



## SmartEnergy – Texas Terms of Service for Residential and Small Commercial Customers

1. **Agreement to Purchase Electricity.** SmartEnergy Holdings, LLC dba SmartEnergy, certificate No. 10253 (“SmartEnergy”), is a retail electric provider (“REP”) to residential and business customers in the State of Texas. Subject to acceptance by SmartEnergy, you agree to purchase, and SmartEnergy agrees to supply, all of your electricity, as delivered to you by your Transmission and Distribution Utility (“TDU”) under the terms and conditions set forth in this document (“Terms of Service” or “TOS”). SmartEnergy will supply the generation portion of your electricity, and your TDU will 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. Our business address is 400 Madison Avenue, Suite 9A, New York, NY 10017, our mailing address is 74 W Broad Street, Suite 530, Bethlehem, PA 18018, and our internet address is [www.smartenergy.com](http://www.smartenergy.com). You may also contact us by telephone at 1-800-443-4440 (toll-free) Monday through Friday from 7:00 a.m. to 6:00 p.m. C.T., and Saturday from 8:00 a.m. to 5:00 p.m. C.T., or by e-mail at [customer.care@smartenergy.com](mailto:customer.care@smartenergy.com).

2. **Agreement and Term.** These TOS, the Electricity Facts Label (“EFL”), Your Rights as a Customer document (“YRAC”), and your documentation of enrollment including the enrollment form, Internet Enrollment Form, Telephone Verification Recording, and Welcome Letter shall be referred to collectively as the “Agreement.” The initial term of the Agreement (the “Initial Term”) shall begin on the date of your first meter reading following completion of enrollment with us, and will last the number of billing cycles set forth in the Agreement. The term of the Agreement (the “Term”) shall begin with the Initial Term and continue afterward month-to-month until terminated by you or by SmartEnergy in accordance with the terms set herein. Your contract documents are available in Spanish if you call us at 1-800-443-4440 (toll-free) or visit our website at [www.smartenergy.com](http://www.smartenergy.com).

3. **Disconnection of Service.** Failure to make

full payment of the charges due hereunder may be grounds for disconnection of electric service. SmartEnergy may request disconnection by the TDU if it has sent you notice of impending disconnection and you have not taken the actions requested in the notice by the date specified in the notice. SmartEnergy will send the notice at least one (1) day after the missed payment and the date for corrective action specified in the notice shall be at least ten (10) days after the date of the notice. SmartEnergy may also unilaterally terminate this agreement, without penalty to you, per Section 15 of this TOS.

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 TDU 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 TDU fees or charges. If you relocate within your TDU’s service territory, you may be able to enter into a new electricity supply agreement with SmartEnergy. The early termination fee charged by SmartEnergy pursuant Section 15 (b) of this TOS does not apply if you move to another address as long as you provide a forwarding address and provide reasonable evidence that you no longer occupy the location specified in the Agreement.

5. **Pricing.** You have enrolled either in a fixed-price plan or a variable-price plan as set forth at the time of enrollment and confirmed in the Welcome Letter. For both fixed price products and variable price products, you will also incur additional service and delivery charges from your TDU. Fixed prices and variable prices, if applicable, will be determined as follows:

a. **Fixed Price Products.** If you enrolled in a fixed-price plan, the Energy Charge per kilowatt-hour (“kWh”) for each billing cycle during the Initial Term will be as indicated at the time of the enrollment and confirmed in the EFL. Your price will be calculated by multiplying the Energy Charge per kWh that month by the amount of electricity you use in the billing cycle. This price is exclusive of state and local taxes and the state miscellaneous gross receipts tax reimbursement.

b. Variable Price Products. If you enrolled in a variable price product, the Energy Charge per kWh for the first month will be as indicated in the Welcome Letter. Thereafter, or if your Agreement converts to a variable-price product, your Energy Charge may be higher or lower each subsequent month, will be set in **SmartEnergy's** sole discretion, and is not based on a market or index price. **SmartEnergy** typically considers some or all of the following factors when setting variable prices:

- publicly available competitor pricing;
- 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.

