



Telephone: 1-800-448-0995  
333 West Washington Street  
Syracuse, New York 13202  
Customer-Services-US@smartestenergy.com

## FIXED PRICE SALES AGREEMENT FOR MASS MARKET CUSTOMERS New York

Customer Name:			
Billing Address:			
Contact Name:		Phone:	
Fax:		Email:	
Check Only if Voluntary REC's are requested	<input type="checkbox"/> Voluntary Renewable Energy Product: %	Check Only if Customer is Tax Exempt	<input type="checkbox"/> If checked, tax exempt documentation will be attached
Utility/Local Distribution Company:		Utility Account Number(s) and approximate Start Date(s): See Attachment A	

### CUSTOMER DISCLOSURE STATEMENT

Price	Fixed Price of \$ /kWh																		
Bill Type																			
How Price is Determined	<p><b>Fixed Price</b> includes the components as described in the table below. The Fixed Price does not include any applicable taxes (other than the gross-receipts tax, if applicable), which shall be passed-through to the customer. Components listed as “pass through” in the table below shall be billed using market-based prices or estimates thereof.</p> <p><u>The price for all electricity sold under this Agreement shall be a fixed-rate product limited to a price no greater than the trailing 12-month average utility supply rate plus a premium of no more than 5% per kWh, plus, in each case, all applicable taxes.</u></p> <table><thead><tr><th>COMPONENT</th><th>Treatment</th></tr></thead><tbody><tr><td>Energy</td><td>Fixed</td></tr><tr><td>Unforced Capacity</td><td>Fixed</td></tr><tr><td>Ancillary Services</td><td>Fixed</td></tr><tr><td>Transmission Owner Transmission Solutions (“TOTs”)</td><td>Fixed</td></tr><tr><td>Clean Energy – Mandatory ZECs</td><td>Fixed</td></tr><tr><td>Clean Energy – Mandatory RECs (Tier 1)</td><td>Fixed</td></tr><tr><td>Future Clean Energy Mandatory Costs (e.g., Tier 2, ORECs)</td><td>Regulatory Change coming</td></tr><tr><td>Renewable Energy (Electricity Supply with Voluntary Renewable Energy Certificates - See Paragraph 6)</td><td>Not Selected</td></tr></tbody></table> <p>Please note that fixed prices for mass market customers are subject to a price cap as outlined in the New York Public Service Commission Order dated December 1249, 2019, as clarified by order dated September 18, 2020. Please be aware that SmartestEnergy US LLC reserves the right to increase pricing and/or terminate this Agreement in accordance with Section 19 – Regulatory or Other Changes.</p>	COMPONENT	Treatment	Energy	Fixed	Unforced Capacity	Fixed	Ancillary Services	Fixed	Transmission Owner Transmission Solutions (“TOTs”)	Fixed	Clean Energy – Mandatory ZECs	Fixed	Clean Energy – Mandatory RECs (Tier 1)	Fixed	Future Clean Energy Mandatory Costs (e.g., Tier 2, ORECs)	Regulatory Change coming	Renewable Energy (Electricity Supply with Voluntary Renewable Energy Certificates - See Paragraph 6)	Not Selected
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Start Date	<p>Supply shall start from first meter read date after the Utility processes your enrollment with SmartestEnergy US LLC (the “Start Date”), which is expected to be during the month of .</p> <p>SmartestEnergy US LLC shall not be held responsible for any delays in the Start Date caused by the actions or inactions of the Utility.</p>																		
Term	<p>This Agreement will begin upon the date the parties executed this Agreement (the “Execution Date”). The Term shall be for a period of months from the Start Date (“Term”). <del>After the end of the Term, this Agreement will automatically continue at a variable rate methodology unless and until this Agreement is terminated by either party as provided in the Renewal section below.</del></p>																		
Process Customer May Use to Rescind	<p>Residential customers may terminate this Agreement within three (3) business days of receipt of this Agreement by contacting SmartestEnergy US LLC.</p>																		

