SmartEnergy – Illinois Terms of Service for Residential and Small Commercial Customers

1. **Agreement to Purchase Electricity**. **SmartEnergy Holdings, LLC** ("**SmartEnergy**"), business address 400 Madison Avenue, Suite 9A, New York, NY 10017, mailing address 74 W Broad Street, Suite 530, Bethlehem, PA 18018, www.smartenergy.com, is an alternative retail electric supplier, certified by the **Illinois Commerce Commission ("ICC")** to offer electricity supply services to residential and non-residential customers in the State of Illinois in **Docket No. 16-0427**. **SmartEnergy** is an independent seller of electric power and energy service certified by the Illinois Commerce Commission and **SmartEnergy** is not representing, endorsed by, or acting on behalf of, a utility or a utility program, a consumer group or consumer group program, or a governmental body or program of a governmental body. Subject to acceptance by **SmartEnergy** and your electric utility ("**Utility**"), you agree to purchase, and **SmartEnergy** agrees to supply, all of your electricity, as delivered to you by your **Utility** under the terms and conditions set forth in this document (the "Contract"). As used herein, the words "we", "us" and "our" refer to **SmartEnergy**, and the words "you" and "your" refer to the **Customer**.

2. **Agreement, Term and Automatic Contract Renewal.** The Contract, Enrollment Form, Internet Enrollment Form, Telephone Verification Recording, Uniform Disclosure Statement and Welcome Letter shall be referred to collectively as the "Agreement". The term of your Agreement begins with the next available meter reading after processing of your enrollment by your **Utility** and **SmartEnergy**, and continues for the term as set forth at the time of enrollment and confirmed in the Welcome Letter and Uniform Disclosure Statement, unless earlier terminated by you or **SmartEnergy** in accordance with the terms of this Agreement.

Automatic Contract Renewal: Based on your expected enrollment date, **this Agreement will expire on the last day of the last billing cycle of the contract term, but may be later based on when the Utility accepts the initial enrollment. The new contract term will immediately follow the last billing cycle of the current term. At least 30 days but not more than 60 days prior to the end of the term, SmartEnergy will send you a contract expiration and renewal notice that includes an offer to renew for another term. You may reject the offer or terminate this Agreement by contacting SmartEnergy by telephone, mail or electronic mail. If you do not reject the offer, it will automatically renew and be deemed accepted by you. If you reject the offer, your account will be returned to Utility service at the end of the current term.**

3. **Right to Cancel**. You will receive a written notice from the **Utility** confirming a switch of your electricity supplier and stating the last day to make a request to rescind the enrollment. You may contact **SmartEnergy** to rescind your Agreement and the pending enrollment within ten (10) calendar days of the **Utility**'s notice. Residential customers may rescind the Agreement and the pending enrollment by contacting either **SmartEnergy** or the **Utility**. This Agreement for electricity supply services shall not be legally binding upon you until the 10-day confirmation 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 **LDC** fees or charges. If you relocate within your **LDC**'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**. You will pay the fixed rate set forth at the time of enrollment and confirmed in the Welcome

Letter or the Uniform Disclosure Statement for the length of the contract . Fixed rates and variable rates will be determined as follows:

a. Fixed Rate. The fixed rate per kilowatt-hour ("kWh") will be as indicated in the Welcome Letter or the Uniform Disclosure Statement. The fixed rate will be multiplied by the amount of electricity you use in the billing cycle to determine the generation portion of your bill, plus any applicable fees, charges or taxes.

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 Price to Compare ("PTC") during any given period. EXCEPT FOR ANY PROJECTED INCREASES OF 20% OR MORE, YOU WILL NOT RECEIVE A NOTICE OF THE UPCOMING VARIABLE RATE; UNLESS YOU CONTACT SMARTENERGY, YOU WILL NOT KNOW THE RATE UNTIL TIME OF BILLING. To access current, available future rates, and highest and lowest historical rates over the preceding twelve (12) months, contact one of our customer care representatives 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 visit our website www.smartenergy.com. 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 indicated in the Welcome Letter or the Uniform Disclosure Statement.

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

e. **SmartEnergy**'s prices may be higher or lower than your **Utility**'s rate in any given month.

f. If you accepted an offer from **SmartEnergy** that included an incentive to enroll, such as a month of free electricity or cash back, your incentive will be described in the Welcome Letter. You must complete the instructions and comply with the terms and conditions on the form included with your Welcome Letter to receive the incentive. You must have an active account with **SmartEnergy** when we process the form in order to be eligible. If you have questions regarding the incentive, you may call **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.

7. **Billing**. You will receive one bill from your **Utility** monthly, in which your **SmartEnergy** supply charges will be listed separately from your **Utility**'s delivery charges. Your **Utility** may or may not charge a fee for switching service to **SmartEnergy**.

SmartEnergy may offer budget billing for the generation portion of the bill if permitted by your **Utility**. 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 will be subject to interest at 1.5% per month or the highest amount allowable under applicable law, whichever is lower. 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 of this Agreement, **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 from your **Utility**, including but not limited to the following: 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 this 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 electricity supply service; and (d) to our affiliates and subcontractors for marketing purposes. Your acceptance of this Agreement is an authorization for the release of this information to **SmartEnergy**. This authorization will remain in effect during the term of this 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. or visit our website www.smartenergy.com. **SmartEnergy** reserves the right to cancel this Agreement on thirty (30) calendar days' Notice in the event you rescind such authorization.

