

SMARTENERGY NEW YORK CUSTOMER DISCLOSURE STATEMENT

Energy Services Company (“ESCO”) Information	SmartEnergy Holdings, LLC (“SmartEnergy”) ESCO eligibility code number SMAR 400 Madison Avenue, Suite 9A, New York, NY 10017 1-800-443-4440 (toll-free) customer.care@smartenergy.com www.smartenergy.com
Product	100% Renewable Electric Energy Product. Percentage of Renewable Energy: 100% of total usage.
Price	[Rate] cents/kWh during the initial Term (the “Rate”).
Fixed or Variable and, if variable, how the price is determined	Fixed during the initial Term.
Length of Agreement and End Date	The Agreement will continue for a fixed term of thirty-six (36) monthly billing cycles (the “Term”).
Process customer may use to rescind the Agreement without penalty	You may rescind the Agreement by calling SmartEnergy at 1-800-443-4440 within three (3) business days of receipt of the Agreement.
Amount of Early Termination Fee and method of calculation	You may terminate the Agreement at any time for any reason and without an early termination fee. You will be required to pay for the usage incurred until your account is transferred back to the local distribution utility (“ Utility ”) or to another electricity company supplier.
Amount of Late Payment Fee and method of calculation	If you receive a single bill from the Utility for both the supply and delivery of electricity and you do not pay your invoice on time, the Utility may assess late charges and fees.
Provisions for renewal of the Agreement	At least 30 days and no more than 60 days prior to the renewal date, SmartEnergy will notify you in writing of the terms of renewal of this Agreement and of your right to renew, reject or renegotiate this Agreement via affirmative consent. See Section 15 – Terms and Conditions.
Renewable Energy Product	100% of the energy provided under the Agreement shall be derived from renewable resources as specified in the Agreement. See Section 14 – Terms and Conditions.
Conditions under which savings to the Customer are guaranteed	The Agreement offers no guaranteed savings. Past savings are not a guarantee of future saving.

Please retain this document for your records. If you have any questions regarding this agreement, contact your **ESCO** using the information above.



SmartEnergy – New York Terms and Conditions for Purchase of Electricity Services by Residential and Small Commercial Customers

1. **Agreement to Purchase Electricity.** SmartEnergy Holdings, LLC (“SmartEnergy”), www.smartenergy.com, is an Energy Services Company (“ESCO”), authorized by the New York State Public Service Commission (“NYPSC”), to offer and supply electric generation services to residential and small non-residential customers in the State of New York. SmartEnergy’s ESCO eligibility code number is SMAR. Subject to acceptance by SmartEnergy and your Utility, you agree to purchase, and SmartEnergy agrees to supply, all of your electricity (the “Services”), as delivered to you by your Utility, under the terms and conditions set forth in this document (the “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. You understand that you are not required to switch your electricity supplier to SmartEnergy.

2. **Agreement and Term.** The Terms and Conditions, your Enrollment Documentation and Welcome Letter shall be referred to collectively as the “Agreement”. The Term of the Agreement begins with the next available meter reading after processing of your enrollment by your Utility and SmartEnergy. Your Services with SmartEnergy will continue for the Term until terminated by you or by SmartEnergy in accordance with the terms of the Agreement.

3. **Right to Cancel.** You have the right to cancel the Agreement without penalty by contacting SmartEnergy within three (3) business days of receipt of the Agreement. To cancel, you may contact SmartEnergy by telephone at 1-800-443-4440 (toll-free) Monday through Friday from 8:00 a.m. to 7:00 p.m. E.T., and Saturday from 9:00 a.m. to 6:00 p.m. E.T, or by email to customer.care@smartenergy.com. The Agreement shall not be legally binding until the

three (3) business day period has expired, and you have not, directly or indirectly, rescinded your selection of SmartEnergy.

4. **Relocation.** You are required to provide notice to SmartEnergy if you relocate. If you relocate, a final reading will be made at your old address, and your account with both the Utility and SmartEnergy will be terminated. 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.** Failure to make full payment of Utility charges may result in you being disconnected in accordance with your Utility’s tariff. Only your Utility has the ability to disconnect your service.

6. **Pricing.** Each month, you will pay for the Services you consume. The supply portion of your electricity bill will be calculated by multiplying your Rate by the amount of electricity you consumed in kilowatt-hours during the billing cycle plus any applicable fees and taxes. You will incur additional service and delivery charges from your Utility.

7. **Billing.** You will be billed and pay SmartEnergy for the Services based on meter readings and consumption information that SmartEnergy receives from your Utility. You will receive one bill from your Utility monthly, in which your SmartEnergy supply charges will be listed separately from the Utility’s service and delivery charges, include applicable taxes. SmartEnergy does not offer budget billing for the generation portion of the bill. If at any time during the term of this Agreement your Utility does not provide consolidated billing for your account, you will be billed by SmartEnergy for any charges owed to SmartEnergy. In that case, you will be billed separately by your Utility for any taxes, distribution charges or other utility fees and 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.