<b>Agreement Without Penalty</b>	
<b>Amount of Early Termination Fee and Method of Calculation</b>	<p><del>No early termination fee for Variable service. For all other products</del>The Termination Fee shall equal the projected amount of electricity to be consumed by customer for the remainder of the Term multiplied by the difference between the contract price in effect for the remainder of the Term and the price at which SmartestEnergy US LLC can sell such electricity following the termination, or \$500 per non-residential account, whichever is greater.</p> <p>For all residential customers <u>and any commercial customers solicited to via door-to-door</u>, the termination fee will be no greater than \$100.00 if there is less than 12 months left of the Term and \$200.00 if there is 12 months or more left of the Term. See Section 4 – Term.</p> <p><del>Agreement is based on the energy consumption used in the prior year. A deviation of 100% or more could result in additional fees for all commercial customers. See section 8 – Customer Usage Deviation.</del></p>
<b>Amount of Late Payment</b>	If SmartestEnergy US LLC manages billing, customer shall pay 1.5% or the highest percentage or amount allowable by law, per month on overdue balances. If the utility manages billing, customer shall be responsible to pay any late fees charged by the utility on overdue balances.
<b>Renewal</b>	<p><del>There are no renewal terms.</del> After the end of the Initial Term, <u>Customer may sign another fixed price agreement with SmartestEnergy US LLC, take electricity supply service from another supplier or take electricity supply service from its distribution utility.</u> <del>this Agreement will automatically continue at a Variable rate methodology unless and until this Agreement is terminated by either party.</del></p> <p><del>Residential Customers only: Not less than 30 days and no more than 60 days prior to the expiration of the Term, SmartestEnergy US LLC will notify Customer in writing and/or by email of the switch to variable rate methodology at which SmartestEnergy US LLC will continue to serve Customer. Customer will have 15 days from Customer's receipt of such renewal notice to reject this offer and terminate the Agreement. If SmartestEnergy US LLC does not receive notice of Customer's termination of this Agreement, this Agreement will continue in full force and effect until canceled by customer. See Section 4 – Term.</del></p>
<b>Guaranteed Savings</b>	There are no guaranteed savings from the Utility rate and your rate may be higher than the Utility rate.

By entering into this Agreement, Customer agrees to the terms above (and those in the attached General Terms and Conditions, in particular, the specific Customer Acknowledgements) and authorizes SmartestEnergy US LLC to act as Customer's agent in dealing with the Utility. If there is any discrepancy between the terms in this "Customer Disclosure Statement" and the ones in General Terms and Conditions, the terms in "Customer Disclosure Statement" shall prevail.

<b>SmartestEnergy US LLC</b>	<b>CUSTOMER</b>
Printed Name:	Printed Name:
Signature:	Signature:
Title:	Title:
Date:	Date:
<b>SmartestEnergy US LLC</b>	
Printed Name:	
Signature:	
Title:	
Date:	

