

GWP – Peak Savings Program – Residential & Small Commercial Customer Terms and Conditions

Thank you for your interest in participating in the Glendale Water & Power Peak Savings program (the “Program”). The Program is offered by the City of Glendale, through its utility department, Glendale Water & Power (collectively, “GWP”) through its contractor Franklin Energy Services, LLC and its subcontractor, AutoGrid, Inc (collectively, “Contractors”). These Terms of Use (these “Terms”) are a legal agreement between the undersigned customer (“You”), GWP and its Contractors governing Your participation in the Program.

BY CLICKING [“ACCEPT”] 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.

You certify that all information entered into this site for enrollment into the Program is accurate and complete. In order to qualify, You cannot be listed in the Medical Equipment Registry.

1. The Program.

- 1.1. *Program Term.* The Program is available until December 31, 2024, unless the program is extended by the Glendale City Council, in which case Your participation in the Program will continue without further notice to You until the You terminate Your participation from the Program, as provided herein. If the Program is not extended by the Glendale City Council, Your participation in the Program will terminate on December 31, 2024 without notice to You, unless Your participation is sooner terminated in accordance with Article 9 below.
- 1.2. *Changes.* GWP reserves the right, in its sole discretion, to modify or to discontinue the Program at any time.
- 1.3. *Devices.* By participating in the Program You hereby grant to GWP the right to remotely access and control one or more smart thermostats at the address You are enrolling (each, Your “Device”). 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 GWP to control that Device in connection with the Program. You further authorize GWP and its Contractors to obtain and share information about Devices used to participate in the Program (such as serial number and zip code) with Manufacturers in order to facilitate Your participation in the Program and validate Your compliance with Program requirements.
- 1.4. *Control.* As part of this Program, GWP will make changes to the temperature setpoint on Your Device without any manual intervention by You. At any time that You desire, You may override this temperature setpoint simply by turning Your Device to a different temperature or using the other methods enabled by the Device Manufacturer. Overriding the temperature set point may result in Your disqualification for Incentives offered to Program participants as described below.

2. Eligibility. This program is available to GWP electric customers only. In order to register for the Program, You agree to provide GWP information to verify Your eligibility for the Program. You agree that the information You provide to GWP in connection with the Program (“User Data”) will be true, accurate, current and complete. Eligibility requirements are listed at GWPPeakSavings.com. You understand that the Program is available until fully subscribed and that incentive amounts are subject to change without notice.

3. Incentives. In connection with the Program, GWP may offer certain rebates, offers, or other incentives (“Incentives”). GWP 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, GWP reserves the right to eliminate Incentives if You opt out of three (3) or more Events (“Events” as defined in the Program FAQs) in any twelve (12) month period.

4. **Your Information.** You authorize GWP to share information about Your account including Your name, street address, account number, electrical usage, Device and billing information with their approved Contractors hired to implement and measure the performance of the program. Customer data will be kept confidential by the Contractors and will not be used for any purpose other than implementation of the Program. By submitting User Data and any other data, materials, or information in connection with the Program, You are licensing such information to GWP and its Contractors for the purpose of providing the Program. In addition, You hereby authorize GWP and its Contractors to access Your information maintained by GWP and/or the Device Manufacturer solely in order for GWP and its Contractors to provide the Program and confirm Your eligibility. For example, You authorize GWP and its Contractors to obtain and share information about Devices used to participate in the Program (such as serial number and zip code) with Device Manufacturers in order to facilitate Your participation in the Program and validate Your compliance with Program requirements. You understand and agree that by authorizing GWP to control Your Device in connection with the Program, GWP may receive access to data from Your Device directly, including data collected from its sensors. For more information on the particular data that GWP and its Contractors will receive access to for this Program, please contact the Contractor at gwppeaksavings@franklinenergy.com. For the avoidance of doubt, notwithstanding anything to the contrary in these Terms, GWP retains its right to access and utilize Your Customer Data to provide You with utility service and manage its electrical system, independently from this Program.
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.** GWP is not responsible for costs associated with providing the systems necessary for You to participate in the Program, such as Devices or 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. GWP EXPRESSLY DISCLAIMS 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. GWP MAKES NO WARRANTIES THAT THE OPERATION OF THE PROGRAM WILL BE UNINTERRUPTED OR ERROR-FREE. GWP MAKES NO GUARANTEE OF AN UNINTERRUPTED SUPPLY OF POWER.
8. **Indemnification.** To the fullest extent permitted by applicable law, You agree to indemnify, and hold GWP, its officers, directors, employees, and agents (each, an “Indemnified Party”), 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. You have no obligation to indemnify an Indemnified Party to the extent of the sole negligence, or willful misconduct of such Indemnified Party.
9. **Limitation of Liability.**
 - 9.1. *Limitation of Liability.* YOU AGREE THAT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL GWP OR ITS CONTRACTORS BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, ARISING OUT OF YOUR PARTICIPATION IN THE PROGRAM, EVEN IF GWP HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IF YOU ARE DISSATISFIED WITH THE PROGRAM OR WITH ANY OF THESE TERMS, OR FEEL GWP HAS BREACHED THESE TERMS, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE PARTICIPATION IN THE PROGRAM. TO THE FULLEST EXTENT PROVIDED BY LAW, IN NO EVENT WILL THE COLLECTIVE LIABILITY OF GWP OR ITS CONTRACTORS TO YOU UNDER THESE TERMS (REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE) EXCEED \$150.
 - 9.2. *Exclusions.* 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,

INCLUDING LIABILITY FOR A PARTY'S FRAUD, WILLFUL INJURY TO THE PERSON OR PROPERTY OF ANOTHER, OR VIOLATION OF LAW, WHETHER WILFUL OR NEGLIGENT.

10. Termination.

- 10.1. *Termination By GWP.* GWP may terminate the Program, or 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.
- 10.2. *Your Termination.* You may terminate Your participation at any time and for any reason by sending an email to gwppeaksavings@franklinenergy.com.
- 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 California, without giving effect to any conflict of laws or principles that may require the application of the law of another jurisdiction
- 11.2. *Consent and Capacity.* You represent that You are over 18 years of age and have the necessary legal capacity to execute this agreement and that You are an authorized representative with authority to legally bind the account holder designated below. You represent that You have received the necessary consents and approvals from the owner(s) or occupant(s) of any premises that is participating in the Program. You are solely responsible for any failure to receive necessary consents and approvals for the installation of qualifying equipment, including Devices, within Your residence or qualifying property 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 GWP, Contractor, and You regarding the Program, and supersede and replace any prior agreements regarding the same. This is not a contract for utility service. Utility service provided to You by GWP remains subject to all GWP terms, conditions, rates, regulations, municipal codes, and policies.
- 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 GWP. Any purported assignment or delegation by You without the appropriate prior written consent of GWP 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 GWP 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 or the Program, please contact the Program implementer at gwppeaksavings@franklinenergy.com. Contract notices shall be sent to gwppeaksavings@franklinenergy.com with a copy to hgarcia@glendaleca.gov. We will communicate with You regarding this Program at the email address provided in the enrollment form.
- 11.7. By participating in this Program, You agree to receive emails regarding the Program from GWP or its Contractors at the email address provided for this Program. These emails may be sent by GWP or its Contractors. You understand that You may opt out of these emails at any time by utilizing the opt-out feature that will be included in such emails.