

# Tomorrow Energy Corp

## NEW JERSEY RESIDENTIAL & SMALL COMMERCIAL TERMS OF SERVICE ELECTRIC SALES AGREEMENT AND TERMS OF SERVICE

The following is your Terms of Service Agreement (together with the Contract Summary, the "Agreement") with Tomorrow Energy Corp, d/b/a/ ("Tomorrow Energy") to authorize a change in your Third Party Supplier (TPS) for the purchase of electricity service for the plan you selected, as specified in your enrollment materials. Your Welcome Kit ("Welcome Kit") is hereby made an integral part of this Agreement. Tomorrow Energy agrees to sell and Customer agrees to buy the quantity of electricity delivered to you, as measured or estimated by your Utility Company. Tomorrow Energy is a TPS licensed by the New Jersey Board of Public Utilities ("NJBPU") and will supply electricity for your residence or business address enrolled under this Agreement. The words "we," "us," and "our" refer to Tomorrow Energy, and the words "you" and "your" refer to the Customer. Retain this Agreement and your Welcome Kit for your records.

**Service Term:** Your initial service under this Agreement is a fixed rate product (Fixed Rate Product), as specified in your Welcome Kit. The minimum term, if any, for the product you elected to enroll under is stated in the Welcome Kit. If you are a new customer, your selected product will become effective on the day your service begins with Tomorrow Energy, which coincides with the date your meter is read by your Utility Company. Because this date is determined by your Utility Company, Tomorrow Energy is not able to commit to a specific date for the commencement of service. If you are currently a Tomorrow Energy customer and are switching to another product, your selected product will become effective within 24 hours of the request to switch to the new plan. Fixed Rate Products shall commence as stated in your Welcome Kit ("Initial Term"). After expiration of the Initial Term, this Agreement shall automatically renew for successive one (1) month periods (the "Renewal Term") at a market variable rate that is set by Tomorrow Energy in its sole discretion, unless either party notifies the other party in writing of its intent to cancel, at least thirty (30) days prior to the next meter read date. You will receive a notice at least 30 days prior to the expiration of your Initial Term outlining your options for renewal.

**Pricing and Payment:** Your rate will be the rate disclosed to you in your Welcome Kit. So long as utility consolidated billing is in effect, each billing period you will receive a single invoice from your Utility Company that includes both Utility Company and TPS charges, including generation supply, distribution and transmission charges, surcharges, and state and local taxes. The rate quoted in your Welcome Kit includes New Jersey Sales and Use Tax. You are responsible for this and any and all additional taxes (whether passed through to you on Utility Company's bill as a separate line item or as part of the price of electric supply, as required by law, rule or regulation) and all Utility Company charges for delivery and distribution services.

**Additional Fees:** There will be an early termination fee of \$75. There will be no charge for starting or stopping service if done within the terms of the contract. There are no early termination fees for variable rate products.

**Rescission Period for Residential and Small Commercial Customers:** If you are a residential or small commercial customer,

you may rescind this Agreement within seven (7) calendar days of receiving your confirmation notice from your Utility Company. To rescind this Agreement within that seven (7) day period, you may contact your Utility Company and/or Tomorrow Energy directly. This Agreement shall not be legally binding upon residential or small commercial customers until the seven-day rescission period has expired, and the customer has not, directly or indirectly, rescinded his or her selection.

**Cancellation and Switching Procedures:** Customer or Tomorrow Energy may cancel a month-to-month variable rate Agreement, for reasons other than non-payment, at any time, by providing written notice to the other party at least thirty (30) days prior to the intended date of termination. If you enrolled under a fixed-rate, or any other term product, you agree to remain a customer of Tomorrow Energy until the term expires. In the case you choose to leave Tomorrow Energy's service while under term contract and beyond the seven (7) calendar day rescission period, you will be charged the early termination fee set forth in your Welcome Letter. All drop and switch proceedings must go through your Utility Company and/or Tomorrow Energy directly. When you cancel services, you agree to pay for the services provided by Tomorrow Energy through the date you are switched to another provider or returned to the Utility Company for service. For residential or small commercial customers, there is no additional charge for starting or stopping electric generation service, if done within the terms of this Agreement. Tomorrow Energy reserves the right to cancel this Agreement (i) if your Utility Company is unable to read your meter for three (3) consecutive months; (ii) if at any time you request separate bills from your Utility Company and Tomorrow Energy Services; or (iii) if the Utility Company removes you from their consolidated billing program and requires that Tomorrow Energy bill you separately for your electricity supply. If this occurs, we will notify both you and your Utility Company of the cancellation of this Agreement at least thirty (30) days prior to the effective date of cancellation and provide you with an opportunity to remedy the termination condition; provided, Tomorrow Energy may terminate the Agreement regardless of whether the customer remedies the condition that triggered the termination notice. It may take up to sixty days for Customer's account(s) to be returned to the Utility Company depending on Utility Company's cancellation procedures. Customer may cancel a fixed Agreement with Tomorrow Energy within 48 hours' notice without penalty, if (1) you move to another service location and provide evidence that you are moving, along with a forwarding address, or (2) a disability and/or death renders you unable to pay for service. You will be responsible for all Tomorrow Energy charges until such time your service is moved to another provider. A final bill will be rendered after the final scheduled meter reading, or if access is unavailable, an estimate of consumption will be used in the final bill, which may be trued up subsequent to the final meter reading.

