



**SmartEnergy – New York Terms and Conditions
for Purchase of Electricity Services (the
“Services”) by Residential and Small Commercial
Customers**

CUSTOMER DISCLOSURE STATEMENT

Price	[____] cents/kWh during the initial Term (the “Rate”).
Fixed or Variable and, if variable, how the price is determined	Fixed during the initial Term after which the Agreement will continue on a month-to-month basis at a variable rate, unless you choose to renew the Agreement for an additional fixed term. Variable rate will be established each month, based upon such factors as load ratio, NYISO 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 NYISO market price or business related factors.
Length of Agreement and End Date	The Agreement will continue for a fixed term of six (6) monthly billing cycles, after which the Agreement will continue on a month-to-month basis at a variable rate (the “Term”), unless you choose to renew the Agreement for an additional fixed 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 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 the end of the initial fixed term, you may renew the Agreement for an additional fixed term or the Agreement will automatically renew on a month-to-month basis at a variable rate.
Conditions under which savings to the Customer are guaranteed	The Agreement offers no guaranteed savings. Past savings are not a guarantee of future saving.

1. **Agreement to Purchase Electricity.** SmartEnergy Holdings, LLC (“SmartEnergy”), www.smartenergy.com, is an Energy Services Company (“ESCO”) offering and supplying Services to residential and small commercial customers in the State of New York. Subject to acceptance by SmartEnergy and your Utility, you agree to purchase, and SmartEnergy agrees to supply, all of your electricity, as delivered to you by your Utility, under the terms and conditions set forth in this document (the “Terms and Conditions”). The Terms and Conditions, your Enrollment Documentation and Welcome Letter shall be referred to collectively as the “Agreement”. 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. **Term.** 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) from 9 a.m. to 6 p.m. E.T. (Monday through Friday), or by email to customer.service@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. **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.

5. **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. For both fixed-rate and variable-rate plans, you will incur additional service and delivery charges from your Utility.

a. Your Rate 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.

b. To access current and future rates contact one of our customer care representatives at 1-800-443-4440.

6. **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.

7. **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.

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 NYISO 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 NYISO 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. **Renewal Notice.** At the end of your initial fixed term, you will receive a renewal notice, enabling you to renew the Agreement for an additional fixed term. If you do not renew the Agreement for a fixed term, the Agreement will continue on a month-to-month basis at a variable rate that will be established each month, based upon such factors as load ratio, NYISO 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 NYISO market price or business related factors, and you may cancel the Agreement at any time without any termination fees, or SmartEnergy may cancel by providing you with Notice. 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.

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.

9. **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) from 9 a.m. to 6 p.m. E.T. (Monday through Friday) . SmartEnergy reserves the right to cancel this Agreement on fifteen (15) calendar days' Notice in the event you rescind such authorization.

10. **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.

11. **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 12 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.

12. **Termination of Service by SmartEnergy.** SmartEnergy may terminate electricity supply service to you for an Event of Default (defined in Section 11 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.

13. **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.

14. **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.

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 575 Lexington Avenue, 4th Floor, New York, NY 10022 or 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.

16. **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. 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 Public Service Commission (“NYPSC”) at 1-800-342-3377 or by writing to the NYPSC at: New York State Public Service Commission, Department of Public Service - Office of Consumer Affairs, Three Empire State Plaza, Albany, New York 12223, or through its website at: <http://www.dps.state.ny.gov>. The telephone number for inquiries and complaints about alternative suppliers is 1-888-697-7728. You must pay the bill in full, except for the specific disputed amount, during the pendency of the dispute.

(b) **Contact Information.** 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) **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.

(f) Consumer Protection. The Agreement is subject to and governed by the Home Energy Fair Practices Act (“HEFPA”). 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.

(g) 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.

(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, 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.

(i) 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.

(j) 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.

(k) 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 the your option to reject the renewal terms. A customer shall not be charged a termination fee if you object to such renewal within three 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.

17. **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.

18. **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.