

General Terms and Conditions For Residential & Small Business Customers

1. Key Defined Terms. Agreement: Collectively, these General Terms, Welcome Letter, all materials in your online enrollment and/or any enrollment correspondence describing the product and price. **Commerce Energy:** Commerce Energy Inc. Also referred to as “we”, “our”, “us”. **Customer:** The account holder named on the Agreement. Also referred to as “I”, “my”, “you”, “your”. **Energy:** the electricity and/or gas we supply to your Location. **Location:** Each Energy account listed on the Agreement and any attached Schedule of multiple locations; each a separate “Location” bound by this Agreement. **MPSC:** The State of Maryland Public Service Commission. **Party:** us or you; collectively “Parties”. **PJM:** PJM Interconnection is a regional transmission organization (RTO) that coordinates the movement of wholesale Energy in all or parts of 13 states, including Maryland and the District of Columbia. **Price:** The Energy price agreed to on the Agreement. **Utility:** your local Energy distribution utility (including any successor).

2. Notice and Details of Appointment of Agent. You give us the exclusive right to act as agent on your behalf in making all supply and delivery arrangements with your Utility and others in order to provide your Energy requirements to your Location. You agree, now and throughout the Term, that you: (a) are not, and will not be, bound by an agreement for your Location with an Energy supplier other than us; and (b) will not cancel or modify our appointment as your exclusive agent in providing Customer’s full Energy requirements to the Location.

3. Acceptance, Verification. This Agreement takes effect when you electronically sign it and is conditional upon our acceptance of it. Our acceptance of this Agreement is at our sole discretion and depends, in part, on whether: (a) your Utility accepts our request to enroll you; (b) we can verify your information by recorded phone call (or other means acceptable to us); (c) you are creditworthy and (d) you are not already enrolled with us (existing customers cannot enter into this Agreement except pursuant to a re-contract, which may be reflected by a capital letter “R” in the upper right corner of the Agreement). You consent to the recording of phone calls related to this Agreement.

4. Term. The Term of this Agreement is 1 to 5 years, as selected when you enrolled. A new Term will begin if this Agreement is Renewed or otherwise extended. The Term begins on the **Start Date**, which will be our first day of Energy supply to your Location under this Agreement. Should the Start Date be delayed (for reasons such as the Agreement being improperly completed, not submitted to us, not implemented by the Utility, etc., we will use commercially reasonable efforts to resolve issues within its control. If the Start Date is not within 60 days of the estimated Start Date due to your action or lack of action, we reserve the right to cancel this Agreement without penalty and propose a new Price to you. The **End Date** will be our last day of Energy supply under this Agreement, not including any renewal or extension. The estimated End Date is the date calculated as Start Date plus Term, and the actual End Date may be 30 days or more from the estimated End Date, depending on the time required to complete your switch back to Utility or other supplier. You remain responsible for all the charges through, to, and including the actual End Date.

5. RENEWAL. SUBJECT TO GOVERNING LAW, WE CAN RENEW THIS AGREEMENT WITH NEW OR REVISED TERMS. WE WILL SEND YOU WRITTEN NOTICE AT LEAST 45 DAYS BEFORE THE END OF THE TERM. THE NOTICE WILL SPECIFY THE DATE BY WHICH YOU MUST ADVISE US YOU DO NOT WANT TO RENEW. IF YOU DO NOT ADVISE US BY THE SPECIFIED DATE, THIS AGREEMENT WILL RENEW IN ACCORDANCE WITH THE NOTICE.

6. Charges (and Credits) under this Fixed Price Agreement. We will supply you with Energy for the Location, as applicable. You agree to pay for the related charges, taxes, and other amounts charged by the Utility including, without limitation, charges relating to transmission, delivery, uplift, congestion and service charges. **6.1 Energy Charge.** Your metered electricity/gas consumption multiplied by your electricity/gas Price, as confirmed via email upon online enrollment completion and on the Welcome Letter and/or any online correspondence. The Energy Charge does not include related charges, taxes, and other amounts charged by the Utility including, without limitation, charges relating to transmission, delivery, uplift, congestion and service charges. **6.2 Taxes.** You shall pay lawful taxes and surcharges that may apply to the charges, whether direct