## GENERAL TERMS AND CONDITIONS

1. **Agreement to Sell and Purchase Energy.** This is an agreement between SmartestEnergy US LLC ("SEUS," the "Company," "Seller," "we," or "us"), an independent energy services company, and you ("Customer," "you," or "your") under which Customer authorizes SEUS to initiate electricity supply service and begin Customer's enrollment with SEUS (the "Agreement"). Subject to the terms and conditions of this Agreement, SEUS agrees to sell and Customer agrees to purchase and accept all the electricity required to serve Customer's account(s) listed on Attachment A ("Purchase Quantities"). SEUS does not guarantee savings under this Agreement. Customer's local distribution utility(ies) (the "Utility") will continue to deliver the electricity supplied by SEUS and will be available to respond to outages and/or other emergencies. SEUS is not affiliated with and does not represent Customer's Utility.
2. **Information Release Authorization.** Customer authorizes SEUS to obtain and review information regarding Customer's credit history from credit reporting agencies and information from Customer's Utility, which shall include, but not be limited to the following: consumption history; billing determinants; account numbers; credit information; public assistance status; existence of medical emergencies; status as to whether Customer has a medical emergency, is human needs, elderly, blind or disabled; data applicable to cold weather periods under section 32(3) of the NY Public Service Law; information pertaining to section 33 of the NY Public Service Law; tax status; and eligibility for economic development or other incentives (collectively, "Customer Information"). This information may be used by SEUS to determine whether it will commence and/or continue to provide energy supply service to Customer and will not be disclosed to a third party unless required by law. **Customer's execution of this Agreement shall constitute authorization for the release of this information to SEUS.** SEUS reserves the right to refuse to provide service to Customer under this Agreement if it is unable to obtain the necessary Customer Information or it obtains Customer Information that it considers unsatisfactory. This authorization will remain in effect during any initial or renewal term of this Agreement; provided, however, that Customer may rescind this authorization at any time by providing written notice to SEUS or by calling SEUS at 1-800-448-0995. SEUS reserves the right to cancel this Agreement in the event Customer rescinds such authorization. The data obtained pursuant to this authorization will be retained by SEUS for a period of six years post-termination of this Agreement consistent with the statute of limitations for contractual disputes and may be used by SEUS in connection with any ongoing business or legal purpose with respect to its obligations under the Agreement, or to offer additional products or services to Customer during the Term or at any time in the six year period after the Agreement terminates, or as contained in any derivative work created by SEUS in association with its business as a retail energy provider.
3. **Customer Acknowledgements.** CUSTOMER ACKNOWLEDGES THE FOLLOWING: THAT ANY SALES REPRESENTATIVE WITH WHOM CUSTOMER HAS SPOKEN REPRESENTS SEUS, AND IS NOT FROM THE UTILITY; THAT YOU ARE THE CUSTOMER WHOSE NAME IS ON THE ACCOUNT, THE SPOUSE OF THE ACCOUNT HOLDER, OR OVER 18 AND AUTHORIZED TO MAKE DECISIONS CONCERNING THE ACCOUNT; THAT YOUR UTILITY WILL CONTINUE TO DELIVER YOUR ELECTRICITY AND PROVIDE YOU WITH YOUR ELECTRICITY BILL UNLESS OTHERWISE AGREED TO IN WRITING; THAT YOU HAVE RECEIVED THE ESCO CONSUMERS BILL OF RIGHTS, A COPY OF SEUS'S TERMS AND CONDITIONS, AND THE CUSTOMER DISCLOSURE STATEMENT; AND, IF A NON-RESIDENTIAL CUSTOMER, THAT YOU WERE INFORMED THAT THE UTILITY MAY DISCONNECT YOUR SERVICE AS A RESULT OF ANY FAILURE TO PAY SEUS'S CHARGES.
4. **Term and Termination.**
  - a. ~~For all products except Variable.~~ This Agreement will begin upon the date the parties executed this Agreement (the "Execution Date"). It will continue for the period set forth in the Customer Disclosure Statement (the "Term") from the first meter read date after the Utility processes the Customer's enrollment with SEUS (the "Start Date"). SEUS shall not be held responsible for any delays in the Start Date caused by the actions or inactions of the Utility. ~~After the end of the Term, this Agreement will automatically continue at a variable rate methodology unless and until this Agreement is terminated by either party.~~
  - b. ~~Variable Service.~~ This Agreement will begin on the date the parties executed this Agreement (the "Execution Date") and will continue unless and until this Agreement is terminated by either party. SEUS will begin supplying electricity to Customer on the first meter read date after the Utility processes the Customer's enrollment with SEUS (the "Start Date"). SEUS shall not be held responsible for any delays in the Start Date caused by the actions or inactions of the Utility.
  - e-b. **Termination Fees.** ~~For commercial customers, the There are no early termination fee shall equals for Variable Service customers. For all other products,~~ the projected amount of electricity to be consumed by customer for the remainder of the Term, multiplied by the difference between the contract price in effect for the remainder of the Term and the price at which SEUS can sell such electricity following the termination, or \$500 per account, whichever is greater. For all residential customers and any commercial customers solicited to via door-to-door, the termination fee will be no greater than \$100.00 if there is less than 12 months left of the Term and \$200.00 if there is 12 months or more left of the Term. SEUS may terminate this agreement early for Customer fails to pay invoices timely. If either Party terminates this Agreement early, then Customer shall owe an Early Termination Fee.
5. **Price.** The price for all electricity sold under this Agreement shall be a fixed-rate product limited to a price no greater than the trailing 12-month average utility supply rate plus a premium of no more than 5% per kWh, plus, in each case, all applicable taxes. ~~The Price for all electricity under this Agreement shall be calculated as described in the Customer Disclosure Statement.~~ For each billing cycle, the Price shall be applied to the Customer's metered usage for such billing cycle (as reported by the Utility).
6. **Renewable Energy Products. Renewable Energy Products.** This paragraph applies if Customer has chosen to receive a voluntary renewable energy product, as outlined in the Customer Disclosure Label. This product bundles electricity with Renewable Energy Certificates ("RECs") in an amount designed to match the Customer's usage. A REC represents the environmental benefits of

