



## Maryland Terms and Conditions for Residential and Small Commercial Customers

1. **Agreement to Purchase Electricity.** **SmartEnergy Holdings, LLC** ("**SmartEnergy**"), [www.smartenergy.com](http://www.smartenergy.com), business address 400 Madison Avenue, Suite 9A, New York, NY 10017, mailing address 7450 Tilghman Street, Suite 100, Allentown, PA 18106-9030, [www.smartenergy.com](http://www.smartenergy.com), 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 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, together with the Enrollment Form, Internet Enrollment Form, or Telephone Verification Recording (as applicable the "Enrollment Authorization"), constitute your agreement with **SmartEnergy** for electricity supply service (the "Agreement"). The initial term of your Agreement shall begin on the date your **Utility** processes your enrollment with **SmartEnergy**, usually within three business days. 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 rate until terminated by you or by **SmartEnergy** in accordance with the terms of the Agreement.

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 at **SmartEnergy Holdings, LLC**, 7450 Tilghman Street, Suite 100, Allentown, PA 18106-9030, or 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 electronically by e-mail to [customer.care@smartenergy.com](mailto:customer.care@smartenergy.com). When you cancel the Agreement, you agree to pay for the electricity supplied by **SmartEnergy** through the date that your **Utility** processes your switch back to **Utility** Standard Offer Service or to another electricity supplier. You are also responsible for any fees incurred by **SmartEnergy** in collecting any unpaid amounts due.

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.** 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 by your **Utility** in accordance with applicable **Utility** rules and procedures.

6. **Pricing.** Your electricity supply rate will be a fixed rate for the first six billing cycles as specified herein and in your Enrollment Authorization. After the first six billing cycles, the Agreement will renew to a variable rate and shall continue until terminated by you or **SmartEnergy**. Your electricity supply rate does not include **Utility** charges.

a. **Fixed Rate.** The rate for your fixed rate initial term will be as indicated herein and in the Enrollment Authorization. Your electricity supply charges will be calculated by multiplying the fixed rate of electricity per kWh by the amount of electricity you use in the billing cycle plus any applicable fees, charges, and taxes. Your supply rate does not include **Utility** fees or charges.

b. **Variable Rate.** If applicable, the rate for electricity will be a variable rate; variable rates may be

higher or lower each month, will be set in **SmartEnergy's** sole discretion, and are not based on a market or index price. **SmartEnergy** typically considers some or all of the following factors when setting variable rates:

- strategic business objectives;
- customer retention or attrition;
- market volatility or uncertainty;
- anticipated customer usage;
- the cost of procuring power including wholesale prices, any ancillary service costs, capacity auctions, utility fees, and transmission and distribution losses;
- weather, supply congestion and infrastructure issues;
- legal or regulatory issues; and
- profit margin.

This list of factors is not exhaustive, and no single factor will determine the rate. Some factors may be estimated or projected, and the factors **SmartEnergy** considers may be weighed differently each month. **SmartEnergy** may spread sudden cost increases over multiple billing cycles so that its customers do not bear the burden of such increases in a single month. In addition, **SmartEnergy** seeks to acquire the majority of its anticipated electricity supply in advance rather than from the spot market. For all of these reasons, the variable rate may not correlate with changes in wholesale market prices, with the **Utility's** rate or with other suppliers' rates. The variable 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. The variable rate may go up or down and the rate may be higher than the **Utility's** rate during any given period. THERE IS NOT A LIMIT ON HOW MUCH THE RATE MAY CHANGE FROM ONE BILLING CYCLE TO THE NEXT. THE RATE CAN CHANGE EACH BILLING PERIOD.

c. 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 Enrollment Authorization and the Contract Summary.

d. **SmartEnergy's** fixed or variable rates may be higher or lower than your **Utility's** rate in any given

month. Current and historical prices should not be taken as a guarantee of future prices, and **SmartEnergy** does not guarantee savings during any billing cycle or over the duration of your Agreement.

e. You may access future pricing information up to twelve days prior to the close of your billing period by 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. or visit our website [www.smartenergy.com](http://www.smartenergy.com).

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 of renewable generation. You will not have electricity from a specific generation facility delivered directly to your meter(s); 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 Agreement. **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. **SmartEnergy** complies with Maryland’s Renewable Portfolio Standard (“RPS”) applicable to all retail electricity suppliers. **SmartEnergy** may retire Tier 1 or Tier 2 renewable energy credits to meet its RPS obligations. The RPS for 2021 is 30.8% from Tier 1 sources, including at least 7.5% from solar energy and a MPSC-directed amount of offshore wind energy. The RPS for 2022 is 30.1% from Tier 1 sources, including at least 5.5% from solar energy and up to 2.5% from PSC-directed offshore wind energy and 2.5% from Tier 2 sources. The RPS for 2023 is 31.9% from Tier 1 sources, including at least 6% from solar energy and up to 2.5% from PSC-directed offshore wind energy and 2.5% from Tier 2 sources. Alternatively, **SmartEnergy** may meet its RPS obligation by paying a compliance fee to the Maryland Renewable Energy Fund. The compliance fees for each kWh shortfall are: 3 cents for Tier 1 non-solar (2019 through 2023); 8 cents in 2021, 6 cents in 2022 and 4.5 cents in 2023 for Tier 1 solar; and 1.5 cents for Tier 2.

8. **Payment.** Your payment is due by the date specified in the **Utility** bill, and late payments will be subject to late payment fees and interest in accordance with applicable **Utility** rules and procedures. 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 charges. You acknowledge that your **Utility** may provide billing and payment information 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 rate 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 rate 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. No deposit is required in support of the Agreement.

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, any identifying number required by your **Utility** to process your enrollment, 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. By entering into the Agreement, you authorize **SmartEnergy** to obtain this information from your **Utility**. 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) 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 the Agreement on thirty (30) calendar days’ Notice in the event you rescind such authorization.

13. **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) if 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 13 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.

14. **Termination of Service by SmartEnergy.** **SmartEnergy** may terminate electricity supply service for an Event of Default (defined in Section 12 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 thirty (30) days of Notice to the Customer if you fail to pay a bill or meet any other payment requirements. 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.

15. **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](mailto: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.

16. **Miscellaneous.**

a. **Dispute Resolution.** You agree to contact **SmartEnergy** 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. regarding any dispute related to the Agreement. You should contact the **Utility** concerning a power outage or any other emergency. If your complaint is not resolved after you have called **SmartEnergy**, you may contact the MPSC at 1-800-492-0474 or [www.psc.state.md.us](http://www.psc.state.md.us).

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

c. **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](http://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.

d. **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.

e. **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.

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 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.

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.

17. **Environmental Disclosure.** 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](http://www.smartenergy.com). **SmartEnergy** will provide a printed copy of the environmental disclosure information upon request and periodically to the extent required by applicable law.

18. **Electric Emergencies and Power Quality.** The **Utility** will continue to operate the electric distribution 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

19. **Entire Agreement.** The Agreement constitutes 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.