or indirect, relating to the sale, purchase or delivery of Energy. This may include State or local municipal taxes that we will pass through to you. If you are exempt from State/local taxes, it shall provide us with proof of such status at the time of its execution of this Agreement. Otherwise, until you provide such proof, we are not required to recognize any exemption or refund/credit previously paid taxes. **YOU WILL DEFEND, INDEMNIFY AND HOLD US HARMLESS FOR ALL TAX-RELATED OBLIGATIONS UNDER THIS AGREEMENT.** **6.3 Billing Fee.** If Commerce Energy is charged a billing fee by the Utility as a cost for billing the Customer, Commerce Energy may pass it though to the Customer. It may be subject to change.

7. Billing, Payment. Your Utility will normally bill you on our behalf, but we have the right, to be exercised in our sole discretion, to bill you directly. If you do not pay all amounts on your bill by the stated due date, then you will be charged a late payment fee, currently set at 1.5% per month.

8. Ending this Agreement Early, Default. If this Agreement ends early, for any reason, you must still pay all amounts charged to you up to the early end date. **Your Right to Cancel:** You may rescind this contract within 3 calendar days from date of the Welcome Letter notifying you of your choice of Commerce Energy as your Energy supplier. In addition, you can end this Agreement without having to pay the Exit Fee, within 30 days from the date of your first bill under this Agreement. **Our Right to Cancel:** We can end this Agreement, at no cost to us, if: (i) required/allowed to by law; or (ii) the Utility is unable to service your Location; (iii) we are required to by law. You will be given 45 calendar days prior notice of termination and an opportunity to remedy the termination condition. You will be in Default if you (a) breach a term of this Agreement or your Utility’s rules; or (b) switch to another energy supplier, including the Utility.

9. Rights of Non-Defaulting Party: If either Party defaults, the non-defaulting Party may terminate this Agreement effective on the date indicated in its notice of termination and shall have the right (i) to withhold any payments due to the defaulting party under this Agreement; (ii) to suspend performance on or after the date of termination; and (iii) to the extent allowed by law, to disconnect, or cause to be disconnected, each Location. In the event of disconnection for non-payment, you may be required to pay additional charges to your utility and us. These charges will be itemized on the disconnect notice. If we terminate this Agreement for reasons other than non-payment, you shall be transferred to the provider of last resort, and you shall be notified of the transfer. The Parties agree and acknowledge that under bankruptcy law (i) this Agreement constitutes a forward contract within the meaning of the United States Bankruptcy Code (“Code”), (ii) we are a forward contract merchant; (iii) we are not a Utility or “Utility” as that term is used in 11 U.S.C. 366, and you agree to waive and not to assert the applicability of the provisions of 11 U.S.C. 366 in any bankruptcy proceeding; and (iv) we are entitled to the rights under, and protections afforded by, the Code.

10. Exit Fee. You understand in order for us to be able to supply Energy to customers, we enter into long term supply arrangements with suppliers of Energy to meet the forecasted needs of our customers. If this Agreement ends early due to your default, you must pay us liquidated damages (the “Exit Fee”) of \$75, per commodity, per location.

11. Customer Information, Credit Review. You authorize us to access, use and update information about you (including contact, billing and credit history, and consumption information), and to obtain it from and provide it to your Utility, our affiliates and service providers. Customer also authorizes us to review and request Customer’s credit history and information, whether in the possession of the Utility or third party credit reporting agencies (and we may disclose such information to our creditor, suppliers, and service providers). We are not obligated to accept, or continue performing, this Agreement if you do not meet our credit requirements. We will send you a letter by regular mail if we do not accept this Agreement for credit reasons. Our supply of Energy to you may depend on your credit worthiness. We are not obligated to accept, or continue performing, this Agreement if you do not meet our credit requirements. You may cancel our right to obtain or use your information at any time but, if you do, we have the right to end this Agreement. We, our affiliates and business partners can use your information to communicate with you about other products and services.

