



PARTICIPATING DEALER AGREEMENT

Alabama Power Company (the “Company”), located at 600 North 18th Street, Birmingham, Alabama 35291, has established a financing program for customers of independent dealers who participate in the Smart Financing program (the “Program”). Company offers consumer financing for heat pumps and other energy-saving home products or services (collectively, “eligible products”) sold by independent dealers. Under the Program, a customer (“borrower”) may apply for a loan to finance the purchase of energy-related home goods and services provided by the undersigned independent dealer who has been authorized to participate in the Program (“Dealer” or “you”). Under the Program, Dealer will provide a borrower with the means to electronically submit a loan application and related documents to obtain a consumer loan (the “Loan”) from Company, all in accordance with the terms and conditions set forth below.

This Participating Dealer Agreement (“Agreement”) shall govern your rights and responsibilities as a Dealer. Do not participate in the Program if you do not agree to all of the terms and conditions set forth in this Agreement. By executing this Agreement, Dealer agrees to be bound and abide by the terms and conditions of this Agreement. In consideration of the foregoing and the promises, covenants, and agreements set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Dealer and Company agree as follows:

1. Dealer’s Obligations. Dealer’s obligations include the following:

(a) Only provide Alabama resident consumers with the means to electronically submit a loan application under the Program to finance the purchase of eligible products;

(b) After a customer decides to purchase eligible products, advise customer of current available options for financing. If the customer decides to apply for financing from Company, provide the customer with web-based access to the Program;

(c) Process only bona fide charges for the sale of eligible products in Dealer's ordinary course of business and ensure that each sale is evidenced by a complete record with the sale date, the sale amount, and other information as required by the Program;

(d) Ensure that all information about the Program provided or directed to customers is complete and truthful, and refer customers and borrowers to www.getsmartfinancing.com for additional information and details regarding the Program;

(e) Respond within twenty-one (21) days to dispute(s) concerning or relating to the sale of eligible products for which financing was provided by Company, and fully cooperate with Company in the resolution of any such dispute(s);

(f) Comply with the terms of this Agreement, the Program (which Program may be modified or updated from time to time by Company), and all instructions, rules and guidelines provided by Company relating to the Program and providing borrowers web-based access to the Program, and with all federal, state and local statutes, codes, ordinances, regulations, and laws (including laws relating to unfair, deceptive or abusive acts or practices);

(g) With respect to those documents and forms electronically provided to and electronically signed by a borrower for financing in connection with the Program, Dealer shall only use the Program's digital documents and forms;

(h) Dealer shall maintain protected access to the Program so that loan applications and related documents are transmitted to Company on a secure platform which ensures, among other things, that such information cannot be altered, viewed or captured by an unauthorized party;

(i) From time to time, Company may develop one or more upgraded processes related to the Program, including, without limitation, Dealer's electronic access to the Program and the electronic submission of loan applications and related documents and disclosures. Dealer will implement upgraded processes within five (5) days of receipt of notice of an upgrade from Company (which may be provided by email);

(j) If Company informs Dealer (which may be done in writing, by email, or by telephone) of any error relating to the electronic submission of an application under the Program, Dealer will correct the error(s) within 24 hours;

(k) Dealer, at its sole cost, and before participation in the Program, shall procure, pay for, and maintain insurance required by law for the services contemplated by this Agreement, plus Commercial General Liability insurance, with coverage on an occurrence basis with policy limits of at least \$250,000 per occurrence and \$500,000 in the aggregate. This insurance shall cover all of Dealer's operations relating to this Agreement;

(l) Dealer is responsible for any financial losses and expenses incurred by Company as a result of an error attributable to Dealer, including, without limitation, attorney's fees and costs to remedy any error;

(m) Dealer shall maintain the confidentiality, integrity and security of information and data of borrowers or other individuals related to the Program;

(n) Dealer will establish and maintain network and internet security processes, security gateways, and firewalls to protect the information and data transmitted by borrowers by way of the Dealer's web-based access to the Program;

(o) Dealer shall not indicate that Company endorses and/or recommends the eligible products sold or services provided by Company; and

(p) Dealer shall annually train its employees on the permitted use of the Program, the use of a secure platform in electronically accessing the Program, and complying with Dealer's written privacy and data security policy.

