

# SMARTREWARDS LOYALTY PROGRAM TERMS AND CONDITIONS

**Effective Date: March 5, 2025**

**To download and/or print these SmartRewards Loyalty Program Terms and Conditions (“Loyalty Program Terms”), click [here](#) [LINK].**

These Loyalty Program Terms constitute a binding agreement between you and EG America, LLC (together with its affiliates, successors, assigns, and subsidiaries, referred to collectively herein as “EG America”, “Company”, “we”, or “us” or “our”). Please read them carefully before using the SmartRewards Loyalty Program (the “Loyalty Program”).

These Loyalty Program Terms affect your legal rights and obligations and govern your use of the Loyalty Program, are legally binding, limit our liability to you, require you to indemnify us, and require you to resolve any disputes through individual arbitration.

BY ACCESSING AND/OR USING THE LOYALTY PROGRAM, YOU ARE INDICATING THAT YOU HAVE READ AND UNDERSTAND THESE LOYALTY PROGRAM TERMS, AND THAT YOU AGREE TO COMPLY WITH AND BE LEGALLY BOUND BY: (A) SUCH TERMS; (B) OUR TERMS OF USE (OUR “TERMS OF USE”) [LINK]; AND, IF APPLICABLE (C) THE TERMS AND CONDITIONS OF NATIONAL PAYMENT CARD ASSOCIATION, D/B/A ZIPLINE, AVAILABLE HERE [LINK]. FOR A DESCRIPTION OF OUR DATA PRACTICES, PLEASE SEE OUR PRIVACY NOTICE [LINK].

By accessing and/or using the Loyalty Program, you also represent and warrant that you are sixteen (16) years of age or older, have a legal residence in the United States. If you are between the ages of sixteen (16) and eighteen (18), you may create an account only under the supervision of a parent or legal guardian who has read, understood and agreed, on your behalf and on his/her own behalf to be bound by these Loyalty Program Terms.

Any terms not defined herein shall have the meaning set forth in our Terms of Service [LINK].

YOUR ACCESS TO AND USE OF THE LOYALTY PROGRAM IS CONDITIONED ON YOUR ACCEPTANCE OF AND COMPLIANCE WITH THESE LOYALTY PROGRAM TERMS. IF YOU DO NOT AGREE TO THESE LOYALTY PROGRAM TERMS, YOU ARE NOT AUTHORIZED TO USE THE LOYALTY PROGRAM, SO DO NOT ACCESS OR USE THE LOYALTY PROGRAM AND UNINSTALL THE SMARTREWARDS LOYALTY APP (“App”).

**NOTE: THESE LOYALTY PROGRAM TERMS CONTAIN A BINDING ARBITRATION PROVISION, CLASS ACTION WAIVER, AND JURY TRIAL WAIVER THAT AFFECT YOUR RIGHTS REGARDING HOW TO RESOLVE DISPUTES WITH US. PLEASE READ IT CAREFULLY. IT IS CONTAINED IN SECTION 10 BELOW.**

## Quick Links

**We have summarized some (but not all) of the main topics of these Loyalty Program Terms below. The complete provisions, and not these quick links or any headings or summaries govern.**

- **Loyalty Program Details**

- There are certain limitations on earning and redeeming Rewards Points and Rewards Dollars. **More** [\[Link to Section 3.1\]](#)
- Participants who link their banking information (ACH) to the App and select ACH as their method of payment are eligible to be enrolled in SmartPay Rewards<sup>SM</sup> membership program for ACH fuel savings. **More** [\[Link to Section 3.2\]](#)
- There are limitations on which fuel prices will be applicable to your redemption of Rewards Points and Rewards Dollars and the amount of Rewards Points or Rewards Dollars you may be able to redeem in a single transaction. IT IS VERY IMPORTANT THAT YOU UNDERSTAND THESE LIMITATIONS. **More** [\[Link to Section 3.3\]](#)
- We may contact you through various means including text and email. **More** [\[Link to Section 3.4\]](#)
- To use the Loyalty Program, you must meet eligibility requirements. **More** [\[Link to Section 3.5\]](#)
- We may modify or cancel the Loyalty Program in whole or in part, at any time and for any or no reason. **More** [\[Link to Section 3.6\]](#)
- You may terminate your Loyalty Program membership at any time. **More** [\[Link to Section 3.6\]](#)
- We may update these Loyalty Program Terms at any time and notify you through the methods so described. **More** [\[Link to Section 3.7\]](#)
- Your continued use of the Loyalty Program is your affirmation of any updated or modified Loyalty Program Terms. **More** [\[Link to Section 3.7\]](#)
- We limit the warranties available to you under the Loyalty Program. **More** [\[Link to Section 6\]](#)
- You release us from certain liabilities. **More** [\[Link to Section 7\]](#)
- You indemnify us for certain actions and activities. **More** [\[Link to Section 8\]](#)
- We limit the types and amounts of damages we can be liable for. **More** [\[Link to Section 9\]](#)
- You agree to resolve any disputes with us via binding individual arbitration and you waive the right to a jury trial or to participate in class actions. **More** [\[Link to Section 10\]](#)

## **1. ABOUT THE LOYALTY PROGRAM**

### **1.1 OS Requirements and Modifications and Updates to the Loyalty Program**

The App is supported by iOS version 16.0 and above and Android version 10.0 and above. If You have an OS that is not supported by the App then You will not be able to continue using the App and will not be able to download the App from or potentially see the App in the Apple or Android App store. Company reserves the right, in its sole discretion, to modify or discontinue offering the Loyalty Program, in whole

or in part, or any features, functionality, tools or Content, at any time, for any reason or no reason, with or without notice to you. We also retain the right to impose limits on your use and storage of any Content or use of any Loyalty Program service at our sole discretion at any time without prior notice to you.

