

## TERMS OF SERVICE

### Pre-Paid Variable Price Product

This document ("Agreement") sets out the Terms of Service for the purchase of electricity between Tara Energy, LLC d/b/a Smart Prepaid Electric ("Smart Prepaid Electric", "we" and "us") and you, the customer ("you", "your" and "Customer"). Customer and Smart Prepaid Electric may be referred to individually as a "Party" or collectively as "Parties" herein. Your electricity requirements at the service location or ESI ID designated by you on your Enrollment or Renewal Form will be served under this Agreement. This Agreement shall not be applicable to Customers who have a time of use meter.

Smart Prepaid Electric is your Retail Electric Provider ("REP"). Smart Prepaid Electric sets the charges you pay for retail electric service. The electricity that Smart Prepaid Electric sells to you must be transported to your service location over transmission and distribution systems which will continue to be regulated by the Public Utility Commission of Texas ("PUCT") and owned by a Transmission and Distribution Service Provider ("TDSP"). The PUCT reviews and approves the rates that the TDSP can charge to transport and distribute electricity to your service location. These charges are passed on by Smart Prepaid Electric to you, the Customer, along with certain charges and fees assessed by the Electric Reliability Council of Texas ("ERCOT").

#### **Types of Products**

We provide electricity under three different product types: fixed rate, indexed and variable price. Your EFL specifies the product type and the term that applies to your contract. Please note that only those parts of this "Product Types" section that describe your specific product type will apply to your contract.

**Fixed Rate Products.** Fixed Rate Products have a contract term of at least three months. Provided that your peak demand does not exceed fifty (50) kW during the term of this Agreement, the price of a fixed rate product may only change during a contract term to reflect actual changes in TDSP charges, changes to the ERCOT or Texas Regional Entity administrative fees charged to loads, or changes resulting from federal, state or local laws that impose new or modified fees or costs on us that are beyond our control. Price changes resulting from these limited circumstances do not require us to provide you with advance notice, however, each bill issued for your remaining contract term will notify you that a price change has been made.

**Term Indexed Products.** Term indexed products have a contract term of at least three months and a price that changes according to a pre-defined pricing formula that is based on publicly available indices or information. The price for term indexed products may also change without advance notice to reflect actual changes in TDSP charges; changes to the ERCOT or Texas Regional Entity administrative fees charged to loads; or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs on us that are beyond our control.

**Month-to-Month Indexed Products.** Month-to-Month indexed products have a contract term of thirty-one (31) days or less and a price that changes according to a pre-defined pricing formula that is based on publicly available indices or information. The price for month-to-month indexed products may also change without advance notice to reflect actual changes in TDSP charges, changes to the ERCOT or Texas Regional Entity administrative fees charged to loads, or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs on us that are beyond our control.

**Variable Price Products.** The price of a variable product can change, without notice to you, after your first billing cycle at the sole discretion of Smart Prepaid Electric. Variable price products have a contract term of thirty-one (31) days or less and a price that varies according to the method disclosed on your EFL.

#### **Length of Service**

Your service under this Agreement will begin on your next meter reading date according to applicable rules. In the event that your TDSP is unable to perform the switch as scheduled, you will continue to receive electricity service from your current provider and will not receive a bill from Smart Prepaid Electric until the actual switch occurs. This date will appear on your first bill. Your initial length of service is indicated on your Enrollment or Renewal Form and/or in the EFL

#### **Right to Rescission**

If you are switching to Smart Prepaid Electric from a different REP, you may rescind this Agreement without penalty at any time before midnight of the third federal business day after receiving this Agreement. PUCT rules permit Smart Prepaid Electric to assume that you will receive this Agreement three (3) federal business days after we mail it to you. You may call us or write to us to rescind this Agreement at 713-881-8600 or toll-free (877)-SPE-8099 and 3800 Buffalo Speedway, Suite 500, Houston, TX 77098.

#### **Right to Cancel**

Smart Prepaid Electric may cancel your Agreement if you do not pay your bills in full and on time. We may also cancel this Agreement if we are no longer a REP in your areas or for any other lawful reason, including in response to changing market conditions. Smart Prepaid Electric will provide you with written notice at least fourteen (14) days prior to cancellation. You may cancel this Agreement at any time without penalty. In the event of cancellation, (i) you will have to contact another REP directly to have your electric service reconnected and (ii) all amounts owed by you to Smart Prepaid Electric shall become immediately due and payable.