**Information Release Authorization:** Customer acknowledges that customer billing and payment information may be provided to Tomorrow Energy by your Utility Company. This information includes, but is not limited to, Customer's account number, meter reading data, rate class and energy usage. This may include

Customer's address(es) and telephone number, and Customer's budget billing plan or payment arrangement preference.

**Energy Assistance Programs:** For Energy Assistance such as Low Income Home Energy Assistance Program (LIHEAP), call (800) 510-3102. For Temporary Relief for Utility Bills (TRUE), call (732) 389-2204. For the Universal Service Fund-Energy (USF) or Fresh Start, call (866) 240-1347. For Lifeline Program, call (800) 792-9745. For NJ Shares, please call (866) 657-4273 or visit [www.njshares.org](http://www.njshares.org).

**Dispute Resolution:** In the event of a billing dispute or a disagreement involving any essential element of this Agreement, the parties will use their best efforts to resolve the dispute. Customer should contact Tomorrow Energy in writing at 3151 Briarpark Dr. Suite 100 Houston, TX 77042 or by telephone at (888) 682-8082. The dispute or complaint relating to a customer account may be submitted by either party at any time to the NJBPU pursuant to its Complaint Handling Procedures. If after discussing your problem with Tomorrow Energy or the Utility Company you remain dissatisfied, you may request an alternate dispute resolution procedure or file an formal complaint with the NJBPU Division of Customer Assistance by phoning (800) 624-0241 or by writing to the following address: New Jersey Board of Public Utilities, Division of Customer Assistance, 44 South Clinton Ave, 9th Floor, PO Box 350, Trenton, NJ 08625-0350. Any dispute arising out of or relating to this contract, or the breach thereof, that cannot be resolved by the Disputes Resolution process or by negotiation between the parties shall be finally resolved by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment upon the award rendered may be entered in any court of competent jurisdiction. The arbitration shall be conducted in New Jersey.

**Billing and Payment:** Customer will pay each invoice in full on the due date specified on the invoice in accordance with the Utility Company tariff for consolidated billing and all applicable late payment charges will apply, or within twenty (20) days of the invoice date for direct billing by Tomorrow Energy or be subject to a late payment charge of the lesser of 1.5% per month or the highest charge permitted by law. Customer may receive a single bill for both commodity and delivery charges from either Tomorrow Energy or the Utility Company, or each of the Utility Company and Tomorrow Energy may invoice separately. Customer payments remitted under a consolidated bill shall be pro-rated in accordance with procedures approved by the NJBPU. In the event of failure to remit payment when due, Tomorrow Energy will have the right to terminate commodity service and to seek suspension of distribution service in conformance with the Home Energy Fair Practices Act (HEFPA). Budget billing is not available.

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

**Delays or Failure to Exercise Rights:** No partial performance, delay or failure on the part of Tomorrow Energy in exercising any rights under this Agreement and no partial or single exercise thereof shall constitute a waiver of such rights or of any other rights hereunder.

**Taxes and Laws:** Except as otherwise provided in this Agreement or by law, all taxes of whatsoever kind, nature and description due and payable with respect to Customer's performance of its obligations under this Agreement, shall be paid by Customer. The

parties' obligations under this Agreement are subject to present and future legislation, orders, rules, or regulations of a duly constituted governmental authority having jurisdiction over this Agreement or the services to be provided herein.