We may from time to time develop and provide updates for the App, which may include upgrades, bug fixes, patches and other error corrections and/or new features, functionality, tools or Content (collectively, "Updates"). Updates may also modify or delete features, functionality, tools or Content in their entirety. Based on your mobile device settings, when your mobile device is connected to the internet either: (a) the Updates will automatically download and install; or (b) you may receive notice of or be prompted to download and install available Updates. Please promptly download and install all Updates. If you do not, portions of the App may not properly operate. All Updates will be deemed part of the App and be subject to these Loyalty Program Terms.

You agree that Company has no obligation to provide any updates or to continue to provide or enable any particular features, functionality, tools or Content, and will not be liable with respect to any such modifications, discontinuance or deletions.

## **1.2 International Use**

The Loyalty Program is operated within the United States and is not intended for use outside of the United States. You are prohibited from accessing or using the Loyalty Program from outside the United States.

## **2. ACCOUNTS**

### **2.1 Account Registration**

You may register to create an Account directly via the App or our Loyalty Program website. You may not register for an Account on behalf of any other person.

Your Account and Account profile page will be created based upon the information you provide. You agree to provide complete, accurate, and up-to-date information during the registration process and to update such information as necessary to ensure that it remains complete, accurate, and up-to-date.

When you create your Account, you will be asked to create a password or PIN, which you will be solely responsible for safeguarding. We require you to use "strong" passwords or PINs (passwords or PINs that use a combination of upper- and lower-case letters, numbers and symbols) with your Account. You agree not to disclose your password or PIN to any third party, and you agree to immediately notify us of any unauthorized use of your Account. You further acknowledge and agree that you will be solely responsible for any activities or actions on or through your Account. We are not liable for any loss or damage arising from your failure to comply with the above requirements.

You are solely responsible for your registration information and for updating and maintaining it. You will immediately notify us here [[LINK to contact tool](#)] of any unauthorized use of your Account, password, or username, or any other breach of

security, but will remain responsible for any unauthorized use thereafter. You will not sell, transfer, or assign your Account or any Account rights.

### **3. LOYALTY PROGRAM DETAILS**

#### **3.1 Earning and Redeeming Rewards Points and Rewards Dollars**

The Loyalty Program is a customer loyalty program that allows enrolled customers (“Participants”) to accrue Rewards Points based on qualifying purchases at participating Company locations, and then convert those Rewards Points to Rewards Dollars which can be used to pay for eligible fuel or convenience store items at participating locations. You may enroll in the Loyalty Program by downloading our App on the [Apple App Store](#) for IOS devices and [Google Play](#) for Android devices or through the Loyalty Program website

<https://www.getsmartrewards.com>

We make no representation or warranty that the Loyalty Program or the App will be available at any particular location or that any given transaction will be able to be completed.

Rewards Points accrue when a Participant’s mobile number is provided at the time of purchase for qualifying in-store Eligible Product Purchases at participating locations and when Participants make a qualifying purchase using the SmartRewards Loyalty App at participating locations. Under the Loyalty Program, “Eligible Product Purchases” means purchases of certain qualifying products located at participating Company locations subject to any exclusions and limitations applicable at the time of sale or as stated herein. Purchases that do not qualify and are excluded from the Loyalty Program include but may not be limited to gift cards, money orders, lottery, postal stamps, tobacco (in certain states), milk (in certain states), and alcohol product purchases. You also may not receive Rewards Points for: any purchases excluded by law; the value of any reward or coupons outside of the Loyalty Program, or taxes on purchases.

Rewards Points and Rewards Dollars earned are subject to account usage limitations described here and below

<http://www.getsmartrewards.com/faqs/>

Rewards Points will typically post to Participant’s Account within 48 hours from earning. No adjustments to Participant’s Account will be made after 90 days from the actual purchase date. We make no representation that Rewards Points will post to a Participant’s Account within a specific time frame or will be free from error. Additionally, we may hold Rewards Points in a pending status for certain purchases, such as those that are suspected of fraud. We will determine when to pend Rewards Points at our sole discretion. If we pend Rewards Points, you will not be able to see them in your account as pending and you will not be able to use them until we release them to your Account.

Rewards Points calculations are based upon qualifying purchases completed as listed on the Loyalty Program website and are subject to change at any time. Participants

will receive one (1) Rewards Point per gallon of fuel purchased in a qualifying purchase at participating Company locations, one (1) Rewards Point per One Dollar (\$1.00) spent in-store on a qualifying purchase at participating Company locations, and one (1) Rewards Point per tobacco item purchased with age verification completed at participating Company locations. Rewards Points are issued for promotional purposes only. Rewards Points that have not been converted to Rewards Dollars (see below) expire 180 days after they are added to your Account. If you do not convert the Rewards Points to Rewards Dollars before they expire, they will be forfeited.

Once you have earned twenty-five (25) Rewards Points, the Customer will need to activate the Rewards which converts the twenty-five (25) Rewards Points to one (1) Reward Dollar on the App. Rewards Points cannot convert to Rewards Dollars until you have reached at least twenty-five (25) Rewards Points. Rewards Points currently convert to Rewards Dollars at the rate of \$0.04 per point. Rewards Points and Rewards Dollars are nontransferable, cannot be encumbered or conveyed by any means to anyone, and can only be redeemed as specifically permitted in connection with the Loyalty Program. Rewards Points and Rewards Dollars may not be combined among Participants and may not transfer through a Participant's estate and may not pass to Participant's successors and assigns. Rewards Points and Rewards Dollars do not constitute property or a property interest of the Participant, and a Participant does not have any other interest or right to them (including, without limitation, no community property interests apply to a spouse's Rewards Points or Rewards Dollars and they are not descendible upon death). Rewards Dollars are issued for promotional purposes only. Rewards Dollars expire thirty (30) days after they have been converted from Rewards Points. If you do not use the Rewards Dollars before they expire, they will be forfeited.

