

Arizona Public Service Residential Battery Pilot Agreement
Between Powerwall Customer, and Tesla, Inc.

Your utility, Arizona Public Service (APS), has developed the Residential Battery Pilot (“**Residential Battery Pilot**”), to help to reduce stress on the electrical grid (the “**Grid**”) during times of high energy demand, by accessing distributed energy resources like Your Powerwall battery (“**Powerwall**”). Tesla, Inc. (“**Tesla**”) has agreed to support the Residential Battery Pilot, with Powerwall Customers who are interested in participating.

Arizona Public Service has also contracted with EnergyHub, Inc. (“**EnergyHub**”), to help administer the Residential Battery Pilot. *However, Tesla will be Your point of contact in relation to the Residential Battery Pilot, and will interface with Arizona Public Service and EnergyHub as needed.*

Thank You for agreeing to participate in the Residential Battery Pilot. This “**Agreement**” sets forth the terms and conditions of Your participation in the Residential Battery Pilot, as between You and Tesla.

Please review and sign this Agreement and the EnergyHub Addendum, and also fill out the attached application.

Customer: (printed) _____ (“**You**” or the “**Customer**”)

Utility: Arizona Public Service (APS) (“**Your Utility**”)

Utility Account Number: _____

Address _____ **for** _____ **Installation:**

____ (“**Home**”)

Equipment at Customer’s Home	Quantity
Tesla Powerwall 2	

- 1. Pilot Description:** Customer agrees to allow Tesla to share data collected from the Customer’s Powerwall with the Utility and EnergyHub, including but not limited to data related to Your identity, Your energy usage and energy production, Your participation in Events (defined below), Your utility account, Your electric bill, and operational data about Your Devices (collectively, “**Pilot Data**”). The Utility and EnergyHub will use the Pilot Data to (a) determine Your eligibility for the Residential Battery Pilot and, (b) during the Pilot Period, to carry out the Residential Battery Pilot, which includes learning about battery performance in a variety of conditions and how batteries may create value for Customers through improved management of energy and demand at their residence.

For providing energy and data from your Powerwall during approximately [100] peak events (“**Events**”) per year, the Pilot incentive (“**Customer Incentive**”) will be payable directly from the Utility to you the Customer.

The Customer Incentive is \$1,250 per home, plus \$500/kW (installed Powerwall capacity) up to a max of \$2,500. The total available incentive for pilot participation is \$3,750.

Your Utility will use good faith efforts to send you the Customer Incentive in the form of a check within 4 weeks after the date that the Utility grants permission to operate your Powerwall.

Customer is responsible for any income taxes that may apply related to amounts received under the Residential Battery Pilot. Your Utility recommends consulting your tax advisor for any specific tax questions or concerns.

More information about the Residential Battery Pilot can be found on the Residential Battery Pilot page: <http://www.chargingrewards.com/apsbattery>

2. Eligibility and Enrollment in the Residential Battery Pilot: The Residential Battery Pilot is open to APS residential service Customers who meet the following criteria:

- are at least 18 years of age,
- have reliable internet access,
- are the owner of the residence, or receive the homeowner’s signed consent on this Agreement,
- have one or more Powerwalls, which must be connecting to the electric grid for the first time and have an Interconnection Application submitted to your Utility after [insert date], and
- have an active electric account with Your Utility and be on a Time of Use (TOU) or a grandfathered rate and solar rate rider.

Upon receiving this Agreement signed by You, Tesla will submit Your materials to EnergyHub and Your Utility. EnergyHub and Your Utility may accept or reject your application in their sole discretion.

3. Term: The term of this agreement will begin on the date that Your Utility grants you permission to operate in the Residential Battery Pilot, and continue until the third anniversary of that date (the “**Term**”).

4. Privacy: EnergyHub will assist in implementing the Residential Battery Pilot as a vendor to Your Utility. By submitting an application to enroll, You authorize Tesla, EnergyHub and Your Utility (a) to collect, review, analyze, and exchange the Pilot Data, for the purposes as set forth in Section 1, as well as for the recipient to fulfil any obligations under the Residential Battery Pilot and applicable law; (b) to automatically signal Your Powerwalls to take part in Events for the Residential Battery Pilot or for general system testing purposes; and (c) to summarize the results of the Residential Battery Pilot in publicly-available studies, provided that any Pilot Data included in such studies will be aggregated or anonymized such that You are not individually identifiable.

