

## **OPPD POWER PANEL TERMS OF USE**

Omaha Public Power District, a public corporation and political subdivision of the state of Nebraska, together with its subsidiaries and affiliates (collectively, "OPPD") provide an online platform in which you can provide study and survey responses in exchange for certain promotional opportunities, subject to the following terms and conditions (the "Terms of Use"), which may be updated by OPPD from time to time without notice to you. These Terms of Use constitute a binding agreement between OPPD and you governing your use of the website [www.oppdpowerpanel.com](http://www.oppdpowerpanel.com) (the "Site"). Please read these Terms of Use carefully. By using and/or visiting the Site, you signify your assent to both these Terms of Use and the OPPD Power Panel Privacy Statement, which is specifically incorporated into these Terms of Use by this reference. You are only authorized to use the Site and the services and promotions associated therewith (the "Service") because of your foregoing agreement to abide by these Terms of Use. If you do not agree to these Terms of Use, please do not use the Site.

### **1. Eligibility**

You hereby represent and warrant that you are a natural person (corporate entities and similar organizations are not eligible to use the Site for any purpose) and are fully able and competent to enter into the terms, conditions, obligations, affirmations, representations and warranties set forth in these Terms of Use and to abide by and comply with these Terms of Use. Further, you represent and warrant that you are a resident of the State of Nebraska. Use of, or participation in, the community or the surveys and studies hosted on the Site is VOID WHERE PROHIBITED and is expressly prohibited to residents of any state that prohibits the activities that occur on the Site. Any participation in the Site or the Service by a user residing or located in one of the foregoing states (other than Nebraska) shall be void. OPPD reserves the right to require proof of residence prior to distributing any incentive.

OPPD, in its sole discretion, may disqualify you from the Service, refuse to provide incentives to you and require you to return any incentives, if you engage in conduct OPPD deems, in its sole discretion, to be improper, in violation of these Terms of Use, unfair or otherwise adverse to the operation of the Site or the Service, or in any way detrimental to other users, or deemed to be contrary to applicable laws. Improper conduct includes, but is not limited to: falsifying personal information required to use the Site or the Service or to receive an incentive; violating any of these Terms of Use; accumulating incentives or providing survey or study responses through unauthorized methods such as automated scripts or other automated means; tampering with the administration of the Site or the Service or trying in any way to tamper with the computer programs associated with the Site or the Service; obtaining other users' information and spamming other users; and abusing the Site or the Service in any way. You further acknowledge that the forfeiture and/or return of any incentive shall in no way prevent OPPD from pursuing criminal or civil proceedings in connection with such conduct.

***THE SERVICE AND THE SITE MAY NOT BE USED FOR ANY FORM OF GAMBLING OR WAGERING.***

You are not required to wager or otherwise provide anything of value in order to receive an incentive through the Site. Employees, agents, and representatives of OPPD and its affiliates are not eligible to receive incentives, nor are parents, siblings, or children of any such employees, agents or representatives, or any person with whom any such employees, agents or representatives are domiciled.

## **2. Enrollment and Participation**

Recruits and Participants (both hereinafter defined) are eligible for certain separate incentive drawings, as more particularly described below. Eligibility for incentives shall run from July, 22, 2014, through March 31, 2020 (the "Promotions Period"). You become a "Recruit" by completing the registration survey (by accurately providing the requested information) and subsequently opting-in for the Service through the link sent to you in a confirmation e-mail. Once you have become a Recruit, you may be invited to complete certain studies through the Site. The studies can be found either by following the link in the invitation sent to you or by locating on the Site the study referenced in such invitation. After you are a Recruit, you become a "Participant" by completing a study to which you were invited through the Site (by providing valid responses to the relevant study questions).