1 megawatt hour (MWh) of renewable energy that can be paired with electricity. This product is Green-e® Energy certified and meets the environmental and consumer-protection standards set forth by the nonprofit Center for Resource Solutions. Learn more at [www.green-e.org](http://www.green-e.org). **Election of this product supports the development of renewable resources, but Customer understands and acknowledges that Customer may not actually be supplied with renewable energy.**

7. **Billing and Payment.** At SEUS's option, Customer may receive a single bill for both commodity and delivery costs from either SEUS or the Utility ("Consolidated Bill"), or the Utility and SEUS may each invoice Customer separately ("Dual Bill"). SEUS will have the right to change the bill type one time during the term of this Agreement. Customer will pay SEUS for electric supply service based on meter readings and consumption information measured by and/or received from Customer's Utility ("Billing Quantity"). For invoices received from SEUS, Customer will pay each invoice in full within 20 days of the invoice date or be subject to a late payment charge of 1.5%, or the highest percentage or amount allowable by law, per month. If Customer fails to pay each invoice in full within 20 days of the invoice date, then, in addition to any other remedies that it may have, SEUS may terminate this Agreement upon 15 calendar days' written notice to Customer. For invoices received from the Utility, Customer will pay each invoice in full as required by Utility's tariff or be subject to a late payment charge as required by Utility's tariff. **Failure to make full payment of SEUS and Utility charges due on any Consolidated Bill will be grounds for disconnection of utility services in accordance with New York State Department of Public Service ("DPS") rules and regulations on the termination of service.** Customer payments remitted in response to a Consolidated Bill shall be pro-rated (when so required) in accordance with procedures adopted by the PSC. A \$35 fee will be charged for all returned payments. If any payments made by you directly to us are rejected two (2) times in a one-year period, the only form of payment acceptable will be a certified check, money order, or electronic funds transfer. If you make a payment for a lesser amount, which includes a statement or letter indicating that the lesser payment constitutes full payment, we may accept such payment without prejudice to any other rights or remedies that we may have against you and we may apply it to your account(s) as a partial payment.

8. **Customer Usage Deviation and Behind the Meter Generation.** ~~If Customer's metered usage during any billing period exceeds, or falls below, its historic usage during a like billing period by 100% or more, and such variation results in SEUS incurring additional charges, Customer will be responsible for the payment of such additional charges.~~ Customer agrees to inform SEUS of any existing self-generation unit(s) or any state power allocations associated with the Customer accounts included in this Agreement prior to execution of this Agreement. Subsequent to the execution of this Agreement, Customer agrees to promptly provide SEUS with advanced written notice once Customer decides to implement any of the following: (i) changes its use of self-generation unit(s), (ii) installation of additional self-generation unit(s); or (iii) addition or amendment of a state power allocation. ~~Notwithstanding the foregoing, Customer shall reimburse SEUS for any costs incurred by SEUS as a result of Customer making any of the changes identified in this paragraph. For the avoidance of doubt, consumption bandwidth thresholds established above shall not apply in a manner that would duplicate Customer's cost reimbursement obligations when calculating costs pursuant to this~~