8. **Payment.** Your payment is due by the date specified in your **Utility** bill, and late payments may be subject to interest at 1.5% per month. The **Utility** will set your payment due date and the payment address.

9. **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, **SmartEnergy** has good faith concerns about your creditworthiness, **SmartEnergy** may conduct a credit review.

10. **Information Release Authorization.** You authorize **SmartEnergy** to obtain and review information regarding your credit history from credit reporting agencies and other information, including but not limited to the following, from your **Utility**: account name, account number, billing address, service address, telephone number, standard offer service type, historical and future electricity usage, rate classification, public assistance status, meter readings, characteristics of electricity service and, when charges under the Agreement are included on your **Utility** bill, billing and payment information. This information may be used by **SmartEnergy** to determine whether it will commence and/or continue to provide electricity to you. Such information may be disclosed to a third-party if (a) required by law; (b) such disclosure is to a third party service provider under confidentiality obligations not to disclose such information and to use it solely for the purpose of providing services to us; (c) in connection with your electric generation service; and (d) to our affiliates and subcontractors for marketing purposes. Your acceptance of the Agreement is an authorization for the release of this information to **SmartEnergy**. This authorization will remain in effect during the Term. You may rescind this authorization at any time by providing Notice thereof to **SmartEnergy** or calling 1-800-443-4440 (toll-free) Monday through Friday from 8:00 a.m. to 7:00 p.m. E.T., and Saturday from 9:00 a.m. to 6:00 p.m. E.T. **SmartEnergy** reserves the right to cancel this Agreement on fifteen (15) calendar days' Notice in the event you rescind such authorization.

11. **Early Termination by You.** You may terminate the Agreement at any time for any reason and without an early termination fee. In addition, there is no charge for stopping or starting electric generation service, if done within the terms of the Agreement. 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. Upon your request for termination, we will provide you with a termination verification number.

12. **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; (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.

a. Remedy for Event of Default. **SmartEnergy** has the right to terminate the Agreement according to Section 13 below if an Event of Default by you 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.

13. **Termination of Service by SmartEnergy.** **SmartEnergy** may terminate electricity supply service to you for an Event of Default (defined in Section 12 above) by you, provided that **SmartEnergy** provides you with at least thirty (30) days' advance written Notice for you to cure the Event of Default before the termination is effective (the "Termination Notice"). If the Event of Default is not cured, the Services will be

terminated, and you will then receive electricity from your **Utility** or will be given the opportunity to choose a different electricity supplier. You will be responsible to pay for electricity consumed prior to termination. In addition, 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 upon thirty (30) days' advance written Notice to you.

14. **100% Renewable Energy Program.** Your electricity usage is matched by the generation of energy from renewable resources by retiring renewable energy certificates (RECs). RECs represent the environmental attributes associated with the applicable amount of renewable energy generation from various renewable sources that comply with the appropriate locational and delivery requirements. RECs will be purchased and retired to satisfy the percentage of renewable generation guaranteed by the Agreement. The renewable mix provided under the Agreement must be at least 50% greater than the applicable Renewable Energy Standard (RES) obligation for the current year. In order to satisfy the terms of this contract, RECs must be purchased through NYGATS from eligible renewable generators that deliver renewable energy to New York; by purchasing Tier 1 RECs from NYSERDA; by procuring RECs from eligible renewable generators through bilateral contracts; by entering into bundled energy and REC purchase agreements with eligible renewable generators; or by making Alternative Compliance Payments to NYSERDA. **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.

15. **Renewal Notice.** At least 30 days and no more than 60 days prior to the renewal date, **SmartEnergy** will notify **Customer** in writing of the terms of renewal of this Agreement and of the **Customer's** right to renew, reject or renegotiate this Agreement via affirmative consent.

16. **Title.** All electricity sold under the Agreement

shall be delivered to a location considered the "Point of Delivery", which shall be at the **NY ISO** load bus (located outside of the municipality where you reside), and shall constitute the point at which title transfers and the sale occurs.

17. **Transfer.** If you request relocation of service within your **Utility's** service territory and continuation of the Services, you can arrange for continuation at the new location of delivery service by contacting your **Utility** and by contacting us. Each provider contacted by you shall remind you of the need to contact the other provider to initiate the change in service or arrange for a conference call with the other provider and you, and within two days, notify the other provider that you requested relocation of service.

18. **Legal Notice.** All legal 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 certified mail or email to you at your service or email address, and to **SmartEnergy** at 7450 Tilghman Street, Suite 100, Allentown, PA 18106-9030, or customer.care@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.