If you become a Recruit within the Promotions Period, you receive one (1) entry into any subsequent Recruit Incentive Drawings (hereinafter defined). If, after becoming a Recruit, you accurately and truthfully complete within the Promotions Period a survey to which you were invited through the Site, you receive one (1) entry into any subsequent Participant Incentive Drawings (hereinafter defined). **Completion of a survey is not required to receive an entry into a Participant Incentive Drawing.** Any Recruit invited through the Site to complete a survey may alternatively receive an entry into subsequent Participant Incentive Drawings by using the alternate method of entry described in Section 3 below. Recruits are selected at random to participate in the relevant surveys during the Promotions Period, and a Recruit may be chosen to participate in multiple surveys (the completion of each of which entitles such Recruit to a separate entry into any subsequent Participant Incentive Drawings).

***THERE IS NO PURCHASE NECESSARY TO BE ELIGIBLE FOR A RECRUIT INCENTIVE DRAWING AND / OR A PARTICIPANT INCENTIVE DRAWING OR TO RECEIVE AN INCENTIVE IN EITHER A RECRUIT INCENTIVE DRAWING OR A PARTICIPANT INCENTIVE DRAWING.***

## **3. Alternate Means of Entry**

Instead of completing the relevant study offered to a Recruit in order to obtain an entry into subsequent Participant Incentive Drawings, such Recruit may receive one (1) entry into the Participant Incentive Drawing for each study offered to such Recruit by legibly printing the Recruit's name, street address, city, state, zip code, telephone number, complete email address, and the path to the study for which the Recruit was selected (URL address) on a 3 x 5 inch (or 7.5 x 12.5 cm) piece of paper and mailing it to Vision Critical Communications Inc., OPPD Power Panel, 505 Fifth Avenue, 18th Floor, New York, NY 10017 US.

Please note the URL address of the relevant survey is necessary to identify the specific

Participant Incentive Drawing being entered. Mail-in entries that do not include the URL address will not be valid.

#### **4. Incentives**

Incentive recipients will be selected at random in periodic incentive drawings. There will be separate drawings for incentives available to Recruits ("Recruit Incentive Drawings") and drawings for incentives available to Participants ("Participant Incentive Drawings"). Recruit Incentive Drawings will be made from a pool of all eligible Recruits and will be conducted within two (2) calendar months of the end of each third full calendar month during the Promotions Period, starting with the end of October of 2014. Participant Incentive Drawings will be made from a pool of all eligible Participants and will be conducted within ten (10) business days of the end of each full calendar month in the Promotions Period, starting with the end of August of 2014. In order to be eligible for a Recruit Incentive Drawing or Participant Incentive Drawing, you must have completed the steps to become a Recruit or a Participant (as appropriate) by 5 o'clock p.m. central time on the last business day of the relevant calendar month (or third calendar month, as appropriate). (In the case of Participants opting for the alternate means of entry under Section 3 above, the piece of paper containing all of the relevant information must be postmarked by the last business day of the relevant calendar month.)

Each Recruit Incentive Drawing will have a top incentive of a \$200 gift card and two secondary incentives, each consisting of a \$75 gift card. Each Participant Incentive Drawing will have three top incentives, each consisting of a \$100 gift card. The odds of receiving an incentive depend on the number of eligible Recruits or Participants, as the case may be, and the odds will be the same whether an entry is the result of completion of a survey or completion of the alternate means of entry under Section 3 above.

Incentives will be distributed only after OPPD (or its employee(s) or agent(s)) has verified that all selected Recruits or Participants have complied with the relevant incentive requirements. Each incentive must be accepted as distributed; no substitution, transfer, conversion, or assignment of incentives will be allowed, except in the case of OPPD (which may, in its sole discretion, substitute an incentive of comparable or greater value). OPPD will notify selected Recruits and Participants through the e-mail address provided by such Recruit or Participant within fifteen (15) business days from the date of the relevant Recruit Incentive Drawing or Participant Incentive Drawing. Recipients will have five (5) business days from when the notification is sent to accept the incentive by responding to the e-mailed notification.