~~section.~~

9. **Delivery Point, Title, and Taxes.** All electricity sold pursuant to this Agreement shall be delivered to a location ("Delivery Point"), which shall constitute the point at which the sale occurs and title to the energy passes to you from us. Customer will be liable for and pay all taxes or surcharges, which are imposed with respect to the sale of electricity. If Customer is exempt from such taxes, Customer is responsible for identifying and requesting any exemption from the collection of the taxes by providing appropriate documentation to SEUS.
10. **Emergency Services.** The Utility will continue to respond to emergencies. In the event of an electricity emergency or service interruption, contact your Utility at one of the telephone numbers listed below. You should also contact your local emergency personnel. Central Hudson Gas and Electric: 1-800-527-2714; Consolidated Edison of NY: 1-800-752-6633; National Grid (KED-LI): 1-800-490-0045; National Grid: 1-800-892-2345; NYSEG: 1-800-572-1131; Orange and Rockland: 1-877-434-4100; or Rochester Gas and Electric: 1-800-743-1701; Long Island Power Authority: 800-490-0075 or 631-755-6900.
11. **Termination.** A residential Customer may rescind this Agreement within 3 business days after the signing or receipt of this Agreement, whichever comes first, by contacting SmartestEnergy US LLC at 1-800-448-0995 or in writing. Customer is liable for all SmartestEnergy US LLC charges until Customer returns to the LDC or goes to another supplier. A final bill will be rendered within twenty (20) days after the final scheduled meter reading or if access is unavailable, an estimate of consumption will be used in the final bill, which will be trued up subsequent to the final meter reading. ~~Customer acknowledges that in the event of a cancellation or termination of this Agreement, it may take several billing cycles for Customer to return to the Utility for commodity supply service. Customer remains liable for all SEUS charges until Customer's switch to the Utility or another supplier is effective. A final bill will be rendered within 45 days after the final scheduled meter reading by the Utility or if access is unavailable, an estimate of usage will be used in lieu of the final bill, which will be trued up when the final meter reading is provided.~~
12. **SEUS Contact Information.** Customer may contact SEUS by phone at 1-800-448-0995, Monday through Friday between the hours of 9:00 A.M. to 5:00 P.M. EST (such hours subject to change), by email at Customer-Service-US@smartestenergy.com, or by mail to 333 West Washington Street, Syracuse, NY, 13202.
13. **Consumer Protections.** The services provided by SmartestEnergy US LLC 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 HEFPA for residential customers. ~~The services provided by SEUS to residential Customers are governed by the terms and conditions of this Agreement and the Home Energy Fair Practices Act (HEFPA).~~ SEUS will provide at least 15 calendar days' notice prior to the cancellation of service ~~to a residential Customer.~~ Customer may obtain additional information by contacting SEUS at 1-800-448-0995, the DPS at 1-888-697-7728, or by writing to the DPS at: New York State Department of Public Service, Office of Consumer Services, 3 Empire State Plaza, Albany, NY 12223, or through its website at [www.dps.ny.gov](http://www.dps.ny.gov).



**14. Dispute Resolution.** The services provided by SmartestEnergy US LLC to Customer are governed by the terms and conditions of this Agreement and HEFPA for residential customers. In the event of a billing dispute or a disagreement involving SmartestEnergy US LLC's service hereunder, the parties will use their best efforts to resolve the dispute. Customer should contact SmartestEnergy US LLC by telephone or in writing as provided above. For consumer complaints that cannot be resolved with the company, you may contact the New York Department of Public Service (DPS). DPS complaints may be directed as follows: Website: [www.dps.ny.gov/complaints](http://www.dps.ny.gov/complaints); Phone: DPS Helpline at 1-800-342-3377 (M-F 8:30a - 4:00p); or Mail: Office of Consumer Services, NYS Department of Public Service, 3 Empire State Plaza, Albany, NY 12223. Customer must pay the bill in full, except for the specific disputed amount, during the pendency of the dispute, and such payment shall be refunded if warranted by the decision of DPS.  
~~13.~~

**~~14.~~15. No Warranties.** Unless otherwise expressly set forth in this Agreement, SEUS provides and Customer receives no warranties, express or implied, statutory, or otherwise and SEUS specifically disclaims any warranty of merchantability or fitness for a particular purpose.

**~~15.~~16. Limitation of Liability.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE NEW YORK LAW, NEITHER YOU NOR SEUS WILL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, EXEMPLARY, PUNITIVE, INCIDENTAL, OR INDIRECT DAMAGES ARISING FROM ANY CLAIM OR LEGAL PROCEEDING BETWEEN YOU AND SEUS, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR LOST REVENUES. THE REMEDY FOR ANY CLAIM OR SUIT AGAINST SEUS WILL BE LIMITED TO DIRECT ACTUAL DAMAGES, WHICH SHALL NOT EXCEED THE AMOUNT OF CUSTOMER'S SINGLE LARGEST MONTHLY INVOICE DURING THE PRECEDING 12 MONTHS. CUSTOMER SHALL NOT PURSUE OR RECOVER ANY ADDITIONAL DAMAGES OR AMOUNTS FROM SEUS, AND HEREBY WAIVES ALL OTHER REMEDIES IN LAW OR EQUITY. THESE LIMITATIONS APPLY WITHOUT REGARD TO THE CAUSE OF ANY LIABILITY OR DAMAGES. CUSTOMER AND SEUS ACKNOWLEDGE THAT THERE ARE NO THIRD-PARTY BENEFICIARIES TO THIS AGREEMENT. IN THE EVENT CUSTOMER FAILS TO REPORT A DISPUTE WITHIN THIRTY (30) DAYS OF THE DISPUTED OCCURRENCE, CUSTOMER WAIVES ANY AND ALL RIGHTS TO ASSERT THE DISPUTE. THIS THIRTY (30) DAY REQUIREMENT SHALL TAKE PRIORITY OVER ALL OTHER PROVISIONS OF THIS AGREEMENT.

