



Maryland Terms and Conditions for Residential and Small Commercial Customers

1. **Agreement to Purchase Electricity.** SmartEnergy Holdings, LLC ("SmartEnergy") is an electric generation supplier that is licensed by the Maryland Public Service Commission ("MPSC") under license # **IR-3783** to supply electricity to residential and business customers in the State of Maryland. Subject to acceptance by SmartEnergy and your electric utility ("Utility"), you agree to purchase, and SmartEnergy agrees to supply, all of your electricity, as delivered to you by the Utility under the terms and conditions set forth in this document ("Terms and Conditions"). SmartEnergy will be supplying the generation portion of your electricity, and your Utility will continue to provide the distribution services. As used herein, the words "we", "us" and "our" refer to SmartEnergy, and the words "you" and "your" refer to the Customer.
2. **Agreement and Term.** The Terms and Conditions, Enrollment Form, Internet Enrollment Form, Telephone Verification Recording, and Welcome Letter shall be referred to collectively as the "Agreement". The initial term of your Agreement shall begin with the next available meter reading after processing your enrollment by the Utility and Smart Energy. A fixed price term shall be for the period of time set forth at the time of enrollment, after which your Agreement will continue month-to-month at a variable price, unless terminated by you or by SmartEnergy in accordance with the terms of the Agreement. A variable price term will continue month to month until terminated by you or SmartEnergy in accordance with the terms of the Agreement, as well.
3. **Right to Cancel.** The Utility will send you a notification letter indicating your enrollment with SmartEnergy. You may terminate the Agreement at any time, for any reason, without fees or penalties by contacting SmartEnergy in writing by sending Notice to SmartEnergy Holdings, LLC, 400 Madison Avenue, Suite 9A, New York, NY 10017, or by telephone at 1-800-443-4440 (toll-free) from 9 a.m. to 6 p.m. E.T., (Monday through Friday), or electronically by e-mail to customer.service@smartenergy.com. When you cancel the Agreement, you agree to pay for the electricity supplied by SmartEnergy through the date that another company begins to supply electricity to you. You are responsible for all charges incurred through the date that makes your cancellation effective, and for any fees incurred by SmartEnergy in collecting any unpaid amounts due.
4. **Relocation.** You are required to provide 30-days advance notice to SmartEnergy if you relocate. A final reading will be made at your old address, and your account with both the Utility and SmartEnergy will be finalized. You will be obligated to pay for the electricity supply service provided through the date the termination due to relocation becomes effective, including without limitation, any applicable Utility fees or charges. If you relocate within your Utility's service territory, you may be able to enter into a new electricity supply agreement with SmartEnergy.
5. **Disconnection of Service.** Only the Utility has the ability to disconnect your service. Failure to make full payment of the charges due hereunder may be grounds for disconnection.
6. **Pricing.** Your rate will be variable and will be set forth at the time of Enrollment and confirmed in the Agreement. For both fixed-rate and variable-rate plans, you will incur additional service and delivery charges from your Utility.
 - a. **Fixed Rate.** If you have selected a fixed rate, the rate will be as indicated in the Agreement. The fixed price during the Term will be calculated by multiplying the price of electricity per kWh by the amount of electricity you use in the billing cycle plus any applicable Utility fees, charges or taxes.
 - b. **Variable Rate.** The initial rate will be as indicated in the Agreement. Subsequent rates assigned to each individual account will be established each month, based upon such factors as load ratio, PJM electricity market pricing, transmission charges, utility charges, utility tariffs, grid usage charges, utility cost allocations to third party suppliers, changes to weather based usage forecasts, and other PJM ISO market price or business related factors. The variable price will be calculated by multiplying the variable price

of electricity per kWh that month by the amount of electricity you use in the billing cycle plus any applicable fees, charges or taxes. The rate assigned to any particular individual account may vary from the rate assigned to any other particular individual account, even though such accounts may be in the same utility rate class.