12. Indemnification. We do not transmit or distribute Energy to you and do not generate the Energy used or consumed by you. Therefore, we do not promise a steady, continuous supply. There are events outside of our reasonable control which may result in fluctuations, interruptions or irregularities in Energy service. WE WILL NOT BE LIABLE FOR ANY FLUCTUATIONS, INTERRUPTIONS OR IRREGULARITIES IN ENERGY SERVICE OR FOR ANY DAMAGE OR CONSEQUENCES RESULTING THEREFROM. WE WILL ARRANGE FOR THE UTILITY TO DELIVER ENERGY TO THE FACILITY/METER(S) ASSOCIATED WITH THE LOCATION (THE "DELIVERY POINT"). FROM AND AFTER THE DELIVERY POINT, YOU WILL DEFEND, INDEMNIFY AND HOLD US HARMLESS FROM ANY AND ALL CLAIMS, LOSSES, EXPENSES, DAMAGES, CAUSES OF ACTION AND JUDGMENTS OF ANY KIND RELATED TO OUR DUTIES AND OBLIGATIONS HEREUNDER. WE SHALL NOT BE LIABLE FOR MATTERS WITHIN THE CONTROL OF THE UTILITY (INCLUDING, BY WAY OF EXAMPLE ONLY, MAINTENANCE OF THE DISTRIBUTION SYSTEM, SERVICE INTERRUPTIONS, LOSS, DETERIORATION OR TERMINATION OF SERVICE, OR METER READINGS) OR ANY DAMAGES CLAIMED TO HAVE BEEN INCURRED DUE TO ANY ACT OR OMISSION OF US, WHERE SUCH ACT OR OMISSION IS DUE IN WHOLE OR IN PART TO ANY EVENT OR CIRCUMSTANCE BEYOND ITS REASONABLE CONTROL OR ITS ABILITY TO PERFORM. EACH PARTY SHALL USE COMMERCIALY REASONABLE EFFORTS TO MITIGATE DAMAGES.

13. Limitation of Liability. Notwithstanding any other provision in this Agreement, in no event will we or any of our affiliated companies be liable for any consequential, exemplary, special, incidental or punitive damages, including, without limitation, lost opportunities or lost profits, even if we have been advised of the possibility of such damages. Our liability related to this Agreement, whether arising under breach of contract, tort, strict liability or otherwise, is limited to direct actual damages as the sole remedy and all other remedies or damages are expressly waived.

14. Disputes Resolution. You may contact us with regard to a concern or dispute under this Agreement by mail, fax or telephone using our contact information as set out in the Welcome Letter. Any dispute resolution proceedings, whether in arbitration or court, will be conducted only on an individual basis and not in a class or representative action or as a named or unnamed member in a class, consolidated, representative or private attorney general action.

15. Amendment, Assignment. We may amend this Agreement by sending you written notice. Unless required by Governing Law (including, for example, a Utility tariff change or other regulatory order), you will have 30 days to reject the amendment, in writing. We will not amend the Term or Price without your consent. We may assign any part of our interest in this Agreement, including to another energy services company, without notice to you or your consent. You cannot assign your rights or obligations without our written consent.

16. Substitution of Location(s). You may request the substitution of one or more Utility account(s) not already included in the Agreement for one or more existing Location(s) included in the Agreement. We will agree to such substitution provided that (i) you provide us with a minimum of 60 days notice of the request; (ii) the new Utility account(s) are located in the same Utility territory and PJM load zone, as applicable, as the Location(s) to be removed from the Agreement; and, (iii) in aggregate, the annual consumption, load profile, capacity requirement, and any other characteristics deemed by us to be material to the Agreement are comparable, in our reasonable opinion, between the new Utility account(s) to be added to the Agreement and the existing Location(s) to be removed from the Agreement. If we agree to the requested substitution then (i) each of your specified Utility accounts not already included in the Agreement will be a Location bound by this Agreement; (ii) we are authorized to deal with your Utility in this regard; and (iii) if Governing Law requires you to provide us with additional written authorization at the time of the substitution, as it relates to starting or ending service at a Location, you will have the option of providing it to us or removing the Location(s) from the Agreement.