Except as otherwise stated above, EnergyHub, Tesla and Your Utility will protect Your personal information and usage data consistent with this Agreement and each company's then-current privacy policy.

- Tesla's privacy policy is located at: <https://www.tesla.com/about/legal#privacy-statement>
- EnergyHub's privacy policy is located at: <http://www.energyhub.com/privacy-policy>
- Arizona Public Service privacy policy is located at: <https://www.aps.com/en/Utility/Regulatory-and-Legal/Privacy-Policy>

- 5. Powerwall Communication:** You acknowledge that the Powerwall will not be fully accessible by Tesla without: (a) a working and reliable Wi-Fi network in Your Home that is positioned to communicate reliably with each Powerwall; (b) a user account for Your Powerwall system; (c) other system elements that may be specified as required by the manufacturer of any of the equipment (*i.e.*, smart phone apps). It is Your responsibility to ensure that You have all required system elements and that such elements are compatible and properly configured.
- 6. Lack of Powerwall Communication:** If Tesla is unable to access Your Powerwall and such access is not restored within a reasonable time not to exceed 3 days after notice by Tesla, Tesla may consider it a default by You and terminate Your participation in the Pilot, in accordance with Section 10.
- 7. Powerwall Operation:** Under the Residential Battery Pilot, You will still have access to any existing Powerwall operating modes, including backup. However, in the time before and during Events, these operating modes will be overridden to allow the Powerwall to charge and discharge in order to provide services to the Grid. As soon as the Event completes, the Powerwall will return to its user-selected operating mode. The Powerwall will be limited to one full charge/discharge cycle per Event.

Storm Watch will still be active throughout the Residential Battery Pilot, and in the event of severe storms, it will take priority over participation in Events, such that the Powerwall will attempt to store energy for backup. However, if outages occur when Storm Watch is inactive or if Storm Watch is disabled, the duration of backup power may be reduced due to participation in this Residential Battery Pilot. Whether or not Storm Watch is running, the Powerwall can be depleted at any time—accordingly you should not rely exclusively on the Powerwall to power life-supporting equipment.

- 8. Warranty and Maintenance:** Participation in the Residential Battery Pilot does not modify or extend the Manufacturer's Limited Warranty ("**Limited Warranty**") applicable to Your Powerwall. Accordingly, it is possible that participating in the Residential Battery Pilot will reduce Your warranty coverage.
- 9. Customer Termination:** You may withdraw from the Residential Battery Pilot for any reason, at any time. Once you are accepted as a Participant in the Pilot but have not yet received the Pilot incentive, you may withdraw by contacting EnergyHub using the contact information provided above. Withdrawal will not affect the other services provided by Tesla to you. By withdrawing, you may render yourself ineligible to receive the Incentive, and

participate in this Pilot in the future. If You have questions or concerns about unenrolling from the Residential Battery Pilot, please contact aps@energyhub.net.

- 10. Tesla Termination:** Tesla may terminate this Agreement and/or Your participation in the Residential Battery Pilot, as a result of unavailability of approvals or other actions needed from Your Utility and its regulators. In the event of such termination, Tesla will provide notice to You by email, and EnergyHub will provide notice at www.energyhub.com. Termination will be effective when communicated to You via email or the Tesla App.
- 11. Default.** In addition to Section 9, Tesla may (on its own or on behalf of EnergyHub or APS) terminate Your participation in the Residential Battery Pilot and Customer Incentive at any time and without liability upon notice to You if (a) You violate this Agreement or applicable law, (b) You do not comply with a reasonable request from Tesla in connection with this Residential Battery Pilot, (c) Your Utility or EnergyHub determines that You're ineligible for the Residential Battery Pilot, (d) You do not maintain a continuous connection to Your enrolled Powerwall(s), or (e) if You enroll in a conflicting demand response or similar program. Termination will be effective when communicated to You via email or the Tesla App.
- 12. Changes in Your Electricity Costs.** Neither Tesla, APS, nor EnergyHub are responsible for any changes in Your electricity costs during the Residential Battery Pilot.
- 13. Information.** You represent and warrant to Tesla that the information you provide while applying for and during the course of the Residential Battery Pilot is accurate and complete.
- 14. Liability:** To the fullest extent allowed by law, except and to the extent of claims covered by the Limited Warranty, neither Tesla, APS, nor EnergyHub shall be liable for any direct, indirect, special or consequential damages to any persons or property resulting from or arising out of any use, repair, delay in repairing, replacement of, or modification to any of the Powerwalls. You hereby agree that Your sole remedy is the repair or replacement of the Powerwall as provided by the Limited Warranty. In no instance shall Tesla or EnergyHub be liable for any damages in excess of \$10,000.
- 15. Electronic Communication:** As a participant in the Residential Battery Pilot, You consent to receive communications from Tesla electronically.
- 16. Changes to the Terms.** Tesla may modify this Agreement at any time by providing You with a notice of a proposed amendment to this Agreement, at the most current email address that Tesla has on record for You. Unless you provide notice to Tesla within 10 days of your objection to Tesla's proposed amendment, this Agreement will be deemed amended by such amendment. In the event that You provide timely notice of Your objection to such amendment, this Agreement shall be deemed terminated upon such date that You provide such notice to Tesla.