- d. Depending on the product and plan that you select, you may be billed a monthly customer charge, which if applicable, will be included in the Agreement.
 - e. SmartEnergy's prices may be higher or lower than your Utility's rate in any given month. Current and historical rates should not be taken as a guarantee of future rates.
7. **Renewable Energy and Renewable Energy Credits.** If you have selected a renewable energy product from SmartEnergy, your rate includes an additional charge for the purchasing of Renewable Energy Certificates and the following provision applies: SmartEnergy will, either directly and/or through its affiliate(s), retire, on your behalf, non-certified Renewable Energy Credits ("RECs") resulting from electricity generated from renewable energy sources, which may include solar, wind, geothermal, biomass, biogas, or low-impact hydro, in an amount matching either all of your usage for a calendar year or the renewable content amount specified in your plan description. Such energy sources will be located in or connected to the PJM regional electricity control area. Each REC represents 1,000 kilowatt hours. You will not have electricity from a specific generation facility delivered directly to your meters; but, through this product, you can support generators of renewable energy that provide electricity to the electricity grid. Renewable energy source availability and generation varies hour-to-hour and from season-to-season, as does all customer electricity usage. SmartEnergy relies on regional system power from the grid to serve its customers' minute-by-minute consumption. But, through retirement of RECs by SmartEnergy, on behalf of customers, SmartEnergy will cause enough renewable energy to be delivered to the PJM regional electricity control area to match either all of your usage or the renewable content amount specified in your plan description. SmartEnergy may take up to three (3) months after the end of a calendar year to retire RECs needed to fulfill this product. SmartEnergy will not be liable to you or any other party for any advertising assertions related to this product including, without limitation, any claim or liability arising from a representation made as to the "green" or "carbon free" nature of the electricity or this product.
8. **Payment.** Your payment is due by the date specified in the Utility bill, and late payments will be subject to interest at 1.5% per month or the highest amount allowable under applicable law, whichever is lower. You will incur additional service and delivery charges from the Utility.
9. **Billing.** You will receive one bill from the Utility monthly, in which your SmartEnergy supply charges will be listed separately from the Utility's delivery charge. Your Utility may or may not charge a fee for switching service to SmartEnergy. You have the right to request a 24-month payment history, without a charge, up to twice in a 12-month period. SmartEnergy does not offer budget billing for the generation portion of the bill.
10. **Renewal, Expiration, or Change in Terms.** If you have a fixed term Agreement with us and it is approaching the renewal or expiration date, or if we propose a change to our terms of service, we will send you written notice, explaining your options and the date by which you must take action to exercise your options, before either the expiration date or the effective date of the change(s). If you have selected a fixed term plan, the "Initial Term" of your Agreement is the number of billing cycles set forth at the time you entered into the Agreement with SmartEnergy. If you do not respond to the written notice described above, your service will continue month-to-month at a variable rate until it is either terminated by you or SmartEnergy in accordance with the terms of the Agreement.
11. **Credit Requirements.** SmartEnergy reserves the right to conduct a credit review prior to providing you with electricity supply service, and reserves the right to refuse you electricity supply service if you do not meet SmartEnergy's credit standards. You agree to provide SmartEnergy with any information reasonably requested in order to complete the credit review. If, prior to commencing electricity supply service or at any time during the Term of the Agreement, SmartEnergy has good faith concerns about your creditworthiness, SmartEnergy may conduct a credit review.
12. **Information Release Authorization.** You authorize SmartEnergy to obtain and review information regarding your credit history from credit reporting agencies and information, including but not limited to the following from the Utility: account name, account number, billing address, service address, telephone number, standard offer service type, historical and future electricity usage, rate classification, meter readings, characteristics of electricity service and,

when charges under the Agreement are included on your Utility bill, billing and payment information from the Utility. This information may be used by SmartEnergy to determine whether it will commence and/or continue to provide electricity supply to you and will not be disclosed to a third party unless required by law. Submission of the Agreement shall be deemed to represent your authorization for the release of this information to SmartEnergy. This authorization will remain in effect during the Term of the Agreement. You may rescind this authorization at any time by providing Notice thereof to SmartEnergy, or calling 1-800-443-4440 (toll-free) from 9 a.m. to 6 p.m. E.T. (Monday through Friday). SmartEnergy reserves the right to cancel the Agreement on fifteen (15) calendar days' Notice in the event you rescind such authorization.