11. **Early Termination**. You may cancel this Agreement at any time, for any reason, without fees or penalties. To cancel, you may contact **SmartEnergy** by mail, telephone, or electronically at the contact information provided above. If you cancel this 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. If you switch back to your **Utility** you may or may not be served under the same rates, terms, and conditions that apply to other customers served by your **Utility**.

12. **Events of Default**. An Event of Default shall mean: (i) failure to make any payment required under this Agreement when due; (ii) the failure to take electric supply when delivered under the terms of this Agreement; (iii) significant downgrading of your credit rating since the effective date of this 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 this 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.

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 supply 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 this Agreement, or for any other reason, **SmartEnergy** reserves the right to terminate this Agreement upon thirty (30) days advance, written Notice to you. Upon any termination of this Agreement, you will return to receiving electricity supply from your **Utility** unless you have selected another electricity supplier.

14. **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. 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 acquire enough RECs to match either all of your usage or the renewable content amount specified in your plan description. **SmartEnergy** may take up to six (6) 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. **Legal Notice**. All legal notice to be given hereunder ("Notice") will be in writing and delivered as specified in this 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 74 W Broad Street, Suite 530, Bethlehem, PA 18018, 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.

16. **Miscellaneous**.

a. Dispute Resolution. You agree to contact **SmartEnergy** by phone 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 mail addressed to **SmartEnergy Holdings, LLC**, 74 W Broad Street, Suite 530, Bethlehem, PA 18018, or by email a customer.care@smartenergy.com regarding any dispute related to this Agreement. If your complaint is not resolved after you have called **SmartEnergy** and/or your **Utility**, or for general **Utility** information, you may contact the **Illinois Commerce Commission**'s **Consumer Services Division** at 800-524-0795 and or the **Office of the Attorney General**

at 800-964-3013

b. Emergencies and Customer Service. In the event of an emergency such as a power failure or downed power line, contact your **Utility**.

For **ComEd** Customer Service:
Customer Care Center
P.O. Box 805379
Chicago, IL 60680-5379
Residential: 1-(800)-EDISON-1 (1-800-334-7661)
7:00 a.m. to 7:00 p.m., Monday through Friday.

For **Ameren Illinois** Customer Service:
300 Liberty Street
Peoria, IL 61602
Residential: 1-800-755-5000 7:00 a.m. to 7:00 p.m., Monday through Friday.

c. Assignment. You may not assign your rights or obligations under this Agreement without **SmartEnergy**'s express written consent. **SmartEnergy** may sell, transfer, pledge, or assign the accounts, revenues, or proceeds due to it under this Agreement, and may also assign its interest in this Agreement to another electric supplier or other entity as permitted by law. SmartEnergy will provide a written notice of the assignment no less than 30 days prior to the assignment.

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. This Agreement is the entire agreement between you and **SmartEnergy** and supersedes any prior written or verbal agreements. This Agreement is binding upon you and **SmartEnergy** and each of its respective successors and permitted legal assigns. This Agreement is not intended to benefit any third party.

f. Representations and Warranties, Limitation of Liability and Arbitration. The electricity supplied by **SmartEnergy** under this Agreement will be purchased from a variety of sources. SMARTENERGY MAKES NO REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS 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 THIS AGREEMENT SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY, WHICH WILL NOT EXCEED THE AMOUNT OF YOUR SINGLE LARGEST MONTHLY INVOICE DURING THE PRECEDING TWELVE (12) MONTHS. NEITHER SMARTENERGY NOR ANY OF ITS AFFILIATES OR SUBCONTRACTORS SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR OTHER DAMAGES, REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON A CLAIM RELATING TO CONTRACT, TORT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, LOST PROFITS, BREACH, NON-PERFORMANCE OR ANY OTHER BASIS. YOU AND SMARTENERGY WAIVE THE RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY DISPUTE ARISING OUT OF OR IN CONNECTION WITH THIS 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 THIS AGREEMENT.

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 this Agreement will take place on an individual basis; class arbitrations and class actions are not permitted. Please visit www.smartenergy.com/resolving-disputes for the full terms and conditions that govern your agreement to resolve any disputes arising under this 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 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.

i. Governing Law. This Agreement shall be construed under and shall be governed by the laws of the State of Illinois 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 this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself. If any provision of this Agreement is held unenforceable, then such provision will be modified to reflect the parties' intention. All remaining provisions of this Agreement shall remain in full force and effect.

k. Amendments. **SmartEnergy** may change, modify or amend this Agreement at any time (each a "Change"). Each Change will be made by **SmartEnergy** in the manner required by applicable law. Each Change will be posted on **SmartEnergy**'s website (www.smartenergy.com), and you will receive individual notice of the Change if required by applicable law. You should review the website periodically for applicable Changes. Your continued use of **SmartEnergy**'s products and services following a Change constitutes your acceptance of this Agreement as so Changed.

17. **Electric Emergencies and Power Quality**. The **Utility** will continue to operate the electric transmission lines and to maintain responsibility for power outages and for power quality. You will hold **SmartEnergy** harmless in the event of a loss of power caused by any entity other than **SmartEnergy**. If you have an electrical emergency, power outage or reduction in power quality, you should contact your **Utility** at its telephone number for emergencies.

18. **Environmental Disclosure**. An Environmental Disclosure Label specifying the approximate generation resource mix and environmental characteristics of the power supply being offered under this Agreement can be found on the **SmartEnergy** website at 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.