Your price will be calculated by multiplying the Energy Charge per kWh that month by the amount of electricity you use in the billing cycle. This price is exclusive of state and local taxes and the state miscellaneous gross receipts tax reimbursement.

c. The price assigned to any individual account may vary from the price assigned to any other individual accounts, even though such accounts may be in the same utility rate class.

d. Current and historical prices should not be taken as a guarantee of future prices.

6. **Renewable Energy and Renewable Energy Credits.** If you have selected a renewable energy product from **SmartEnergy**, your price 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.

7. **Billing.** You will receive one bill from us per billing cycle, which will include supply charges from **SmartEnergy** and delivery charges from your TDU. Your bill will be sent by e-mail unless you have requested to receive it by U.S. mail. You have the right to request a 12-month payment history, without a charge, once per 12-month period.

8. **Payment.** Your payment is due by the date specified in your **SmartEnergy** bill, which will be at least 16 days after the date the bill was issued. If the 16<sup>th</sup> day falls on a holiday or weekend it will be due on the next business day. Late payments will be subject to a one-time late payment penalty of 5% for each delinquent month's charges that remain unpaid after the close of business on the bill due date. **SmartEnergy** will also charge the following fees when applicable:

- a. \$40 for any returned check, electronic fund

transfer or credit card transaction not processed due to insufficient funds or credit availability;

- b. \$25 disconnection notice fee;
- c. \$20 reconnection process fee;
- d. \$25 for an out-of-cycle meter switch;
- e. Non-recurring fees charged to **SmartEnergy** by the **TDU** and passed through to you, which may include switch fees, reread, off cycle, disconnection, reconnection, priority reconnection, weekend reconnection, and meter test. These fees are paid to the **TDU** and are uniform among all **REPs**; and
- f. \$20 early termination fee per month remaining in the Initial Term at the time of termination.

**SmartEnergy** reserves the right to include, in any subsequent invoice, adjustments related to previous invoices, including invoicing errors, meter reading errors, miscalculation of taxes or other errors or omissions. You authorize **SmartEnergy** to charge your credit or debit card or checking account without notice for any unpaid balances including fees and adjustments. If you dispute the charges on your invoice let us know immediately and we will investigate, during which time your obligation to pay the disputed portion of your invoice will be suspended.

If you anticipate having difficulty paying your invoice by the due date, call our customer service phone number as described in Section 1. You may be eligible for payment assistance, an average payment plan or a deferred payment plan (DPP). Dollar Energy Fund is a bill payment assistance program that accepts donations and distributes them to those in need through local organizations. If you would like to apply for a bill payment assistance program, contact your **TDU**. They will screen you for eligibility and refer you to a Community Based Organization (CBO) or local agency in your area that will assist you with the application process. Your **TDU** will also be able to tell you about other programs that may be available to help you.

Go to <https://www.DollarEnergy.org/donate/> if you would like to make a contribution for the benefit of other customers with severe financial hardships.

Alternatively, you may be eligible for an average payment plan, which is available to customers who are not currently delinquent in payment and also to delinquent customers in limited situations. You may choose enrollment on an average payment plan, in lieu of enrollment on a DPP for certain months set forth below. An average payment plan is designed to even out the highs and lows in your electric bill. **SmartEnergy** may reconcile your account and recalculate a new average monthly payment amount as frequently as every billing period but at least annually. We may collect under-payments over a period no less than the reconciliation period or upon termination of service. We will credit or refund any over-payments at each reconciliation or upon termination of service. In the event the Agreement is rescinded or terminated, or your electric service is disconnected, the billing plan does not affect your obligation to pay for all actual usage. You, upon settlement of the total deferred balance, or **SmartEnergy**, in the event you fail to make any payment in a timely manner, may remove your account from the average billing plan and return to regular billing, in which case any variance in actual charges and average monthly payments will be immediately applied to your account and become due with your next regular bill.

