party, including, without limitation, acts of God, flood, fire, earthquake, pandemic, extreme weather, explosion, governmental actions, war, terrorist threats or acts or other civil unrest, lock-outs, strikes or other labor disputes.
- k. **Eligible Equipment List.** Equipment that is eligible to participate in the Program are listed below. SMUD expressly reserves the right to amend the Eligible Equipment List at any time and for any reason without prior notice.
 - i. Tesla Powerwall 2 and associated communications equipment
 - ii. Tesla Powerwall+ and associated communications equipment
 - iii. Tesla Powerwall 3 and associated communications equipment
- l. **Equipment Installation.** Pursuant to Section 6, if you do not already have Eligible Equipment, you may separately arrange for some or all of the Equipment to be installed by a licensed contractor at your Property. You agree that SMUD is not responsible or liable for Equipment installation, operation, services, or service-related defects. You will contact the installation contractor of the Equipment for any operation, installation, or service-related issues.

13. Consent and Release for Data

- a. You agree that SMUD may access, use, and disclose your personal data to SMUD contractors and agents to effectuate the purpose of this Agreement, including data related to Equipment performance and usage, your electrical utility account information, usage history, and meter data, and for no other purposes. You agree to provide SMUD with available electrical design information about the Equipment, your Property, and other electrical hardware attached to your Property, including single-line diagrams and permits.
- b. You agree to grant SMUD the right, without restriction, to use all your data produced as a result of your participation in the Program for all legal purposes, including granting SMUD the right to share some data with SMUD's Service Provider solely for the purpose of meeting Program requirements.
- c. We take data privacy and security seriously, and all data access, use, and sharing is subject to the terms of our privacy policy (available at <https://www.smud.org/Corporate/Privacy-policy>) and applicable law. In addition to the specific types of information that we may disclose that are listed in paragraph (a) above, the other specific types of information we may disclose and the reasons for obtaining such information can be found in our privacy policy.