13. **Estimated Meter Readings.** The Utility may estimate your usage under regulations set by MPSC. The Utility must take an actual reading at least every other billing cycle and its procedure for estimated meter readings must be approved by MPSC. The bill will clearly indicate if it is an estimated reading by use of the word "ESTIMATE" on the bill, in close proximity to the estimated amount.
14. **Basic Service Availability.** The State of Maryland provides its citizens with the right to basic service from the Utility. Basic service is power supply you receive from your Utility. The price for this basic service is variable and will change based on the market price for electricity. You are eligible to receive basic service at any time and to continue to receive it indefinitely.
15. **Events of Default.** An Event of Default shall mean: (i) failure to make any payment required under the Agreement, when due; (ii) the failure to take electric supply when delivered under the terms of the Agreement, if such failure is not cured within ten (10) business days after SmartEnergy provides you with written Notice; (iii) significant downgrading of your credit rating since the Effective Date of the Agreement, as determined by SmartEnergy in its sole discretion; (iv) if you file a petition or otherwise commence, authorize or acquiesce in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or have such petition filed against you and such petition is not withdrawn or dismissed for twenty (20) days after such filing; or (v) you are unable to pay your debts as they are due and such inability is not cured within ten (10) days after SmartEnergy provides you with written Notice as defined herein.
 - a. Remedy for Event of Default. SmartEnergy has the right to terminate the Agreement according to Section 15 if an Event of Default occurs.
 - b. Collection of Past Due Charges. SmartEnergy will pass through to you all charges related to the collection of past due charges, including but not limited to, collection agency fees, legal and court fees and account termination fees.
16. **Termination of Service by SmartEnergy.** SmartEnergy may terminate electricity supply service for an Event of Default (defined in Section 14 above). You will then receive electricity from the Utility or will be given the opportunity to choose a different electricity supplier. You will be responsible to pay for electricity consumed prior to service termination. SmartEnergy may also terminate the Agreement within fourteen (14) days of Notice to the Customer if you fail to pay a bill or meet any other payment requirements. SmartEnergy also has the option to disconnect your electricity supply service if you use less than 5,000 kWh of electricity per year. In the event of a change in applicable law or regulation that prevents or prohibits SmartEnergy from performing under the terms of the Agreement, or for any other reason, SmartEnergy reserves the right to terminate the Agreement either by contacting SmartEnergy as specified herein, or by contacting your Utility. If you return to basic service provided by the Utility, you may or may not be served under the same rates, terms and conditions that apply to other customers served by the Utility.
17. **Legal Notice.** All notice to be given hereunder ("Notice") will be in writing and delivered as specified in the Agreement to both you and SmartEnergy, as applicable, by mail (to SmartEnergy at 575 Lexington Avenue, 4th Floor, New York, NY 10022), or by email (to SmartEnergy at customer.service@smartenergy.com). Notice will be effective upon either confirmation of receipt by the person to whom it is addressed, or when delivery is confirmed by the carrier, whichever is earlier.
18. **Miscellaneous.**