When using Rewards Dollars to purchase fuel, there is a redemption limit per transaction of a maximum of \$1.50 per gallon and \$15.00 total.

**EXAMPLE REWARDS POINTS TO REWARDS DOLLARS CONVERSION PROCESS:**

- If you purchased 10 gallons of fuel and spent \$20 in store using the App, you would earn 30 Rewards Points (10 points earned from purchase and 20 points earned from in-store purchase).
- You can then activate Your Rewards which converts 25 Reward Points to \$1.00 in Rewards Dollars in the App, and Your account would have 5 Rewards Points remaining.
- Once 25 Rewards Points are converted into \$1.00 in Rewards Dollars, you would have up to thirty (30) days to spend the \$1.00 in Rewards Dollars on eligible at the pump fuel or convenience store items at participating locations via the App. If you did not spend the \$1.00 in Rewards Dollars within thirty (30) days, the reward would expire and be forfeited.
- You would have up to one year to earn at least twenty (20) more Rewards Points so that you have a minimum of twenty-five (25) Rewards Points that can be automatically converted to Rewards Dollars. Otherwise, those remaining 5 Rewards Points will expire and be forfeited.

Additionally, new Participants in the Loyalty Program will receive the following rewards during the first thirty (30) days after enrolling in the Loyalty Program:

- (2) up to five (5) free dispensed beverages; and
- (3) up to five (5) free of the following Farmhouse private label items—2.15oz chocolate bars/tubes or 1.25 oz chips, nuts or trail mix (collectively, the “Welcome Rewards”).

Any and all Welcome Rewards expire thirty (30) days after enrollment and if not used by then, are forfeited.

Additionally, new Participants who add a method of payment to their account will receive a reward of twenty (20) cents per gallon lower than the highest posted price for that grade of fuel that would be automatically applied to the purchase for up to of five (5) fill-ups at participating Company location (the “Welcome Fuel Reward”). This Welcome Fuel Reward lasts for thirty (30) days from the addition of the method of payment to the account. . The Welcome Fuel Reward expires thirty (30) days after the addition of a method of payment to the account, and if not used by then is forfeited.

Participants are solely responsible for ensuring that the contact information listed in their Account is accurate and valid. The Company is not responsible for Rewards Points or Rewards Dollars lost or not credited. If the Loyalty Program is terminated or the Participant’s Account is closed, any unused Rewards Points and Rewards Dollars will be forfeited. Rewards Points and Rewards Dollars are for one-time redemption only, and all redemptions are final. In the event that a Participant returns products that were partially or wholly paid for with Rewards Points and Rewards Dollars, the Rewards Points and Rewards Dollars used in connection with such a purchase shall not be reissued and no Rewards Points or Rewards Dollars shall be reissued to such Participant’s Account. In these cases, the Participant forfeits the Rewards Points and Rewards Dollars.

Rewards Points and Rewards Dollars are not redeemable for cash. Participants may be notified of additional ineligible products and services. Other restrictions may apply. Lost, stolen, or expired Rewards Points or Rewards Dollars will not be replaced. Reward Points or Rewards Dollars redemption or conversion values may be changed at any time without notice, and we reserve the right in our sole discretion to amend redemption rights or eligibilities now and in the future.

### **3.2 SmartPay Rewards<sup>SM</sup> Membership Program**

Participants in the Loyalty Program, who are eighteen (18) years of age or older, who link their banking information (ACH) to the App and select the ACH as their method of payment are eligible to be enrolled in a membership program (“SmartPay Rewards<sup>SM</sup>”). These Participants who have linked their banking information (ACH) to the App, select ACH as their method of payment, and enroll in SmartPay Rewards<sup>SM</sup> (the “SmartPay Members”) are eligible to receive an everyday reward on motor fuel that is ten (10) cents per gallon lower than the highest posted price for that grade of fuel at participating Company locations.

You further acknowledge and agree that you will be solely responsible for any activities or actions on or through your Account, including by individuals that you may have designated as secondary account holders to access and use your SmartPay Member account (“Linked SmartPay Members”), whether or not you have authorized such activities or actions. The Company is not liable for any loss or damage arising from your failure to comply with the above requirements.

Unlike SmartPay Members, who must be eighteen (18) years of age or older, Linked SmartPay Members must be sixteen (16) years of age or older at the time of registration. All activities conducted by Linked SmartPay Members in connection with your Account shall be deemed your activity for the purpose of these Loyalty Program Terms. While certain Linked SmartPay Members may also be independent Participants of the Loyalty Program and SmartPay Members of SmartPay Rewards<sup>SM</sup>, all activities by Linked SmartPay Members when acting as a secondary Account holder for your Account will be tied to your Account including, without limitation, access to any Loyalty Rewards. We are not responsible for any disputes between you and any Linked SmartPay Members.

To join SmartPay Rewards<sup>SM</sup>, SmartPay Members must pass an identity background check conducted by the National Payment Card Association d/b/a ZipLine, in accordance with their terms and conditions available here [\[LINK\]](#).