#### **Billing & Payment**

Following the switch to Smart Prepaid Electric from your current provider, you will also be able to access your current account balance, current electricity rate, and estimated amount of remaining prepaid electricity by logging onto your Smart Prepaid Electric account, or by automated phone by calling (877) 773-3133.

You may make payments by credit card by phone. You may also make payments at any MoneyGram or ACE Cash Express location. You may also mail either a money order or cashier's check to 3800 Buffalo Speedway Ste 500, Houston TX 77046 ATTN: Accounts Receivable. If you choose to mail a payment, you must allow sufficient time for mailing and processing before your pre-payment balance drops to \$10. Smart Prepaid Electric shall not be responsible for any delay in processing manual payments (including money orders or cashier's checks). Upon Smart Prepaid Electric's receipt of your payment, we will provide you a written confirmation of such payment via your chosen method of communication as specified in your Enrollment Form.

### **Communication of Information**

Smart Prepaid Electric will use either an email address or a text-message to provide you with any required or important information such as low balance alerts, payment confirmations and other important account activities or required contract notices. It is your responsibility to take all actions necessary to establish, maintain and update your email address and/or text-message contact number because failure to do so could result in disconnection of your electric service.

**Summary of Usage and Payment (SUP)** You may request a Summary of Usage and Payment ("SUP") which when requested will be provided by email. You have access to the SUP via our website at [www.smartprepaidelectric.com](http://www.smartprepaidelectric.com). You may also request a SUP be sent via US Mail. If you request the SUP by mail, you will be charged a fee of \$2.95

### **Additional Charges & Fees**

Smart Prepaid Electric will charge 1) a \$25.00 returned payment fee, 2) a \$4.95 enrollment processing fee, and 3) \$2.95 payment processing fee for any payments applied to your account and 4) a \$2.95 fee in the event you request a paper copy of your SUP. Such fees are in addition to any disconnect/reconnect fees that may be assessed by your TDSP.

Acceptance by us of any partial payment from you will not relieve you of your obligation to pay the full amount owed. You will be responsible for any non-recurring fees assessed by the TDSP and/or Smart Prepaid Electric associated with requests for move-in or switch, self selected switches, disconnection and reconnection fees, previous billing errors, meter tampering or meter read errors, or other errors or omissions.

Rate discounts through the LITE-UP Texas Discount Program were reinstated by the Texas Legislature to provide discounts to eligible customers during the summer months. To apply for eligibility directly with the program administrator, LIDA, please call 1-800-241-7011. Smart Prepaid Electric offers the benefits of this program as required by applicable rule. Additionally, if you need help paying your bill, you may qualify for additional low-income energy assistance programs in your community.

Smart Prepaid Electric offers each Customer the opportunity to voluntarily contribute to a bill payment assistance program for qualified residential Customers. You may find more information about Smart Prepaid Electric's bill payment assistance program by calling our customer service department.

Additional information regarding any of the aforementioned programs may be obtained by contacting a Smart Prepaid Electric customer service representative at 713-881-8600 (or (877)-SPE-8099).

### **Default & Disconnection of Service for Nonpayment**

If you fail to remit payment as specified above in Billing and Payment, Smart Prepaid Electric may order the TDSP to disconnect electric service to the premise(s) served under this Agreement. Smart Prepaid Electric will provide you with warning notices via email, and/or text message as indicated on your Enrollment Form, at least one (1) day prior to your balance dropping to \$10. If you fail to replenish the balance on your pre-paid account and your account drops to or below \$10, your service will be disconnected without additional notice.

Even if you are disconnected for nonpayment, you remain liable to Smart Prepaid Electric for all billed amounts and any charges associated with disconnection of service for nonpayment and reconnection. We reserve the right to pursue all legal remedies available to us to collect any amounts lawfully owed. In the event you fail to pay your bill in accordance with this Agreement, you agree to pay reasonable collection costs and expenses (including attorney's fees and third party collection fees) we incur as a result of our attempt to collect any amounts you owe.

In the event that you have more than one agreement with Smart Prepaid Electric for service to ESI IDs not receiving service under this Agreement, any failure to pay under another agreement with Smart Prepaid Electric will constitute a default under this Agreement and shall give Smart Prepaid Electric the right to terminate this Agreement and seek any other remedy available to Smart Prepaid Electric at law or in equity.