OPPD is not responsible for (and shall not be liable for) late, lost, misdirected, or unsuccessful efforts to notify a selected Recruit or Participant. If a selected Recruit or Participant cannot be contacted or fails to respond within the allotted time, OPPD reserves the right to void such Recruit's or Participant's entry and select another eligible Recruit or Participant (as applicable) for the relevant incentive; provided that, in the event a selected Recruit or Participant (as applicable) has not timely accepted the incentive after attempts have been made to contact the initial Recruit or Participant (as applicable) and two (2) alternate Recruits or Participants (as applicable), OPPD may elect not to distribute the relevant incentive to any Recruit or Participant.

Before receiving their incentives, selected Recruits and Participants may be requested to return via e-mail or regular mail an affidavit of eligibility and appropriate tax forms or to otherwise provide verification information, as OPPD may request in its sole discretion. By completing, and returning the affidavit or other requested forms, the Recruit or Participant: (i) confirms compliance with these Terms of Use; and (ii) releases and forever discharges OPPD, its affiliates and subsidiaries and its advertising and promotional agencies from all claims, demands, damages, actions and causes of action arising or to arise by reason of the acceptance or use of the relevant incentive. Failure to comply with this requirement can result in disqualification and forfeiture of any incentive received.

In the event of a dispute regarding the identity of the person submitting an entry or survey response, the entry or response will be deemed submitted by the person under whose contact information the response was submitted, or if the identity of the person submitting the contact information itself is contested, the name in which the email address on file was registered with the email service provider.

Liability for any applicable taxes imposed on any incentive won through the Site or the Service is the sole responsibility of the recipient of such incentive.

***THE SITE IS FOR ENTERTAINMENT AND PROMOTIONAL PURPOSES ONLY AND MAY NOT BE USED IN CONNECTION WITH ANY FORM OF GAMBLING OR WAGERING.***

## **5. Your Account and Information**

If you use this Site, you are responsible for maintaining the confidentiality of your account and password for the Site and for restricting access to your computer, and you agree to accept responsibility for all activities that occur under your account, password, or contact information. If you are under 18 years of age, you may not use the Site. OPPD reserves the right, in its sole discretion, to refuse service, terminate accounts, or remove or edit content.

## **6. Release and Limitation of Liability**

You will not hold OPPD, its officers, directors, employees or agents responsible for other users' actions or inactions, including their survey responses or content posted on the Site.

If you have a dispute with another user, you release OPPD (and its officers, directors, agents, subsidiaries, joint venturers and employees) from claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with such dispute. You further acknowledge that this waiver is an essential and material term of these Terms of Use, and that without such waiver, OPPD would not have entered into these Terms of Use.

You will not hold OPPD liable to you or any other user for any special, indirect, incidental, consequential or punitive damages pursuant to these Terms of Use, however caused and under whatever theory of liability, including but not limited to, loss of profits, loss of business opportunities or loss of goodwill or reputation, even if OPPD has been advised of or should have been aware of the possibility of such damages.

This Site is offered by OPPD and is intended for use only by residents of Nebraska. OPPD makes no representations that the Site is appropriate or available for use in other jurisdictions. Those who access or use the Site from other jurisdictions do so at their own choice and are solely responsible to comply with local law.

Notwithstanding any other provision of these Terms of Use, in no event will OPPD's liability to you for any action or claim related to the services provided under these Terms of Use, whether based on contract, tort, negligence or any other theory of liability, exceed \$200.