### **3.3 Applicable Fuel Prices and Limitations on the Amount of Rewards Dollars that You May Use in a Single Transaction**

**IT IS VERY IMPORTANT THAT YOU UNDERSTAND THIS SECTION. PLEASE READ IT CAREFULLY.**

Unless you have linked your banking information (ACH) to the App and select the ACH as your method of payment, when you use any Rewards Dollars on a purchase of motor fuel, **the price you will pay for fuel is always the highest posted price for that grade of fuel at that location.** Rewards Dollars may only be redeemed for fuel purchases made at the pump, and cannot be redeemed for pre-paid fuel purchases. When you use any Rewards Dollars on a purchase of motor fuel, you will not qualify for any other discounted and/or posted price, including but not limited to cash discounts, car wash discounts, site-specific discounts, promotional prices, or any posted prices for SmartPay ACH Members who have linked their banking information (ACH) to the App and select the ACH as their method of payment, and you may not use any Rewards Dollars for any other fuel price other than the highest posted price for that grade of fuel at that location.

If you are a SmartPay Member and have linked your banking information (ACH) to the App and select as your method of payment, some locations may post and/or offer a “SmartPay” price or a “Member” price that is ten (10) cents per gallon lower than the highest posted price for that grade of fuel at that location. If you are a SmartPay Member and you have linked your banking information (ACH) to the App and select the ACH as your method of payment and a location offers this “SmartPay” or

“Member” price, you may also be able to redeem Rewards Points on that purchase, subject to any limitations elsewhere in these Loyalty Program Terms. **\*\*PLEASE NOTE\*\* If you have not linked your banking information (ACH) to the App and/or do not select ACH as your method of payment, you are not a SmartPay Member and you will never be eligible for the “SmartPay” or “Member” price.**

When using the SmartPay price or Member price in combination with Rewards Dollars to purchase fuel, there is a total redemption limit per transaction of a maximum of \$1.50 per gallon and \$15.00 total.

### **3.4 Participant Communications**

#### **(a) Emails**

By using the Loyalty Program, you agree to receive email communications from us. You may cancel or modify the e-mail marketing communications you receive from us by following the instructions contained within our promotional e-mails. This will not affect subsequent subscriptions and if you opt-out is limited to certain types of e-mails, the opt-out will be so limited. Please note that we reserve the right to send you certain communications relating to your Account or use of our Loyalty Program, such as administrative and service announcements and these transactional account messages may be unaffected even if you choose to opt-out from receiving our marketing communications.

#### **(b) Text Messages**

By enrolling in the Loyalty Program, you agree to receive SMS or MMS marketing messages from us. You also may be given opportunities to subscribe to various text marketing or other text messaging programs. You consent to receive ongoing text alerts (including by auto-dialers or other automated technology) from us related to our various businesses and affiliates, which may include co-promotions with or about other parties, except that if the scope of your consent for a particular subscription is limited that subscription will be so limited. Such consent is not required to purchase any product or service aside from the text subscription itself. For each subscription, text “HELP” for help and text “STOP” to terminate (i.e., opt out) of that subscription. Subsequent or different subscriptions will be unaffected by an opt-out. You consent to receive a text confirming any opt-out as well as non-marketing administrative or transactional messages. For subscriptions to recurring text messages, you may receive up to the number of text messages per month specified in your consent, or to which you later consent. Alerts auto-renew unless otherwise specified when you consented. You understand that we will send mobile text messages using automated technology. Standard message, data and other



fees may be charged by your carrier, and carriers may deduct charges from pre-paid amounts or data allowances, for which you are responsible. Contact your carrier for details. If we are charging a premium rate for text messages, that will be explained in the applicable subscription consent. Not all phones and/or carriers are supported. You may contact us regarding text communications at: EG America, LLC, 165 Flanders Road, Westborough, MA 01581, or via email at: [support@smartpayrewards.com](mailto:support@smartpayrewards.com).

(i) Oklahoma residents: You authorize the person, entity, and/or equipment/technology making or allowing the placement of a telephonic sales call and/or text message to deliver or cause to be delivered a telephonic sales call and/or text message to you using an automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called; and you are not required to directly or indirectly sign this agreement or to agree to enter into such an agreement as a condition of purchasing any property, goods, or services.

(c) Our Content

We try to keep our Content current and accurate, but fuel prices, convenience store prices, menus, and other Content on the App and/or our website are not guaranteed, and not all menu items, pricing and offers are available in all of our locations. Actual availability and pricing will be determined at each participating location.

### 3.5 Eligibility

The Loyalty Program is available to individual United States residents for personal, non-commercial use at participating locations only. Geographic and other eligibility restrictions may apply to some aspects of our Loyalty Program. The Loyalty Program is intended for personal, non-commercial use only and is limited to one Account per individual. We may refuse to create an Account for any reason or no reason. We reserve the right to exclude any individual from or discontinue any individual's participation in the Loyalty Program. We reserve the right to cancel or suspend participation in the Loyalty Program in the event of fraud, abuse of Loyalty or Loyalty privileges, violation of these Loyalty Program Terms, our Terms of Use [\[LINK\]](#), Privacy Notice [\[LINK\]](#), or any applicable law, or at our sole discretion for any reason or no reason.

As noted in Section 3.4 (Participant Communications), you need not consent to receive commercial emails or texts to qualify for the Loyalty Program or its benefits. For purposes of certainty, the Loyalty Program or its benefits are not conditioned on any exercise or non-exercise of applicable privacy rights; provided, however, that if you elect to delete your personal information that is associated with your Account, we may be unable to provide your Loyalty Program services or benefits.