### **Deferred Payment Plans**

Smart Prepaid must offer you upon request a deferred payment plan if your prepaid account balance goes below negative \$50 during an extreme weather emergency, if a state of disaster is declared by the Governor or if you have been underbilled. If a deferred payment plan is established, it will be confirmed in writing by Smart Prepaid Electric. Smart Prepaid Electric may place a switch hold on your account during the term of deferred payment plan until all amounts under the plan are paid. If you fail to adhere to the plan, your service may be disconnected as per normal disconnection procedures. If a switch hold is in effect, you will need to remit payment to regain electric service and you may not obtain service from another provider until all amounts under the plan are paid.

### **Changes in Laws or Regulations**

In the event that there is a Change in Law (as defined below), Smart Prepaid Electric reserves the right to modify this Terms of Service. Smart Prepaid Electric will provide you with fourteen (14) calendar days' advance written notice of any modification. The modifications will become effective on the date stated in the notice unless you cancel your Agreement in writing. You may cancel your Agreement without penalty no later than the effective date of the modification. Notice is not required for a modification that benefits you. Change in Law means any change in federal, state or local law or any legislative or regulatory action that imposes new or modified fees or costs on Smart Prepaid Electric that are beyond Smart Prepaid Electric's control.

## **Dispute Procedures**

If you have any questions, concerns, complaints or a dispute regarding your Smart Prepaid Electric service or this Agreement, please call our Customer Service number at 713-881-8600 or toll-free (877)-SPE-8099. See "Your Rights as a Customer" for further information on customer disputes. Any communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to the attention of the "Legal Department" at Tara Energy, LLC d/b/a Smart Prepaid Electric 3800 Buffalo Speedway, Suite 500, Houston, TX 77098. Any dispute with respect to a bill is deemed to be waived unless Smart Prepaid Electric is notified in writing within sixty (60) days of the bill date.

## **Critical Care and Chronic Condition Residential Customers**

Smart Prepaid Electric is not able to provide prepaid electricity service to customers that are qualified or qualify as critical care or chronic condition. A critical care customer is a residential customer who has a person permanently residing in his or her home who has been diagnosed by a physician as being dependent upon an electric-powered medical device to sustain life. A chronic condition customer is a residential customer who has a person permanently residing in his or her home who has been diagnosed by a physician as having a serious medical condition that requires an electric-powered medical device or electric heating or cooling to prevent the impairment of a major life function through a significant deterioration or exacerbation of the person's medical condition. To apply, your physician must execute and deliver the required forms to your respective TDSP (utility). You may request the forms(s) by calling 1.877-773-8099, the Public Utility Commission or your TDSP utility. If you provide information to Smart Prepaid Electric that you have become critical care or chronic condition, Smart Prepaid Electric will work with you to transition you to another product or provider in a manner that avoids a service disruption. This designation does not relieve you of any obligations under this Agreement, including your obligation to pay any account balance associated with this contract.

## **Discrimination**

Smart Prepaid Electric 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 customer in a economically-distressed geographic area or qualification for low-income or energy efficiency services. Further, Smart Prepaid Electric cannot use a credit score, credit history, or utility payment data as the basis for determining the price for residential electric service for a product with a term of 12 months or less.

## **Customer Warranties**

Customer warrants and represents that: (i) Customer is the owner or lessee of record for all ESI ID locations to be served hereunder and Customer has the authority to enter into this Agreement for service to each of these ESI IDs; (ii) any and all of the data given, and representations made, concerning electric service to its ESI IDs are true and correct to the best of Customer's knowledge; and (iii) Customer shall consume and not resell any power purchased hereunder with the exception of power consumed by Customer's tenants or lessees.

## **WARRANTY**

**CUSTOMER ACKNOWLEDGES AND AGREES THAT SMART PREPAID ELECTRIC DOES NOT PRODUCE, TRANSMIT OR DISTRIBUTE POWER AND, AS A RESULT, SMART PREPAID ELECTRIC CANNOT WARRANT, AND DOES NOT WARRANT IN ANY MANNER, THE ELECTRICITY PROVIDED. NO REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, SHALL APPLY TO SMART PREPAID ELECTRIC'S PERFORMANCE OF ITS OBLIGATIONS IN THIS AGREEMENT AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED AND CUSTOMER HEREBY WAIVES ALL SUCH WARRANTIES. SMART PREPAID ELECTRIC MAKES NO REPRESENTATION AS TO THE SUFFICIENCY, QUALITY OR CONTINUATION OF THE SERVICES PROVIDED HEREIN.**