19. **Miscellaneous.**

a. Dispute Resolution. You agree to contact **SmartEnergy** at (toll-free) Monday through Friday from 8:00 a.m. to 7:00 p.m. E.T., and Saturday from 9:00 a.m. to 6:00 p.m. E.T, or by mail addressed to **SmartEnergy Holdings, LLC**, 7450 Tilghman Street, Suite 100, Allentown, PA 18106-9030, or by email at customer.care@smartenergy.com, regarding any dispute related to the Agreement. If you call us during these hours regarding a **Utility** emergency, your call will be transferred directly to the **Utility**. If you are calling outside of these hours you will be given the **Utility's** emergency phone number to call. If you call us outside of these hours regarding customer service issues, you will be prompted to leave your contact information and a message and we will return your call during regular business hours. Reasonable efforts will be made to resolve your inquiry fairly and efficiently. If you are not fully satisfied after discussing your dispute with **SmartEnergy**, you may contact the **New York**

State Department of Public Service (“DPS”) by calling the **DPS Helpline** at 1-800-342-3377 (Monday through Friday from 8:30 a.m. to 4:00 p.m.); or by writing to the Office of Consumer Services, **New York State Department of Public Service**, at 3 Empire State Plaza, Albany, NY 12223; or through its website at www.dps.ny.gov/complaints. You must pay the bill in full, except for the specific disputed amount, during the pendency of the dispute.

b. **Emergencies and Customer Service.** In the event of an emergency such as a power failure or downed power line, or for information about universal service programs contact your **Utility**. If your **Utility** is **Central Hudson Gas and Electric**, call 1-800-527-2714. If your **Utility** is **Consolidated Edison of NY**, call 1-800-752-6633. If your **Utility** is **National Grid**, call 1-800-642-4272. If your **Utility** is **National Grid Long Island (Keyspan LI)**, call 1-800-930-5003. If your **Utility** is **National Grid Metro (Keyspan Metro)**, call 1-718-643-4050. If your **Utility** is **New York State Electric and Gas (NYSEG)**, call 1-800-572-1131. If your **Utility** is **Orange and Rockland (O&R)**, call 1-877-434-4100. If your **Utility** is **Rochester Gas and Electric**, call 1-800-743-1701. If your **Utility** is **National Fuel Gas**, call 1-800-365-3234.

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. If such an assignment is made, and if Notice is required by law, we will provide Notice no later than thirty (30) calendar days prior to the transfer date.

d. **Publicity.** When you provide a testimonial or win a contest, **SmartEnergy** shall be entitled to disclose and publicize your identity as a customer of **SmartEnergy** on its website and in any other marketing material.

e. **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. The Agreement is binding upon you and **SmartEnergy** and each of its respective heirs, successors and permitted legal assigns. The Agreement is not intended to benefit any third party.

f. **Limitations of Liability and Representations and Warranties.** 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 TO YOU OR ANY THIRD PARTY 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.

g. **Consumer Protection.** The services provided by **SmartEnergy** to **Customer** are governed by the terms and conditions of this Agreement and the **New York State Public Service Commission** rules and regulations (Orders) including the Uniform Business Practices (UBP) and other applicable requirements including the NYS Home Energy Fair Practices Act (“HEFPA”) for residential customers. Any payments you make on a consolidated bill will be allocated in accordance with procedures adopted by the **NYPSC**

and the **Utility**. You may obtain additional information about consumer protections by contacting **SmartEnergy** or by contacting the **NYPSC**.

h. Arbitration. If your complaint or dispute is not resolved through contact with our customer service department, you agree to resolve those disputes through binding arbitration or small claims court instead of in courts of general jurisdiction. Any arbitration under the Agreement will take place on an individual basis; class arbitrations and class actions are not permitted. Please visit www.smartenergy.com/resolvingdisputes for the full terms and conditions that govern your agreement to resolve any disputes arising under the Agreement through binding arbitration or small claims court.

i. 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, accidents, labor disputes, required maintenance, your **Utility**'s non-performance, including without limitation, an outage, or any other cause beyond **SmartEnergy**'s control. **SmartEnergy** shall not be liable to you for any interruptions caused by a Force Majeure Event.

j. Governing Law; Venue. Venue for any lawsuit brought to enforce any term or condition of the Agreement shall lie exclusively in the State of New York. The Agreement shall be construed under and shall be governed by the laws of the State of New York without regard to the application of its conflicts of law principles.

k. Non-Waiver; Severability. The failure by one party to require performance of any provision shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any subsequent breach or default of the Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself. If any provision of the Agreement is held unenforceable, then such provision will be modified to reflect the parties' intention. All remaining provisions of the Agreement shall remain in full force and effect.

l. Material changes. No material changes shall be made in the terms or duration of the Agreement without your express consent obtained under the methods authorized in the New York Uniform Business Practices ("UBP"). This shall not restrict us from renewing the Agreement by clearly informing you in writing, not less than thirty days nor more than sixty days prior to your option to reject the renewal terms. A customer shall not be charged a termination fee if you object to such renewal within three (3) business days of receipt of the first billing statement under the Agreement as renewed. Regarding contract renewals, with the exception of a rate change, or an initial sales agreement that specifies that the Agreement renews on a monthly basis with a variable rate methodology which was specified in the Agreement, all changes will be considered material and will require that we obtain your express consent for renewal.

20. **Electric Emergencies and Power Quality.** Your **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 your **Utility** at its telephone number for emergencies.