By participating in the Loyalty Program, you shall be subject to EG America's Privacy Policy located at [\[insert\]](#), which may be updated from time to time, in our sole discretion. **For more details on the information we collect, read our privacy policy**

**carefully.** You authorize us to monitor your Loyalty Program Account, and we have the right to take any necessary legal action based on fraud, abuse, or suspicious activity in connection with your Account or any of your activities relating to the Loyalty Program, and you agree to cooperate with any such action or investigation. If you are engaged in such activity, you may be liable for monetary losses, including litigation and/or arbitration costs and damages.

### **3.6 Cancellation and Termination**

These Loyalty Program Terms shall continue in full force and effect until terminated by us or you as provided herein. You may cancel your enrollment in the Loyalty Program at any time by contacting us through [the App, the Loyalty Program website [\[LINK\]](#), or by calling 1-800-225-9702. You may uninstall the App at any time. If a Participant has had no purchase activity for a period of time (such period of time to be determined in EG America's sole discretion), EG America reserves the right to cancel the Participant's enrollment and Account, in which case you will forfeit all remaining Rewards Points and Rewards Dollars.

We may, in our discretion, without liability to you and without limiting our other remedies, with or without prior notice and at any time, decide to modify, limit, suspend, deactivate, or cancel your Account and/or take technical and legal steps to prevent you from using the Loyalty Program at any time for any reason. We reserve the right to suspend or terminate your Account or your access to the Loyalty Program if you create more than one Account, or if any information provided during the registration process or thereafter or your use of the Loyalty Program is determined to be incomplete, inaccurate, outdated, deceptive, or fraudulent.

In addition, we may not issue you any Rewards Points or Rewards Dollars, and you will forfeit all existing Rewards Points and Rewards Dollars, if we (a) terminate your Account because of conduct that we determine, in our discretion, violates these Loyalty Program Terms or any applicable law, involves fraud or misuse of the Loyalty Program, or is harmful to our interests or another customer; or (b) modify or terminate the Loyalty Program in whole or in part, at our discretion. We also reserve the right to deny future enrollment if we deem your conduct to have violated these Loyalty Program Terms.

Any Rewards Points or Rewards Dollars in your Account will be forfeited at the time of cancellation or suspension. Any failure by us to insist upon or enforce your strict compliance with these Loyalty Program Terms will not constitute a waiver of any of our rights.

We reserve the right to cancel unconfirmed Accounts or Accounts that have been inactive for a prolonged period of time.

EG America may terminate these Loyalty Program Terms for convenience at any time upon notice to you. Notwithstanding the foregoing, with respect to you, these Loyalty Program Terms shall terminate without any further action needing to be taken by us upon any breach by you of these Loyalty Program Terms. Upon the termination of these Loyalty Program Terms for any reason whatsoever all licenses granted

hereunder shall immediately terminate and you shall immediately cease and desist from all access to and use of the Loyalty Program and the App, and shall immediately delete the App from all devices that you own or control. For the avoidance of doubt, notwithstanding any termination of these Loyalty Program Terms, you remain liable for all use of Loyalty Program and the App through any device you own or control, including any transactions initiated through such use. The terms set forth in the following sections of these Loyalty Program Terms shall survive the termination for any reason: “WARRANTY LIMITATION” (Section 6), “RELEASE” (Section 7), “INDEMNIFICATION BY YOU” (Section 8), “LIMITATION OF LIABILITY”, (Section 9); “CHOICE OF LAW, DISPUTE RESOLUTION, MANDATORY INDIVIDUAL ARBITRATION, CLASS ACTION WAIVER” (Section 10), and “ENTIRE AGREEMENT AND STATEMENT OF NON-RELIANCE” (Section 12).

### **3.7 Updates to Loyalty Program Terms**

These Loyalty Program Terms shall govern the Loyalty Program as it applies to you from time-to-time. THESE LOYALTY PROGRAM TERMS MAY BE MODIFIED IN WHOLE OR IN PART AT ANY TIME. YOU UNDERSTAND AND AGREE THAT EACH TIME YOU SIGN IN TO YOUR ACCOUNT, OR OTHERWISE USE THE LOYALTY PROGRAM (E.G., EARNING OR REDEEMING REWARDS POINTS OR REWARDS DOLLARS), YOU ARE AGREEING TO BE BOUND BY THE THEN APPLICABLE LOYALTY PROGRAM TERMS AND YOU AGREE THAT WE MAY NOTIFY YOU OF NEW OR MODIFIED TERMS BY POSTING THEM ON THE APP (OR IN ANY OTHER REASONABLE MANNER OF NOTICE WHICH WE ELECT), AND THAT YOUR CONTINUED LOYALTY PROGRAM ENROLLMENT AFTER SUCH NOTICE CONSTITUTES YOUR GOING FORWARD AGREEMENT TO THE NEW OR MODIFIED TERMS. Any new Loyalty Program Terms will be effective as to new use and transactions as of the time that we post them, or such later date as may be specified in them or in other notice to you. However, the Loyalty Program Terms that applied when you previously transacted will continue to apply to such prior transactions (i.e., changes and additions are prospective only) unless mutually agreed. In the event any notice to you of new, revised, or additional terms is determined by a tribunal to be insufficient, the prior agreement shall continue until sufficient notice to establish a new agreement occurs. In the event any tribunal finds any changed terms to be invalid, unenforceable, or illegal, such will be severed to the extent necessary for the remainder to be valid and enforceable. You should frequently check the App and the e-mail associated with your Account, for notices, both of which you agree are reasonable manners of providing you notice. You can reject any new, revised, or additional terms by terminating your Loyalty Program enrollment as set forth in Section 3.4. Continued enrollment and use of the App constitutes acceptance of such terms.