## **LIMITATION OF REMEDIES, LIABILITY AND DAMAGES**

**THE REMEDY IN ANY CLAIM OR SUIT BY YOU AGAINST SMART PREPAID ELECTRIC WILL BE LIMITED TO DIRECT ACTUAL DAMAGES. BY ENTERING INTO THIS AGREEMENT, YOU WAIVE ANY RIGHT TO ANY OTHER REMEDY. IN NO EVENT WILL EITHER SMART PREPAID ELECTRIC OR YOU BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES. THESE LIMITATIONS APPLY WITHOUT REGARD TO THE CAUSE OF ANY LIABILITY OR DAMAGES.**

## **Force Majeure Event**

If an event occurs which makes it impossible for Smart Prepaid Electric to perform under this Agreement (a "Force Majeure Event"), including but not limited to (i) a failure of any wholesale supplier and/or TDSP to perform any contract with Smart Prepaid Electric, (ii) force majeure or similar event as declared by our wholesale supplier(s) and/or the TDSP(s), (iii) act of God, (iv) extraordinary weather occurrence, (v) fire or explosion, (vi) any governmental action, prohibition or regulation, or (vii) war, civil disturbance or other national emergency, our performance under this Agreement shall be excused for the duration of such event. Smart Prepaid Electric shall promptly notify customer of the Force Majeure Event, any resulting contingency, and the contemplated effect thereof on the provision of service. Upon elimination or cessation of the Force Majeure Event and any contingency, the obligations herein of Smart Prepaid Electric to provide service to customer shall be reinstated. Smart Prepaid Electric reserves the right to terminate this Agreement should the event or the need for contingency not be eliminated within forty-five (45) days after the occurrence.

## **Assignment**

You may not assign or transfer this Agreement, in whole or in part, or any of your rights or obligations hereunder without the prior written consent of Smart Prepaid Electric. Smart Prepaid Electric may assign this Agreement, in whole or in part, without your consent.

### **Miscellaneous**

This Agreement shall be governed by and construed, enforced, and performed in accordance with the laws of the State of Texas and shall supersede any previous promises, understandings and agreements. The provisions of the Uniform Commercial Code ("UCC") shall apply to this Agreement and electricity shall be a "good" for purposes of the UCC. <http://tlo2.tlc.state.tx.us/statutes/docs/BC/content/htm/bc.001.00.000002.00.htm#2.105.00>. If any provision of this Agreement is deemed invalid, illegal or otherwise unenforceable, Customer and Smart Prepaid Electric agree that it shall be modified to the minimum extent necessary to render it valid, legal and enforceable. If such provision cannot be modified in a manner that would make it valid, legal and enforceable, such provisions shall be severed from the Agreement, and all other provisions hereof shall remain in full force and effect. In the event there is a conflict between the Your Rights as a Customer document and these Terms of Service, these Terms of Service shall prevail.

### **Entirety of Agreement**

It is the intention of the parties that the Agreement shall contain all terms, conditions, and protections in any way related to, or arising out of, the sale and purchase of the electricity, and supersedes, any and all prior such agreements between the Parties hereto, whether written or oral, as to the provision of electric service to any of Customer's ESI IDs. Both Parties have agreed to the wording of the Agreement and any ambiguities therein shall not be interpreted to the detriment of either party merely by the fact that such party is the author of the Agreement. The Agreement may not be modified or amended except in writing, duly executed by both Smart Prepaid Electric and Customer.

### **Contact Information**

Tara Energy, LLC d/b/a Smart Prepaid Electric, Certificate No. 10051, is a licensed retail electric provider. Any questions or inquiries regarding this Agreement may be directed to a Smart Prepaid Electric customer service representative at [info@smartprepaidelectric.com](mailto:info@smartprepaidelectric.com), 713-881-8600 or ((877)-SPE-8099). We are available Monday-Friday 8:00 AM-7:00 PM CST Saturday 9:00 AM- 2:00 PM CST. Our internet address is [www.smartprepaidelectric.com](http://www.smartprepaidelectric.com). Our fax number is 832-380-8228. Our mailing address is: Tara Energy, LLC d/b/a Smart Prepaid Electric 3800 Buffalo Speedway, Suite 500, Houston, TX 77098.

**In case of an emergency or to report an outage, please contact your electric utility (Transmission and Distribution Service Provider - TDSP) directly. CenterPoint: 1-800-332-7143; Oncor: 1-888-313-4747; Texas New Mexico Power: 1-888-866-7456; AEP Central: 1-866-223-8508; AEP North: 1-866-223-8508**