You may also be eligible for a deferred payment plan which is available to Critical Care or Chronic Condition Residential Customers, as defined by law, residential customers who have expressed an inability to pay and have not received more than two (2) collection or disconnection notices in the last twelve (12) months, and residential customers that have received at least three (3) months of service with SmartEnergy. You may request a deferred payment plan if you have been underbilled, or for bills that become due on July, August, or September during an extreme weather, or bills that become due on January or February during a state of disaster declared by the governor of Texas in the **TDU** service area. With a deferred payment plan you will be able to pay an outstanding balance in installments that extend beyond the due date of the current bill.

Upon agreeing to either an average payment plan for a delinquent account or a deferred payment plan, a switch-hold may be applied to your account and you will not be able to buy electricity from other companies until

you pay the total deferred balance. If we put a switch-hold on your account, it will be removed after your deferred balance is paid and processed. While a switch-hold applies, if you are disconnected for not paying, you will need to pay **SmartEnergy** to get your electricity turned back on. If you make a partial payment, we will credit it first to the oldest balance due for electric service, followed by the current amount for electric service. All deferred payment plans shall be formalized in writing and provided to you.

9. **Right of Rescission.** You have the right to rescind the Agreement without penalty by contacting **SmartEnergy** within three (3) business days following your receipt of these TOS. To rescind, you may contact **SmartEnergy** in writing by sending notice to:

**SmartEnergy Holdings, LLC, 74 W Broad Street, Suite 530, Bethlehem, PA 18018**, or electronically by e-mail to: [customer.care@smartenergy.com](mailto:customer.care@smartenergy.com); or by telephone at 1-800-443-4440 (toll-free) Monday through Friday from 7:00 a.m. to 6:00 p.m. C.T., and Saturday from 8:00 a.m. to 5:00 p.m. C.T.

When you rescind 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 rescission effective, and for any fees incurred by **SmartEnergy** in collecting any unpaid amounts due.

10. **Contract Expiration Notice.** If you have a fixed price product, we will send you three (3) written notices throughout the last third of the fixed rate contract period, explaining your options and the date by which you must take action to exercise your options. The last written notice will be sent at least thirty (30) days or one (1) billing cycle before the expiration date of the Initial Term. **If you do not respond to the written notice described above, your service will continue month-to-month at a variable price in a default renewal product until it is either terminated by you or SmartEnergy in accordance with the terms of the Agreement.**

11. **Change in Contract Terms.** We may make changes at any time to our Terms of Service, except for

changes to the length of your contract term. Changes to the price of a fixed price product are permissible only to reflect changes in the **TDU** charges, changes to the **Electric Reliability Council of Texas** ("ERCOT") or other administrative fees charged to load or changes resulting from federal, state or local laws that impose increased costs on **REPs** beyond our control. Changes to the price of a variable price product may occur as described in the Agreement. If we make material changes other than term or price, we will notify you in writing of the change at least fourteen (14) days before the change will take effect. If you do not cancel the contract before the effective date of the change, the change will become effective as stated in the notice. Notice is not required for a change that is beneficial to you.

12. **Deposits.** **SmartEnergy** may assess the need for a deposit at any time. For customers who enroll more than one premise(s) with us we may require a security deposit for each premise(s). Applicants for new service may be required to pay an initial deposit if they don't meet one or more of the following criteria:

a. You have a good credit rating or report with your previous energy company, or a consumer reporting agency and such proof or written reference can be provided to us as defined by the **Federal Trade Commission**;

b. You have not been late paying an electric bill more than once during the last year that you were a customer of another energy company;

c. You haven't had your electric service terminated or disconnected for not paying a bill during the last year that you were a customer of another energy company.

d. Regardless of the answers to (a)-(c), residential applicants' credit will be deemed satisfactory if: (1) you are age sixty-five (65) or over and are not currently delinquent in payment of any electric service account; or (2) you submit a certification letter developed by the **Texas Council on Family Violence** determining you to be a "victim of family violence" (ask **SmartEnergy** customer service reps for a toll-free fax number to submit the letter).