## **4. PAYMENT TERMS**

### **4.1 Payment Accounts**

If you provide us with any payment method, YOU ARE RESPONSIBLE FOR PROVIDING US WITH VALID PAYMENT METHOD DETAILS. Please note that the payment information, including name and contact information, that you submit when you register for an Account will be used and shared with our payment processing service provider and otherwise used in accordance with our Privacy Notice [[LINK](#)].

The App may not accept all payment cards. In addition, we reserve the right to change, from time to time, the methods of payment that may be linked to your Account through the App. We further reserve the right to disable any payment methods already linked to your account at any time and for any reason.

When you provide a payment method to us, you authorize us to collect and store that payment method, along with other related transaction information. When you fund a transaction, you authorize us (and our designated payment processors) to charge the full amount to the payment method you designate for the transaction.

By registering a payment method, you represent and warrant that you are the holder of the associated account or an authorized user thereof and that such account is valid.

If you wish to designate a different payment method, or if there is a change in your designated payment method status, you must change your information in your Account. This may temporarily disrupt your access to your Account while we verify your new payment information.

We are not the issuer of any payment method and is not responsible for determining whether any transaction initiated by you will be approved. For questions concerning your payment methods or transactions on your accounts, you must contact your issuer using the contact information provided by the issuer to you.

Notwithstanding anything else herein, you acknowledge that your rights with respect to, and the procedures that you must follow for resolution of, fraudulent or unauthorized charges to your payment method accounts are as set forth in your agreement with the issuers of your payment methods. These Loyalty Program Terms do not create any responsibility of EG America to notify you or your issuer of potentially fraudulent or unauthorized charge activity or to take any action on your behalf with respect thereto.

#### **4.2 Transaction Disputes**

If you would like to dispute any transactions made in store or at the pump, please contact customer service by emailing [smartrewards@eg-america.com](mailto:smartrewards@eg-america.com)

#### **4.3 Third-Party Charges and Mobile Alerts**

You are solely responsible for any fees or charges incurred to access the App through an internet access provider or other third party, including without limitation data charges incurred if you are not connected to WiFi access, charges to receive SMS messages or other mobile access, which may be billed to you or deducted from your prepaid balance by your mobile provider. You agree that we are not liable in any way for any third-party charges.

### **5. THIRD-PARTY TERMS**

The Loyalty Program may also provide links to third-party websites, resources or services including, without limitation, the National Payment Card Association d/b/a ZipLine, SessionM, Wright Express® Financial Services Corporation, and Altria Group Distribution Company. You acknowledge and agree that the Company is not

responsible or liable for (i) the availability, terms or practices of such websites, resources or services, or (ii) the content, products or services available on or through such websites, resources or services, including that any information provided is complete, accurate or up to date. Links to such websites, resources or services do not imply any endorsement by the Company of such websites, resources or services or the content, products or services available on or through such websites, resources or services. You acknowledge sole responsibility for and assume all risk arising from your use of any such websites, resources or services or the content, products or services available on or through such websites or services.

Portions of the Loyalty Program may be integrated into or linked to third-party sites, platforms, and applications that we do not control. Similarly, we may make third party ads and other third-party services, which we also may not control, available to you on or via our Loyalty Program. This may include the ability to register or sign in to our Loyalty Program using Facebook Connect or other third-party tools, and to post content on third-party services using their plug-ins made available on our Loyalty Program.

Use caution when dealing with third parties and consult their terms of use, terms and conditions, and privacy policies. We take no responsibility for third-party services. We will not be responsible or liable for any damage or harm resulting from your interactions with such websites or services, or the content, products or services available on or through such websites or services.

If you are accessing or using the Loyalty Program through Apple, Android, or any other platform, these are third-party services.

## **6. Warranty Limitation**

To the extent permitted by law, we make no guarantees, warranties or representations of any kind concerning the Loyalty Program and the App. The Loyalty Program and the App are provided “as is” and “as available” and we make no warranty of any kind, express or implied, including any implied warranty of merchantability, fitness for a particular purpose, or non-infringement in connection to the services provided to you pursuant to the Loyalty Program, the App, or these Loyalty Program Terms. We do not warrant that the Loyalty Program or the App will operate without errors or defects, that they will be free from viruses, or that they will be available and operational at all times. We are not responsible for the quality, safety, legality, or any other aspect of any goods or services you purchase through your use of the Loyalty Program or the App.

## **7. Release**

You release EG America and its affiliates and partners from liability regarding or connected to any earning, redemption, and use of the Loyalty Program and/or Rewards Points or Rewards Dollars, including, without limitation, any Rewards Points or Rewards Dollars that, after receipt, may be lost, stolen, destroyed, forfeited, or expired.

## 8. Indemnification By You

**IT IS VERY IMPORTANT THAT YOU UNDERSTAND THIS SECTION. PLEASE READ IT CAREFULLY.**

You agree to indemnify, defend, and hold harmless EG America and its subsidiaries and other affiliates, and its and their directors, officers, owners, agents, co-branders or other partners, employees, information providers, licensors, licensees, consultants, contractors and other applicable third parties (collectively "Indemnified Parties") from and against any and all claims, demands, causes of action, debt or liability, including without limitation attorney's fees and costs incurred by the Indemnified Parties arising out of, related to, or which may arise from: (1) your participation in the Loyalty Program; (2) any breach or non-compliance by you of any of these Loyalty Program Terms; (3) your actions or omissions; or (4) your negligence or violation or alleged violation of any applicable law, regulations, or any rights of a third party.