2. Loan Applications. Dealer will comply with the Program's procedures in taking and submitting loan applications and related documents from borrowers to the Company for the purchase of eligible home goods and services from Dealer and will ensure that all applications are digitally signed in-person by the borrower(s). Dealer may not approve or decline a loan application submitted by a borrower under the Program.

3. Ownership of Loans and Information. Dealer acknowledges that Company owns all information submitted by borrowers and the Loans established in connection with the Program and that Dealer has no ownership rights therein.

4. Dealer's Representations, Warranties and Covenants. Dealer represents, warrants and covenants to Company as follows:

(a) Dealer shall be and will remain duly-licensed, authorized to conduct business, and in good standing in all states in which it conducts business, and shall have the legal authority and power to offer, sell, and/or install heat pumps and other energy-saving home products or services eligible for financing under the Program;

(b) Dealer will not represent itself as an agent or employee of Company;

(c) With regard to any sale or installation of heat pumps and other energy-saving home products or the provision of services eligible for financing under the Program, Dealer has complied with all applicable laws and regulations in the solicitation of the sale, installation and financing of the eligible products and services, including (but not limited to) any notice of right to cancel and the corresponding waiting period;

(d) The eligible products and services under the Program will be duly delivered and installed by Dealer in good, workmanlike manner, accepted by the customer in good and working order, shall conform with all warranties, express or implied, representations, legal obligations and local, state and federal requirements and codes concerning the condition, installation and provision of the eligible products and services;

(e) This Agreement does not constitute the assumption of any duty by Company or any representation or warranty by Company regarding the sale or installation of heat pumps and other energy-saving home products or the provision of services eligible for financing under the Program;

(f) Upon receipt of notice from Company and/or a request from a customer to correct any defective work and/or to replace defective products, Dealer will correct any such defective work and/or replace any defective products within thirty (30) days of such notice or request;

(g) Dealer will maintain all necessary and appropriate licenses and/or permits to sell and install heat pumps and other energy-saving home products or provide the services eligible for financing under the Program;

(h) Dealer will comply with all laws, rules and regulations applicable to such licenses and/or permits to sell and install heat pumps and other energy-saving home products or provide the services eligible for financing under the Program;

(i) Company's right to receive payment under any loan issued to finance the purchase of eligible goods and services from Dealer will not be subject to any defense the customer/borrower may raise relating to the sale and/or installation of eligible goods and services by Dealer;

(j) The Dealer guarantees its performance in the sale and installation of heat pumps and other energy-saving home products as well as the provision of services eligible for financing under the Program;

(k) In connection with the Program, Dealer shall not require a borrower to provide his/her social security number to Dealer;

(l) Only the borrower shall receive digital copies of documents and forms electronically delivered to the borrower during the loan application process under the Program;

(m) Dealer shall not notify the borrower of the denial of a loan application submitted electronically to Company;

(n) Dealer shall establish and maintain strict controls over its electronic access to the Program;

(o) Dealer shall not provide any third-party with access to consumer data or information stored or saved in a cloud solution in connection with the Program;

(p) Dealer's employees and agents shall comply with Dealer's written privacy and data security policy;

(q) Dealer shall retain the original documentation for each sales transaction for at least one (1) year from the date of the sales transaction;

(r) Dealer is in compliance with, and will continue to comply with, all applicable laws, rules and regulations, including but not limited to: laws relating to (i) the sale of the eligible goods and the provision of eligible services; (ii) the sale of products and services on credit; (iii) point-of-sale practices and representations made by Dealer's employees and representatives; and (iv) laws relating to privacy and data security, including without limitation, the requirement to have and maintain a written privacy and data security policy;

(s) Dealer will take no action to prevent any amounts financed under the Program from being valid and enforceable against the customer/borrower;

(t) Dealer is, and will at all times remain, duly organized, validly existing and in good standing under the laws of its state of formation;

(u) Any and all information furnished by Dealer to Company, or any information subsequently furnished by Dealer, relating to participation in the Program is true and correct in all material respects;

(v) Dealer will not utilize the Program for the purpose of disbursing cash to a customer/borrower or for the refinancing of a customer/borrower's existing debt to Dealer; and

(w) Company will send Dealer any request for information received from a customer/borrower relating to a claim or complaint relating to an eligible product or service sold by Dealer that Company cannot satisfy with information in its files. Dealer shall provide a written response within seven (7) business days of Dealer's receipt of such request from Company, including the results of its investigation of the claim or complaint and shall include legible copies of any related documents and records.