## **7. Indemnity**

You agree to defend, hold harmless and indemnify OPPD, its officers, directors, employees and agents, from and against any and all losses, costs, expenses, damages or other liabilities (including reasonable attorneys' fees) incurred by OPPD from and against any cost, liability, loss, damage, cause of action, claim, suit, proceeding, demand or action (a) brought by a third party against OPPD in connection with your use of the Site or the use of the Site through your account or contact information; or (b) resulting from: (i) your use of the Site; (ii) your decision to supply credit information via the Site, including personal financial information; (iii) your decision to submit postings and accept offers from other users; (iv) any breach of contract or other claims made by users with which you conducted business through the Site; (v) your breach of any provision of these Terms of Use; (vi) any liability arising from the tax treatment of incentives; (vii) any negligent or intentional wrongdoing by any user; (viii) any act or omission of yours; and/or (ix) your obligations to another user. This defense and indemnification will survive these Terms of Use and your use of the Site.

## **8. Warranty Disclaimer**

YOU AGREE THAT YOUR USE OF THIS SITE AND THE SERVICE SHALL BE AT YOUR SOLE RISK. THIS SITE AND THE SERVICE PROVIDED BY OPPD ARE PROVIDED "AS IS," AS AVAILABLE, AND WITHOUT ANY WARRANTIES OR CONDITIONS (EXPRESS OR IMPLIED, ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OR TRADE). OPPD MAKES NO REPRESENTATIONS OR WARRANTIES, OF ANY KIND, EITHER EXPRESS OR IMPLIED, AS TO THE QUALITY, IDENTITY OR RELIABILITY OF ANY THIRD PARTY, OR AS TO THE ACCURACY OF THE POSTINGS MADE ON THE SITE BY ANY THIRD PARTY. OPPD CANNOT GUARANTEE CONTINUOUS OR SECURE ACCESS TO THE SITE OR SERVICE OR THAT THE SITE OR SERVICE WILL MEET YOUR REQUIREMENTS. OPERATION OF THE SITE MAY BE AFFECTED BY FACTORS OUTSIDE OF OPPD'S CONTROL. TO THE FULLEST EXTENT LEGALLY PERMITTED, OPPD, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS DISCLAIM AND EXCLUDE ALL IMPLIED WARRANTIES, TERMS AND CONDITIONS, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, WHICH YOU RECEIVE FROM OPPD OR THROUGH THE USE OF OPPD'S SITE OR SERVICE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS OF USE.

## **9. Confidentiality**

(a) "Confidential Information" shall include, without limitation, any non-public information, technical data, or know-how, including, without limitation, that which relates to: (i) research, product plans, pricing, services, personnel, markets, trade secrets, data compilations, processes, designs, drawings, engineering, hardware configuration information, marketing or finances; (ii) any OPPD customer data; and (iii) any details relating to the Site or the Service, including study or survey questions, the provisions in these Terms of Use, and any topics addressed herein. Notwithstanding the foregoing, Confidential Information does not include information, technical data, or know-how that is: (a) in the public domain or becomes available to the public and not as a result of the act or omission of the receiving party; (b) without restriction on disclosure, rightfully obtained by the receiving party from a third party; (c) without restriction on disclosure, lawfully in the possession of the receiving party at the time of disclosure; or (d) approved for release by explicit written authorization of OPPD.

(b) You agree to take all appropriate action to ensure the confidentiality and security of OPPD's Confidential Information. Without limiting the generality of the foregoing, you agree that you: (i) shall maintain OPPD's Confidential Information in the strictest confidence; (ii) shall not disclose, display, publish, transmit, or otherwise make available such Confidential Information or take the benefit thereof, in whole or in part; and (iii) shall not copy, duplicate, replicate, transform, or reproduce such Confidential Information. Notwithstanding anything to the contrary in this section, you shall be liable to OPPD for damages resulting from disclosure of any Confidential Information required by law, regulation or valid court order; provided that prior written notice is provided to OPPD sufficiently in advance of such required disclosure to allow OPPD to respond and take reasonable and lawful action to avoid and/or minimize the degree of such disclosure or seek appropriate protective orders.

## **10. Intellectual Property**

(a) When you submit content and/or information to the Site, you grant OPPD a non-exclusive, worldwide, perpetual, irrevocable, royalty-free, sublicenseable and transferable license to use, reproduce, distribute, prepare derivative works of, display and perform the content in connection with the Site, in any media known now or in the future, subject to the terms of the OPPD Power Panel Privacy Statement.