## 9. Limitation of Liability

**IT IS VERY IMPORTANT THAT YOU UNDERSTAND THIS SECTION. PLEASE READ IT CAREFULLY.**

**TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EG AMERICA OR ANY OF ITS CONTRACTORS OR PROVIDERS, OR ANY OF EACH OF THEIR AFFILIATES AND SUBSIDIARIES, BE LIABLE FOR ANY DAMAGES OR INJURY ARISING OUT OF THE USE OF OR INABILITY TO USE THE LOYALTY PROGRAM OR THE APP, INCLUDING, BUT NOT LIMITED TO, ANY GENERAL, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH ANY CLAIM IS BASED. IN ANY CASE, THE LIABILITY OF EG AMERICA OR ANY OF THE OTHER PERSONS OR ENTITIES DESCRIBED IN THE PRECEDING SENTENCE ARISING OUT OF THE USE OF OR INABILITY TO USE THE LOYALTY PROGRAM OR THE APP SHALL NOT EXCEED IN THE AGGREGATE THE LESSER OF \$10.00 OR THE SUM OF THE FEES PAID BY YOU FOR THE SERVICE.**

## 10. Choice of Law, Dispute Resolution, Mandatory Binding Individual Arbitration, Class Action Waiver

**PLEASE READ THIS SECTION CAREFULLY. IT AFFECTS RIGHTS THAT YOU MAY OTHERWISE HAVE. IT PROVIDES FOR RESOLUTION OF DISPUTES THROUGH INDIVIDUAL ARBITRATION INSTEAD OF COURT TRIALS AND CLASS ACTIONS. ARBITRATION IS MORE INFORMAL THAN A LAWSUIT IN COURT, USES A NEUTRAL ARBITRATOR INSTEAD OF A JUDGE OR JURY, AND DISCOVERY IS MORE LIMITED. ARBITRATION IS FINAL AND BINDING AND SUBJECT TO LIMITED REVIEW BY A COURT. THIS ARBITRATION CLAUSE SHALL SURVIVE TERMINATION OF THESE TERMS.**

**YOU HAVE THE RIGHT TO OPT OUT OF THIS DISPUTE RESOLUTION PROVISION (EXCEPT THE JURY TRIAL WAIVER AND CLASS ACTION WAIVER) WITHIN THIRTY (30) DAYS OF ACCEPTANCE OF THESE TERMS, IF YOU FOLLOW THE PROCEDURES SET FORTH IN THIS SECTION. OTHERWISE, YOU WILL BE BOUND TO SETTLE ANY DISPUTES YOU MAY HAVE WITH EG AMERICA THROUGH THE FOLLOWING DISPUTE RESOLUTION PROCEDURES.**

These Loyalty Program Terms are governed by and construed in accordance with the laws of the State of Massachusetts, excluding that body of laws pertaining to conflict of laws. If any provision of these Loyalty Program Terms is determined by a court of law to be illegal or unenforceable, such provision will be enforced to the maximum extent possible and the other provisions will remain effective and enforceable.

YOU AND EG AMERICA AGREE TO ARBITRATE ON AN INDIVIDUAL BASIS – RATHER THAN LITIGATE IN COURT – any and all claims or disputes between us (including any parents, subsidiaries, affiliates, officers, directors, employees, or agents of EG America) that are connected to, arise out of, or in any way relate to these Loyalty Program Terms, the Loyalty Program, or the App. Notwithstanding this agreement to arbitrate, you and EG America may bring appropriate claims against each other in small claims court, if the claims fall within the small claims court's jurisdiction, or before the Federal Communications Commission, the relevant state public utilities commission, or any other federal, state, or local government agency authorized by law to hear the claims.

Opt Out: You may opt out of this dispute resolution provision (except jury trial waiver and class action waiver) by notifying EG America in writing of that intent within thirty (30) days after acceptance of these Terms by sending a letter stating that you are opting out of this dispute resolution provision to EG America, ATTENTION LAW DEPARTMENT via U.S. mail to 165 Flanders Road, Westborough, MA 01581. If you opt out of the dispute resolution provision, that opt out will remain in effect if EG America modifies this section in the future.

Class Action Waiver: You and EG America agree that all claims or disputes between you and EG America will be arbitrated individually, and that there will be no class, representative, or consolidated actions. If you or EG America brings a claim in small claims court or before any administrative or regulatory agency, the class action waiver will still apply, and neither of us can bring a claim on a class or representative basis. Furthermore, neither you nor EG America may participate in a class or representative action as a class member if the class action asserts claims that would fall within the scope of this arbitration agreement if they were directly asserted by you or EG America. Both parties agree that this class action waiver is an essential part of our arbitration agreement and that if this class action waiver is found to be unenforceable by any court or arbitrator then the entire arbitration agreement set forth in this Section will not apply to any claim or dispute between you and EG America, except for the provisions waiving the right to jury trial. This class action waiver may not be severed from our arbitration agreement.

Arbitrator Authority: The arbitration between you and EG America will be binding. In arbitration, there is no judge and no jury. Instead, our disputes will be resolved by an

arbitrator, whose authority is governed by these Terms. You and EG America agree that an arbitrator may only award such relief as a court of competent jurisdiction could award, limited to the same extent as a court would limit relief pursuant to these Loyalty Program Terms. An arbitrator may award attorneys' fees and costs if a court would be authorized to do so, and may issue injunctive or declaratory relief if that relief is required or authorized by the applicable law, but that injunctive or declaratory relief may not extend beyond you and your dealings with EG America. Review of arbitration decisions in the courts is very limited.