17. Inability to Perform. You accept that certain events beyond our control, including force majeure events declared by our direct or indirect suppliers, may affect our ability to supply Energy at your Price. If this happens, we may, in our sole discretion and without liability: (a) temporarily supply them to you at the market price available to us; or (b) suspend this Agreement until as soon as we are reasonably able to resume performance. This Agreement will otherwise remain in full effect. "Force majeure" means those events not reasonably anticipated on the effective date of this Agreement and beyond the control of Commerce Energy including events associated with the Utility, the commodity supplier or others used to deliver Energy to the Location, curtailment or disruption by the Utility, the commodity supplier of the Utility's appropriation of Energy.

18. Contract Services. We are an energy retailer, not your utility, and will be providing you with Energy for the Term outlined in the Welcome Letter for the Charges (and Credits) outlined in para 6. We may also bill you directly as outlined in para 7.

19. Notice. We will send written notices relating to this Agreement to your billing address (as may be amended from time to time). At our discretion (if, for example, there is a fault with regard to your billing address), we may instead send notices to your service address (as may be amended). You give us permission to deliver pre-recorded phone messages to you concerning your account and/or to notify you about other products/services provided by us or our affiliates. You may opt out of receiving pre-recorded phone messages by contacting our Customer Service Department. You must send written notices to us at our address listed on the Welcome Letter and be able to give proof of delivery upon request. If a change in Governing Law necessitates that a group of customers be given a general notice, we may give it by posting it on our website at commerceenergy.com.

20. Governing Law. The laws of the State of Maryland govern this Agreement.

21. Confidentiality. Each Party acknowledges and agrees that the terms or conditions of this Agreement, including the fees paid hereunder and the terms of any proposal or any documents provided to you and by us in connection with this Agreement, constitute confidential information. Neither Party shall disclose any such confidential information to a third party (other than the Party's employees, counsel, accountants, affiliates or advisors who have a need to know such information and who have agreed to keep such information confidential) without the express prior written consent of the other Party, except in order to comply with any applicable law, regulation, exchange or regional transmission organization rule or in connection with any court or regulatory proceeding; provided, however, that each Party shall use reasonable efforts to prevent or limit the disclosure of confidential information, and shall immediately notify the other Party of the request for disclosure so as to afford such other Party the opportunity to oppose such disclosure or otherwise obtain a protective order or other relief as may be available. Each Party will cooperate with the other in any attempt to obtain such protections. This confidential provision shall not apply to (a) information that was known to a Party prior to obtaining information from the other Party; (b) information in the public domain; (c) information obtained by a Party from a third party who did not, directly or indirectly, receive the information from the other Party to this Agreement or from an entity that was under an obligation of confidentiality to the other Party to this Agreement; or (d) information developed by either Party independent of any confidential information. The Parties shall be entitled to all remedies available at law or equity to enforce or seek relief in connection with this confidentiality obligation.

22. Miscellaneous. This Agreement is the entire contract between you and us. It can only be amended if agreed to by Commerce Energy's head office in a written notice to, or recorded telephone call with, you. Electronic, e-mail and fax signatures are for legal purposes equivalent to original signatures. If a part of this Agreement is deemed unenforceable, for any reason, we can make the minimal changes for it to be legal and enforceable. If our name does not appear on your Utility bill within 12 months of the anticipated Start Date and you have not contacted us in writing to implement this Agreement; or if we are unable to implement this Agreement for reasons beyond our control; then it will be deemed terminated at no cost to either you or us. No delay by us to exercise our rights under this Agreement will constitute a waiver of such rights.

23. Emergency. In an emergency situation relating to your Energy supply, call your utility : BGE at 1.800.685.0123.

24. Consumer Information. The services provided by the Utility will continue to be offered by your local utility: Baltimore Gas and Electric. Should you have any questions or require additional information regarding this Agreement, you can contact us at: Commerce Energy, Inc. PO Box 2210, Buffalo, New York, 14240-2210, 1.866.587.8674, contactus@commerceenergy.com. You can contact the Maryland Public Service Commission at 1.800.492.0474 or through the website at <http://webapp.psc.state.md.us/Intranet/home.cfm>.

Commerce Energy



Executive Vice President