Subject to and conditioned on compliance with these Terms of Use, OPPD grants you a limited license to access and to make personal use of the Site for the purpose of accessing and participating in the surveys and promotional contests hosted on the Site. Such limited license does not include any resale or commercial use of the Site or its contents; any collection and use of any product listings, descriptions, or prices; any derivative use of this Site or its contents; any downloading or copying of account information for the benefit of another service; or any use of data mining, robots, or similar data-gathering and extraction tools.

You cannot and must not sell, reproduce, distribute, modify, display, publicly perform, prepare derivative works based on, repost or otherwise use any content found on the Site in any way for any public or commercial purpose without OPPD's prior written consent or the consent of the rights holder. Unless you are otherwise lawfully entitled to do so, you cannot and must not use any content found on the Site or any other website, in a networked computer environment, or in

any medium, for any purpose except your own internal viewing. You agree that you will not attempt to reverse engineer or attempt to interfere with the operation of any part of the Site unless expressly permitted by law.

You may not frame or utilize framing techniques to enclose any trademark, logo, or other proprietary information (including images, text, page layout, or form) of OPPD without the express written consent of OPPD. You may not use any meta tags or any other "hidden text" utilizing OPPD's name or trademarks without the express written consent of OPPD. Any unauthorized use terminates the permission or license granted by OPPD.

The Site or any portion thereof may not be reproduced, duplicated, copied, sold, resold, visited or otherwise exploited for any commercial purpose that is not expressly permitted by OPPD, in writing.

(b) OPPD and its licensors retain all right, title and interest in and to all patent rights, inventions, copyrights, know-how and trade secrets relating to the Site and the Service. The OPPD logo and name are trademarks of OPPD and may be registered in certain jurisdictions. All other product names, company names, marks, logos and symbols on the Site may be the trademarks of their respective owners. Except as expressly stated above, nothing in these Terms of Use confers any license under any of OPPD's or any third party's intellectual property rights, whether by estoppel, implication or otherwise.

(c) Please report problems, offensive or infringing content, and policy violations to OPPD. OPPD wants to make sure that the content on the Site does not infringe upon the copyright, trademark or other rights of third parties. If you believe that your rights have been violated, please notify OPPD using the contact information below, and OPPD will investigate.

## **11. Applicable Law and Venue**

These Terms of Use are governed in all respects by the laws of the State of Nebraska without giving effect to any principle that may provide for the application of the law of another jurisdiction. You agree that any claim or dispute you may have against OPPD must be resolved by a court located in Douglas County, Nebraska. You hereby submit to the personal jurisdiction of the courts located within Douglas County, Nebraska, for the purpose of litigating all such claims or disputes.

## **12. Termination**

These Terms of Use shall become effective upon your acceptance or your use of the Site and shall continue until terminated by OPPD or you as provided for under the terms of this section. Unless otherwise agreed to in writing between the parties, either party may terminate the Agreement at any time upon notice to the other party. In such event, (i) your account and access to the Site shall be terminated; and (ii) you shall become ineligible to receive any incentives distributed in connection with the Site.

When you terminate these Terms of Use, you may no longer have access to data, messages, files and other material you keep on the Site. The material may be deleted along with all your previous posts and entries.

### **13. Site Privacy Policy**

The OPPD Power Panel Privacy Statement posted on the Site is a part of these Terms of Use and provides additional terms and conditions related to specific services offered on this Site. OPPD reserves the right to change the OPPD Power Panel Privacy Statement. Changes to the OPPD Power Panel Privacy Statement shall take effect when OPPD posts them to the Site. When using services on the Site, you are subject to all posted policies and rules applicable to the services you use. All such policies are expressly incorporated into these Terms of Use.