**Entire Agreement:** This Agreement sets forth the entire agreement between the parties with respect to the terms and conditions of this transaction; any and all other agreements, understandings and representations by and between the parties with respect to the matters addressed herein are superseded by this Agreement.

**Acceptance and Amendments:** This Agreement shall not become effective until accepted by Tomorrow Energy. Tomorrow Energy reserves the right to cancel this Agreement upon failure of Customer to maintain satisfactory creditworthiness as determined by Tomorrow Energy, or to meet minimum or maximum threshold consumption levels as determined by Tomorrow Energy. Tomorrow Energy may amend the terms of this Agreement at any time, consistent with any applicable law, rule or regulation, by providing such notice to Customer of such amendment as is required by law prior to the effective date thereof.

**Force Majeure:** The term "Force Majeure" shall mean any cause not reasonably within the control of the Party claiming suspension and which by the exercise of due diligence, such Party is unable to prevent or overcome, including but not limited to, any act or cause which is deemed a Force Majeure by the Utility Company or any electric transmission system owner or operator. If either party is unable, wholly or in part, by Force Majeure to perform or comply with any obligations or conditions of this Agreement, such party shall give immediate written notice, to the maximum extent practicable, to the other party. Such obligations or conditions, so far as they are affected by such Force Majeure, shall be suspended during the continuance of any inability so caused, and such party shall be relieved of liability and shall suffer no prejudice for failure to perform the same during the period. The party claiming suspension of obligations must in good faith attempt to mitigate and/or terminate the Force Majeure.

**Assignment:** You may not assign this Agreement, in whole or in part, or any of your rights or obligations hereunder without the prior written consent of Tomorrow Energy. Tomorrow Energy may, without your consent, (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial agreement; (b) transfer or assign this Agreement to an affiliate of Tomorrow Energy; (c) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of Tomorrow Energy; and/or (d) transfer or assign this Agreement to any other certified TPS. In the case of (b), (c) or (d), any such assignee shall agree in writing to be bound by the terms and conditions hereof and upon any such assignment, Customer agrees that Tomorrow Energy shall have no further obligations hereunder.

**Limitations of Liability:** Liabilities not excused by reason of Force Majeure or otherwise shall be limited to direct actual damages. Neither party shall be liable to the other for consequential, incidental, punitive, special, exemplary or indirect damages. Lost profits or penalties of any nature are hereby waived; these limitations apply without regard to the cause of any liability or damage, including the negligence of Tomorrow Energy; provided, this waiver shall not apply to any rights Customer may have under New Jersey or Federal Consumer Protection laws. There are no third-party beneficiaries to this Agreement.

**Representations and Warranties:** The electricity sold under this Agreement will meet the applicable Utility Company’s standards and may be supplied from a variety of sources. Tomorrow Energy makes no representations or warranties other than those expressly set forth in this Agreement, and Tomorrow Energy expressly disclaims all other warranties, express or implied, including warranties of merchantability and fitness for a particular purpose.

**Governing Law:** This Agreement shall be governed by, enforced and performed in accordance with the rules of the NJBPU and the laws of the State of New Jersey.

**Contact Information:** For questions concerning your rate, service initiation, or service cancellation, please contact Tomorrow Energy using the contact information below:

If you wish to contact the NJBPU, you may do so as follows

<p><b>Tomorrow Energy Corp</b></p> <p><b>Internet Address:</b>  <a href="http://www.TomorrowEnergy.com">www.TomorrowEnergy.com</a></p> <p><b>Address:</b>            3151 Briarpark Drive, Suite 100            Houston, Texas 77042</p> <p><b>Customer Service:</b>            Phone: (888) 682-8082            Fax: (800) 256-6181</p> <p><b>Operating Hours:</b>            Monday – Friday            8:00 AM – 5:00 PM EST</p>	<p><b>New Jersey Board of Public Utilities ( NJBPU)</b></p> <p><b>Address:</b>            44 South Clinton Ave            9<sup>th</sup> Floor            P.O. BOX 350            Trenton, NJ 08625-0350</p> <p><b>Phone Number:</b>            (800) 624-0241</p> <p><b>NJBPU License No:</b>            ESL-0178</p>
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**In the event of a power outage or other electric service emergency, please call your Local Distribution Company:**

<b>PSEG Electric</b>	
<b>Customer Service:</b> 1-800-436-7734	<b>Emergency Outage:</b> 1-800-436-7734