If we determine that an existing customer who was not

required to pay an initial deposit upon enrollment was late paying a bill more than once during the last 12 months of service or had service terminated or disconnected for nonpayment during the last 12 months of service, we may ask that customer to pay an initial deposit when we make that determination. If you have already paid an initial deposit but the average of your actual billings for the last 12 months are at least twice the amount of the original average of the estimated annual billings and we sent you a termination notice or disconnection notice, or the account was in fact disconnected, in the last 12 months, then we may ask you to pay an additional deposit. We may send the request for additional deposit combined with or at the same time as a 10-day disconnection notice, and we may disconnect service if the additional deposit is not paid within the ten days stated in the notice.

The total of all deposits, initial and additional, required for a residential customer or applicant will equal the greater of one-fifth (1/5) of the customer's estimated annual billing or the sum of the customer's estimated billings for the next two (2) months. Estimated billings will include only charges for electric service. We may base the estimated annual billing for initial deposits for applicants on a reasonable estimate of average usage for the customer class. For deposits from existing customers, we will base the estimated annual billing on the customer's actual historical usage, to the extent available. After 12 months of service with **SmartEnergy**, a customer whose billings were estimated may request that we recalculate the required deposit based on that customer's actual historical usage.

The initial deposit for a commercial applicant will equal the greater of the sum of the customer's estimated billings for the next three (3) months or one-fourth (1/4) of the customer's estimated annual billing.

We will pay interest on deposits at a rate set by the **Public Utility Commission of Texas (PUC)** on or before December 1 of the preceding calendar year. Interest will be paid annually or when the deposit is returned or credited to your account. We will refund your deposit, by means of a credit to your account, when you have paid bills for service on time for 12 consecutive months (for residential customers) or 24 consecutive months (for commercial customers). If you

transfer service to another **REP**, we will agree with your new **REP** whether to refund to you the deposit plus accrued interest or whether to transfer it to the new **REP**. Before doing either, we will subtract from the amounts refunded or transferred any amounts still owed by you to us. If a deposit is refunded within thirty (30) days of the date of deposit, then no interest payment is required. If we collect a deposit, we will reflect the deposit on your bill. We will keep required records of deposits, retain records of unclaimed deposits for at least four (4) years, and make a reasonable effort to return unclaimed deposits.

13. **Information Release Authorization.** You authorize **SmartEnergy** to obtain and review information regarding your credit history from credit reporting agencies. You authorize your **TDU** or previous **REP** to release to **SmartEnergy** any information that is necessary for **SmartEnergy** to become your **REP**, including: account name, account number, billing address, service address, telephone number, standard offer service type, historical and future electricity usage, rate classification, meter readings, and characteristics of electricity service.

If you are a residential customer, you may be required to complete and submit an authorization form for **SmartEnergy** to obtain and review electric services payment history for the past two (2) years from your previous **REP** or a consumer reporting agency.

The information you authorize or have authorized may be used by **SmartEnergy** for permitted purposes and will not be disclosed to a third party unless required by law. 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 the customer service number as described in Section 1. **SmartEnergy** reserves the right to cancel the Agreement on fifteen (15) calendar days' Notice in the event you rescind such authorization.

14. **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) when permitted by Section 12 of this TOS, 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 as defined herein.

15. **Termination.** You may terminate the Agreement at any time by providing Notice to **SmartEnergy**. **SmartEnergy** has the right to terminate the Agreement according to this Section 14 if an Event of Default occurs. You will be responsible to pay for electricity consumed prior to service termination.

a. Termination by **SmartEnergy**. 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 without penalty by giving you at least fourteen (14) days' advance written Notice.

b. Early Termination Fee. If you terminate the Agreement before the expiration of the Initial Term or if there is an Event of Default during the Initial Term causing **SmartEnergy** to terminate the Agreement, then an early termination fee of \$20 per month remaining in the Initial Term is immediately payable to **SmartEnergy**. The early termination fee does not apply if you move to another address as long as you provide a forwarding address and provide reasonable evidence that you no longer occupy the location specified in the Agreement.

c. Availability of Provider of Last Resort. If your electric service is terminated, you may obtain services from another REP or the Provider of Last Resort (POLR). The POLR offers a standard retail service package. Information about the POLR and other REPs can be obtained by calling 1.866.PWR.4.TEX or by visiting [www.powertochoose.com](http://www.powertochoose.com).

d. Collection Costs. **SmartEnergy** will pass through to you all charges related to the collection of amounts due to **SmartEnergy**, including but not limited to, collection agency fees, attorney fees, and court fees.