### **15. Force Majeure**

Except for any obligations owed to any third parties, neither you nor OPPD shall be responsible for the failure to perform or any delay in performance of any obligation hereunder due to labor disturbances, accidents, fires, floods, telecommunications or Internet failures, strikes, wars, riots, rebellions, blockades, acts of government, governmental requirements and regulations or restrictions imposed by law or any other similar conditions beyond the reasonable control of such party. The time for performance of such party shall be extended by the period of such delay.

### **16. General**

You agree that the Site shall be deemed solely based in Nebraska and that the Site shall be deemed a passive website that does not give rise to personal jurisdiction over OPPD, either specific or general, in jurisdictions other than Nebraska. OPPD may amend these Terms of Use at any time and in OPPD's sole discretion by posting the revised terms on the Site. Unless otherwise stated in such revision, the revised terms will take effect when they are posted. You are responsible for reviewing the notice and any changes. You can review the most current version of these Terms of Use at any time at:

[https://www.oppdpowerpanel.com/MediaServer/20/documents/OPPD%20Power%20Panel%20Terms%20of%20Use%20March%202019%20-%20March%202020%20final\\_\\_\\_\\_.pdf](https://www.oppdpowerpanel.com/MediaServer/20/documents/OPPD%20Power%20Panel%20Terms%20of%20Use%20March%202019%20-%20March%202020%20final____.pdf). Your continued use of the Site and the Service following changes to these Terms of Use will constitute your acceptance of changes or modifications to these Terms of Use. If you do not agree to any changes to these Terms of Use, do not continue to use the Site or the Service.

These Terms of Use set forth the entire understanding and agreement between you and OPPD with respect to the subject matter of these Terms of Use. The following sections shall survive any termination of these Terms of Use: 6, 7, 8, 9, 10, and 11.

You are responsible for compliance with applicable local laws, keeping in mind that access to the content of this Site may not be legal for or by certain persons or in certain localities. OPPD will not be considered to have modified or waived any of its rights or remedies under these Terms of Use unless the modification or waiver is in writing and signed by an authorized representative of OPPD. No delay or omission by OPPD in exercising its rights or remedies will impair OPPD's rights or be construed as a waiver. Any single or partial exercise of a right or remedy will not preclude further exercise of any other right or remedy. If any part of these Terms of Use is held to be unenforceable, the unenforceable part will be given effect to the greatest extent possible, and the remainder will remain in full force and effect. Nothing in these Terms of Use or related policies should be deemed to confer rights or benefits on third parties.



You will not transfer, assign or delegate your rights or obligations (including your account through the Site) under these Terms of Use to anyone without OPPD's express written permission, and any attempt to do so will be null and void. OPPD may assign these Terms of Use without restriction.

You may find on the Site links to other websites. You acknowledge and agree that OPPD is not responsible or liable for: (i) the availability or accuracy of such websites or resources; or (ii) the content, advertising or products on or available from such websites or resources. The inclusion of any link on the Site does not imply that OPPD endorses the linked website. You use the links at your own risk and expressly relieve OPPD from any and all liability arising from your use of any third-party website.

You shall be solely responsible for your own entries and all content you post on the Site, as well as the consequences of posting or publishing entries or content. When uploading entries or comments to the Site, you affirm, represent and/or warrant that: you own or have the necessary licenses, rights, consents and permissions to use and authorize OPPD to use all patent, trademark, trade secret, copyright or other proprietary rights in and to any and all of your entries of content, to enable inclusion and use of your entries and content in the manner contemplated on the Site and in these Terms of Use.

The boldface paragraph headings in these Terms of Use are included for ease of reference only and have no binding effect. These Terms of Use and all policies and documents referenced in these Terms of Use comprise the entire agreement between you and OPPD with respect to the use of this Site and the Service and supersede all prior agreements between the parties regarding the subject matter contained herein as well as any conflicting or inconsistent terms in any websites that link to or are linked from the Site.