**~~16.~~17. Arbitration of Disputes, Waiver of Jury Trial, and Participation in Class Actions.** ANY COMPLAINT, CLAIM, OR DISPUTE BETWEEN SEUS AND CUSTOMER, WHETHER ARISING IN ANY CONTRACT, STATUTE, REGULATION, TORT, OR OTHERWISE, SHALL, AS THE SOLE AND EXCLUSIVE REMEDY OF SEUS AND CUSTOMER, BE DECIDED BY FINAL AND BINDING ARBITRATION UNDER THE CONSUMER ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA") AND PURSUANT TO THE FEDERAL ARBITRATION ACT ("FAA"), 9 U.S.C. § 1 ET. SEQ., AND SHALL BE VENUED EXCLUSIVELY IN THE STATE OF NEW YORK AND THE COUNTY WHERE SERVICES ARE BEING PROVIDED UNDER THIS AGREEMENT, OR WHERE SEUS AND

CUSTOMER MUTUALLY AGREE. ANY SUCH COMPLAINTS, CLAIMS, OR DISPUTES SHALL PROCEED ONLY IN ARBITRATION AND ONLY ON AN INDIVIDUAL BASIS. THE ARBITRATOR'S DECISION SHALL BE FINAL AND BINDING AND MAY BE ENTERED INTO JUDGMENT IN ANY COURT OF COMPETENT JURISDICTION. SEUS AND CUSTOMER SHALL NOT BE PERMITTED TO JOIN OR CONSOLIDATE COMPLAINTS, CLAIMS, OR DISPUTES INVOLVING OTHERS, NOR SHALL ANY COMPLAINTS, CLAIMS, OR DISPUTES BE BROUGHT OR MAINTAINED AS A CLASS ACTION OR IN ANY REPRESENTATIVE CAPACITY.

**BY AGREEING TO BINDING ARBITRATION, SEUS AND CUSTOMER UNDERSTAND AND AGREE THAT THEY ARE KNOWINGLY, VOLUNTARILY, AND WILLINGLY WAIVING THE RIGHT TO SUE OR SEEK RELIEF OR HAVE ANY COMPLAINTS, CLAIMS, OR DISPUTES ADJUDICATED IN ANY COURT OF LAW, ADMINISTRATIVE PROCEEDING, OR ANY OTHER FORUM, WHETHER THOSE COMPLAINTS, CLAIMS, OR DISPUTES ARISE OR ARE BASED IN ANY CONTRACT, STATUTE, REGULATION, TORT, OR OTHERWISE. SEUS AND CUSTOMER UNDERSTAND AND AGREE THAT THEY ARE KNOWINGLY, VOLUNTARILY, AND WILLINGLY WAIVING THE RIGHT TO A TRIAL BY JURY. SEUS AND CUSTOMER UNDERSTAND AND AGREE THAT THEY ARE KNOWINGLY, VOLUNTARILY, AND WILLINGLY WAIVING THE RIGHT TO PARTICIPATE IN OR BE REPRESENTED IN ANY CLASS ACTION OR CLASS ARBITRATION.**