17. Agreement to Arbitrate. Please carefully read this provision, which applies to any dispute between you and Tesla, Inc. and its affiliates (together “Tesla”).

If you have a concern or dispute, please send a written notice describing it and your desired resolution to resolutions@tesla.com.

If not resolved within 60 days, you agree that any dispute arising out of or relating to any aspect of the relationship between you and Tesla will not be decided by a judge or jury but instead by a single arbitrator in an arbitration administered by the American Arbitration Association (AAA) under its Consumer Arbitration Rules. This includes claims arising before this Agreement, such as claims related to statements about our products.

We will pay all AAA fees for any arbitration, which will be held in the city or county of your residence. To learn more about the Rules and how to begin an arbitration, you may call any AAA office or go to www.adr.org.

The arbitrator may only resolve disputes between you and Tesla, and may not consolidate claims without the consent of all parties. The arbitrator cannot hear class or representative claims or requests for relief on behalf of others purchasing or leasing Tesla products. In other words, you and Tesla may bring claims against the other only in your or its individual capacity and not as a plaintiff or class member in any class or representative action. If a court or arbitrator decides that any part of this agreement to arbitrate cannot be enforced as to a particular claim for relief or remedy (such as injunctive or declaratory relief), then that claim or remedy (and only that claim or remedy) shall be severed and must be brought in court and any other claims must be arbitrated.

If you prefer, you may instead take an individual dispute to small claims court.

You may opt out of arbitration within 30 days after signing this Agreement by sending a letter to: Tesla, Inc.; P.O. Box 15430; Fremont, CA 94539-7970, stating your name, product and intent to opt out of the arbitration provision. If you do not opt out, this agreement to arbitrate overrides any different arbitration agreement between us, including any arbitration agreement in a lease or finance contract.



Addendum

This EnergyHub Addendum (the “Addendum”) is entered into by and between you the Powerwall Customer (“you”) and EnergyHub as an exhibit to and a part of that certain Arizona Public Service Residential Battery Pilot Agreement (the “Agreement”), entered into by and between you and Tesla Inc. as of the date set forth above. Unless otherwise defined herein, all capitalized terms will have the meanings ascribed to them in the Agreement.

- 1. Arbitration (EnergyHub; Your Utility).** If you and EnergyHub or you and Your Utility do not resolve any dispute by informal negotiation, any other effort to resolve the dispute will be conducted exclusively by binding individual arbitration governed by the Federal Arbitration Act (“FAA”). You are giving up the right to litigate (or participate in as a party or class member) all such disputes in court before a judge or jury. Instead, all disputes will be resolved on an individual basis before a neutral arbitrator, whose decision will be final except for a limited right of appeal under the FAA. Any court with jurisdiction over the parties may enforce the arbitrator’s award.
- 2. Indemnification:** You agree to indemnify and hold harmless EnergyHub and APS (and each of their respective affiliates, agents, directors, officers, and employees) for any injury or damage to any persons or property, arising from access and use of the Powerwalls caused by any breach of this Agreement by You, by the negligence of You or of Your household members, agents, employees, tenants, licensees, invitees, tenant’s invitees, or independent contractors.

CUSTOMER

Date: _____