- a. Dispute Resolution. You agree to contact SmartEnergy at 1-800-443-4440 (toll-free) from 9 a.m. to 6 p.m. E.T. (Monday through Friday) regarding any dispute related to the Agreement. You should contact the Utility concerning a power outage or any other emergency.
- b. If your complaint is not resolved after you have called your electric supplier and/or your electric Utility, or for general Utility information, residential and business customers may contact the MPSC at 1-800-492-0474 or www.psc.state.md.us, or the Maryland Attorney General's Office at 1-888-743-0023.
- c. Assignment. You may not assign your rights or obligations under the Agreement without SmartEnergy's express written consent. SmartEnergy may sell, transfer, pledge, or assign the accounts, revenues, or proceeds due to it under the Agreement, and may also assign its interest in the Agreement to another electric supplier or other entity as permitted by law.
- d. Publicity. When you provide a testimonial or win a contest, SmartEnergy shall be entitled to disclose and publicize your identify as a customer of SmartEnergy on its website and in any other marketing material.
- e. Indemnification. You shall indemnify, defend and hold harmless SmartEnergy from and against any claims arising from or out of any event, circumstance(s), act or incident occurring or existing after electricity is delivered to your home or business.
- f. Entire Agreement. The Agreement is the entire agreement between you and SmartEnergy and supersedes any prior written or verbal agreements. The Agreement is binding upon you and SmartEnergy and each of its respective successors and permitted legal assigns. The Agreement is not intended to benefit any third party.
- g. Representations and Warranties, Limitation of Liability and Arbitration. The electricity supplied by SmartEnergy under the Agreement will be purchased from a variety of sources. SMARTENERGY MAKES NO REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN THE AGREEMENT, AND EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE. SMARTENERGY'S LIABILITY UNDER THE AGREEMENT SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY, WHICH WILL NOT EXCEED THE AMOUNT OF YOUR SINGLE LARGEST MONTHLY INVOICE DURING THE PRECEDING TWELVE (12) MONTHS. NEITHER SMARTENERGY NOR ANY OF ITS AFFILIATES OR SUBCONTRACTORS SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR OTHER DAMAGES, REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON A CLAIM RELATING TO CONTRACT, TORT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, LOST PROFITS, BREACH, NON-PERFORMANCE OR ANY OTHER BASIS. YOU AND SMARTENERGY WAIVE THE RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY DISPUTE ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT. BOTH SMARTENERGY AND YOU AGREE NOT TO INITIATE OR BECOME A PARTY TO ANY CLASS ACTION SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THE AGREEMENT.
- h. Force Majeure. SmartEnergy will make commercially reasonable efforts to provide electricity supply but does not guarantee continuous service. SmartEnergy is not responsible for power outages or other events outside its control that may prevent SmartEnergy from supplying electricity (collectively, "Force Majeure Events"), including without limitation, acts of God or governmental authority, accidents, labor disputes, required maintenance, your Utility's non-performance, including without limitation, an outage, or changes in laws of any governmental authority or any other cause beyond SmartEnergy's control. SmartEnergy shall not be liable to you for any interruptions caused by a Force Majeure Event.

19. **Environmental Disclosure.** Pursuant to O.A.C. 4901:1-21-12, an Environmental Disclosure Label specifying the approximate generation resource mix and environmental characteristics of the power supply being offered under the Agreement can be found on the SmartEnergy website at www.smartenergy.com. SmartEnergy will also provide a printed copy of the environmental disclosure information upon request.

20. **Electric Emergencies and Power Quality.** The Utility will continue to operate the electric transmission lines and to maintain responsibility for power outages and for power quality. You will hold SmartEnergy harmless in the

event of a loss of power caused by any entity other than SmartEnergy. If you have an electrical emergency, power outage or reduction in power quality, you should contact the Utility at its telephone number for emergencies. If your Utility is Baltimore Gas and Electric, call 1-877-778-2222, and if your Utility is Pepco, call 1-877-737-2662

21. **Entire Agreement.** The Agreement, including these Terms and Conditions, constitute the entire agreement for the purchase of electricity between you and SmartEnergy, and shall take the place of any and all prior agreements and understandings, oral or written, regarding SmartEnergy supplying electricity to you.