Arbitration Procedures: You and EG America agree that these Loyalty Program Terms affect interstate commerce and that the Federal Arbitration Act applies. All arbitrations shall be conducted by the American Arbitration Association ("AAA"). The AAA's rules are available on its website at [www.adr.org](http://www.adr.org) or by calling 1-800-778-7879. If the claim asserted in arbitration is for less than \$75,000, the AAA's Supplementary Procedures for Consumer-Related Disputes will apply. If the claim asserted is for \$75,000 or more, the Commercial Arbitration Rules will apply. If there is a conflict between the AAA's rules and this dispute resolution agreement, this dispute resolution agreement shall control. To initiate arbitration, you must send a letter requesting arbitration and describing your claims to EG America, ATTENTION LAW DEPARTMENT via U.S. mail to 165 Flanders Road, Westborough, MA 01581. You must also comply with the AAA's rules regarding initiation of arbitration. EG America will pay all filing fees and costs for commencement of an arbitration, but you will be responsible for your own attorneys' fees and costs unless otherwise determined by the arbitrator pursuant to these Terms or applicable law. We have and may exercise the right to pay the arbitration fees if required for arbitration to be enforceable. EG America will not seek to recover its fees and costs from you in the arbitration, even if allowed under the law, unless your claim has been determined to be frivolous. The arbitration will be held in Boston, Massachusetts or in some other location to which EG America agrees.

Jury Trial and Class Action Waiver Where Arbitration Does Not Apply: If for any reason our arbitration agreement is found to be unenforceable, inapplicable, or if you opt out of this dispute resolution agreement, you and EG America expressly and knowingly WAIVE THE RIGHT TO TRIAL BY JURY. This means that a judge rather than a jury will decide disputes between you and EG America if, for any reason, the arbitration agreement is not enforced. You further agree that in any claims or disputes between you and EG America there will be no class, representative, or consolidated actions and neither you nor EG America may participate in a class or representative action as a class member.

Survival: This dispute resolution provision survives the termination of these Loyalty Program Terms. If you bring a claim against EG America after termination of these Loyalty Program Terms that is based in whole or in part on events, act or omissions that occurred while you were enrolled in the Loyalty Program or used the Loyalty Program or App, this dispute resolution provision shall apply.

## **11. Additional Items**

### **11.1 Physical Risks**



You agree that your use of the Loyalty Program and the App is at your own risk and that you will not use the App while operating a vehicle (also known as distracted driving). You also agree to follow safety guidelines or warnings posted or made available (i) at the service station/gas station at which you use the App and (ii) by your wireless carrier.

### **11.2 Tax Liability and Impact of Disputes on Payment Obligations**

EG America is not responsible for any tax liability related to the Loyalty Program. Any disputes concerning the Loyalty Program will not affect your payment obligations for your fuel or convenience store purchases.

### **11.3 Account Ownership and Beneficiary Rights**

You acknowledge and agree that you have no ownership rights in your Loyalty Program Account. You further acknowledge and agree that you have no third-party beneficiary rights in any agreement between us and any third party, and that the only relationship created by these Loyalty Program Terms is one between you and us.

### **11.4 Notice for California Users**

Under California Code Section 1789.3, California users of online services are entitled to the following specific consumer rights notice: Complaints regarding the Services or requests to receive further information regarding use of the Services may be sent to the above address or to [SmartRewards@eg-america.com](mailto:SmartRewards@eg-america.com). Additionally, the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1625 North Market Blvd., Suite N112, Sacramento, CA 958314 or by telephone at (916) 445-1245 or (800) 952-5210. Hearing impaired persons may call TDD (800)-326-2297 or TDD (916)-928-1227, see [www.dca.ca.gov](http://www.dca.ca.gov) for additional information.

### **11.5 Assignment**

Except as expressly set forth herein, you may not sell, assign or transfer any element of or other benefit you receive, or any other aspect of the Loyalty Program, App, your Account, or any of your rights or obligations under these Loyalty Program Terms, whether by operation of law or otherwise. We may sell, transfer, or assign the Loyalty Program or the App, in whole or in part, at any time, without notice to you. If we make such an assignment, the sole responsibility for the matters assigned, including any obligations to you, will lie with the party to which we make the assignment, and we will be released from any responsibilities or obligations.

## **12. Entire Agreement and Statement of Non-Reliance**

These Loyalty Program Terms, our Terms of Use, and our Privacy Notice, constitute the entire and exclusive understanding and agreement between you and Company regarding your access to and use of the Loyalty Program and supersede and replace any and all prior or contemporaneous oral or written understandings or agreements between you and Company and regarding the subject matter hereof. You also expressly acknowledge and agree that you are not entitled to rely upon, and have not relied upon, any representation or warranty by EG America that is not expressly stated

in these Loyalty Program Terms, and that no employee or agent of EG America is authorized to make any such representation.

To the extent of any disagreement or contradiction between these Loyalty Program Terms, our Terms of Use, and our privacy Notice, these Loyalty Program Terms shall control.

### **13. Contact Us**

If you have any questions or concerns, please contact Company at [SmartRewards@eg-america.com](mailto:SmartRewards@eg-america.com).

You can also write to us at:

EG America, LLC  
165 Flanders Road  
Westborough, MA 01581

You can also call us at:

1-800-225-9702

Should you send any submissions, suggestions, ideas, or feedback, whether related to the Loyalty Program and/or the App or otherwise ("Feedback"), you acknowledge and agree that any Feedback is given voluntarily, and that EG America is free to use, disclose, reproduce, license, or otherwise distribute, and exploit Feedback provided to it as it sees fit, without obligation or restriction of any kind, and no consideration, compensation, or acknowledgement of any sort will be provided to you. Further, you hereby irrevocably and forever release and waive any claim against EG America and its affiliates regarding the use of any Feedback for any purpose.

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