NOTWITHSTANDING THE FOREGOING, THIS PARAGRAPH DOES NOT PREVENT YOU FROM FILING A COMPLAINT RELATING TO YOUR ELECTRIC SUPPLY SERVICE WITH SEUS PURSUANT TO THE LAWS GOVERNING RETAIL ELECTRIC SUPPLIERS IN YOUR STATE AND THE REGULATIONS OF ANY AGENCY IN YOUR STATE WITH JURISDICTION OVER RETAIL ELECTRIC SUPPLIERS. HOWEVER, ANY COMPLAINTS, CLAIMS, OR DISPUTES SUBMITTED TO SAID AGENCY REMAIN OTHERWISE SUBJECT TO THE PROVISIONS OF THIS PARAGRAPH, INCLUDING, BUT NOT LIMITED TO, THE AGREEMENT TO SUBMIT ALL COMPLAINTS, CLAIMS, OR DISPUTES, WHETHER ARISING OR BASED IN ANY CONTRACT, STATUTE, REGULATION, TORT, OR OTHERWISE, TO BINDING AND FINAL ARBITRATION; THE KNOWING, VOLUNTARY, AND WILLING WAIVER OF THE RIGHT TO SUE OR SEEK RELIEF IN ANY COURT OF LAW, ADMINISTRATIVE PROCEEDING, OR ANY OTHER FORUM; THE KNOWING, VOLUNTARY, AND WILLING WAIVER OF THE RIGHT TO A JURY TRIAL; AND THE KNOWING, VOLUNTARY, AND WILLING WAIVER OF THE RIGHT TO PARTICIPATE OR BE REPRESENTED IN ANY CLASS ACTION OR CLASS ARBITRATION.

**~~17.~~18. Force Majeure.** In the event that either party is rendered unable, wholly or in part, to perform that party's obligations under this Agreement due to events not reasonably anticipated or within either party's control, such as, but not limited to, acts of God, severe weather events, curtailment by Customer's Utility, etc., the Parties agree that such non-performance shall be excused for the duration of the event which caused it. Should the parties have cause to claim force majeure, the claiming party will notify the other party, in writing, of the cause(s) of such event, the anticipated duration of non-performance and the remedies being taken to eliminate the cause. Financial obligations relating to payment for or delivery of

electricity under this Agreement cannot be cause for claiming force majeure and obligations cannot be excused as a result of a force majeure event.

~~18.~~**19. Applicable/Governing Law.** This Agreement is governed by the laws of New York State. This Agreement is subject to present and future legislation, orders, rules, regulations, or decisions of a duly constituted governmental authority having jurisdiction over this agreement or the services to be provided hereunder.

~~19.~~**20. Regulatory or Other Changes.** SEUS and Customer recognize that a change in any law, rule, regulation, or tariff that results in a change in a cost or requirement applicable to SEUS (each, a “Regulatory Change”) could materially impact a term or provision of this Agreement including, but not limited to price. Accordingly, SEUS retains the right to modify this Agreement, including Customer’s price, as a result of a Regulatory Change, subject to Customer’s affirmative consent. SEUS shall provide 30 days’ prior written notice to Customer of any modification to this Agreement resulting from a Regulatory Change. If Customer does not consent to the modification, then SmartestEnergy US LLC may terminate this Agreement.

~~Please note that as a result of COVID-19, there is significant uncertainty in the amount that utilities will charge SmartestEnergy US LLC for billing and purchasing receivables (“POR Charges”). As a result, if your Utility increases or decreases its POR Charges by more than 0.5% during the term of this Agreement, SmartestEnergy US LLC will reset the fixed portion of your rate to reflect such changes. Smartest Energy US LLC will provide you with 30 days notification before any such reset.~~

~~20.~~**21. Assignment.** You may not assign this Agreement, in whole or in part, or any of your rights or obligations without SEUS’s prior written consent. We may, upon 30 days’ written notice, transfer, sell, pledge, encumber, or assign this Agreement or the accounts, revenues, or proceeds in connection with any financial or billing services agreement and transfer or assign this Agreement, in whole or in part, to an ESCO affiliate of SEUS, or any other approved ESCO or other entity authorized by the DPS without your consent. This Agreement shall be binding on each party’s successors and legal assigns.

~~21.~~**22. Severability.** If any provision of this Agreement is held by a court or regulatory agency of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force without being invalidated in any way.

~~22.~~**23. Forward Contract.** Customer agrees that this Agreement is a “forward contract” within the meaning of the U.S. Bankruptcy Code, as amended, and that SUES is a “forward contract merchant” within the meaning of the U.S. Bankruptcy Code, as amended.

~~23.~~**24. Entire Agreement.** This Agreement, including any enrollment form and applicable attachments, is the entire Agreement between Customer and SEUS with respect to the subject matter hereof and there are no promises, covenants, or undertakings other than those expressly set forth in this Agreement.