16. **Legal Notice.** All notices to be given hereunder ("Notice") will be in writing and delivered as specified in the Agreement to both you and **SmartEnergy**, as applicable, by mail to **SmartEnergy** at 74 W Broad Street, Suite 530, Bethlehem, PA 18018, or by email to **SmartEnergy** at [customer.care@smartenergy.com](mailto:customer.care@smartenergy.com). Notice by mail 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. Notice by e-mail will be effective when the device on which the sender sends the e-mail records it as being sent, unless the sender receives an automated message that the e-mail has not been delivered. "Out of office" replies or any other automated reply set by the recipient to warn of failed receipt are not considered to be an automated message that the e-mail has not been delivered if in fact the message was accessible by the recipient.

17. **Miscellaneous.**

a. Dispute Resolution. You agree to contact **SmartEnergy** as described in Section 1 regarding any dispute related to the Agreement. You should contact the TDU concerning a power outage or any other emergency.

b. If your complaint is not resolved after you have called your electric supplier and/or your electric TDU, or for general utility information, residential and business customers may contact the PUC for assistance at 1-888-782-8477 (toll-free) from 8:00 a.m. to 5:00 p.m. C.T. weekdays, or at <https://www.puc.texas.gov>. Hearing or speech impaired customers may contact the PUC via 7-1-1 (Texas relay service). The **Office of Attorney General**, Consumer Protection Division also accepts complaints from residential utility customers in matters governed by the PUC online at <http://www.texasattorneygeneral.gov/consumer-protection>. Please see your YRAC and visit [www.smartenergy.com/resolving-disputes](http://www.smartenergy.com/resolving-disputes) for the full terms and conditions that govern resolution of any

disputes arising under the Agreement.

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.

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

e. Entire Agreement. The Agreement 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.

f. Representations and Warranties, Limitation of Liability. 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 FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR OTHER DAMAGES, REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON A CLAIM RELATING TO CONTRACT, TORT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, LOST PROFITS, BREACH, NON-

PERFORMANCE OR ANY OTHER BASIS. YOU AND SMARTENERGY WAIVE THE RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY DISPUTE ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT. BOTH SMARTENERGY AND YOU AGREE NOT TO INITIATE OR BECOME A PARTY TO ANY CLASS ACTION SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THE AGREEMENT.

g. 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/resolving-disputes](http://www.smartenergy.com/resolving-disputes) 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. Arbitration or other process for complaint resolution between **SmartEnergy** and a residential or small commercial customer shall be conducted in Texas pursuant to Texas law and applicable federal law.

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 TDU'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. The Agreement shall be construed under and shall be governed by the laws of the State of Texas 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.

18. **Required Disclosure**. The Electricity Facts Label specifying required information about the power supply being offered under the Agreement can be found on the **SmartEnergy** website at [www.smartenergy.com](http://www.smartenergy.com). The website also contains the Your Rights as a Customer document and required price explanations. **SmartEnergy** will also provide a printed copy of the information upon request. Information is available in English and Spanish.

19. **Electric Emergencies and Power Quality**. The **TDU** 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 the **TDU** at its telephone number for emergencies.

20. **Antidiscrimination**. **SmartEnergy** cannot deny service or require a prepayment or deposit for service based on a customer's race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, level of income, disability, familial status, location of a customer in an economically distressed geographic area, or qualification for low income or energy efficiency services. For residential customers, **SmartEnergy** cannot use a credit score, a credit history, or utility payment data as the basis (i) for determining the price for electric service for a product with a contract term of 12 months or less, or (ii) for denying an applicant's request to become a residential electric service customer, but it may use the applicant's electric bill payment history to deny such a request. **SmartEnergy** may review electric bill payment history for the past two (2) years.