5. Breach of Representations and Warranties. In the event Dealer breaches any of the warranties and/or representations herein, Dealer shall indemnify, defend and hold harmless Company for, from and against any and all claims, actions, causes of actions, liabilities, damages, losses and costs (including, without limitation, litigation-related costs and expenses and reasonable attorney's fees) which result directly or indirectly from a breach. "Losses" as used herein includes any amounts recovered by customer and/or borrower from Company, any unpaid balance of the amount financed and any unpaid finance charges by the borrower to Company as result of a breach.

6. Confidentiality of Borrower Information and Data Security.

(a) In connection with Dealer's access to the Program, Dealer agrees in each instance to use the Program only for purposes of providing a customer access to the Program to seek financing for eligible products and services and only in accordance Dealer's written privacy and data security policy and applicable law;

(b) Dealer will not sell, provide, or exchange information pertaining to any loan application or transaction;

(c) Dealer will establish written policies and procedures that implement and maintain appropriate administrative, technical and physical safeguards to (i) protect the security, confidentiality and integrity of borrower information provided to Company by way of the Program, in accordance with applicable law, (ii) protect against unauthorized access to or use of personally identifiable information which could result in harm or inconvenience to any borrower; and (iii) protect against identity theft by reporting to Company potential patterns, practices, alerts or specific activities indicating the possible theft of a borrower's identity. In connection with these safeguards, Dealer agrees to promptly report any identity theft incidents or patterns, practices, alerts or specific activities indicating the possible theft of a borrower's identity to Company.

(d) Before discarding any material containing information relating to a customer or borrower under the Program, Dealer agrees to destroy it in a manner rendering the information unreadable;

(e) Company may request an audit of Dealer's compliance with this Agreement. Dealer agrees to fully cooperate with Company in the performance of such audit and agrees to pay for Company's costs and expenses related to such audit; and

(f) Dealer shall notify Company immediately upon discovery or notification of any actual, potential or threatened security breach (i.e., unauthorized access, disclosure or use) involving or which may involve information about a customer/borrower who applied for and/or received a loan under the Program. In connection therewith, Dealer shall provide Company with a detailed description of the incident, the type of customer/borrower information that was the subject of the security breach, the identity of the affected customers/borrowers, and any other information Company may request concerning the customers/borrowers or the details of the breach, as soon as such information can be collected or otherwise becomes available. Dealer agrees to take action immediately, at its own expense, to investigate the incident and to identify, prevent and mitigate the effects of any such security breach, and to carry out any recovery necessary to remedy the impact. Dealer also agrees to bear any cost or loss Company may incur as a result of the breach, including without limitation, the cost of notifying customers/borrowers and providing credit monitoring/identity theft protection services, if required by applicable law, rule, or

regulation or Company reasonably determines that such notification and services should be provided.

7. Indemnification. Dealer agrees to indemnify, defend and hold harmless Company and its parent, subsidiaries, and affiliates as well as their respective officers, directors, employees, agents, vendors, suppliers, and third-party providers from and against all claims, losses, costs, liabilities, and damages of any and every kind (including, without limitation, any costs, expenses and reasonable attorneys' fees) that such parties may incur as a result of, due to, or arising out of (i) the breach of any representation, warranty and/or covenant made by Dealer in this Agreement; (ii) Dealer's violation of Company's intellectual property and proprietary rights in the Program; (iii) a claim made by any person or entity with respect to the products or services sold or provided by Dealer in connection with financing provided under the Program; (iv) Dealer's noncompliance with the terms or conditions of this Agreement or with any applicable federal, state and local statutes, codes, ordinances, regulations, and laws (including, but not limited to, laws relating to unfair, deceptive or abusive acts or practices); (v) Dealer's failure to comply in any material respect with the terms of the Program; (vi) Dealer's and its employees and/or agents misconduct or fraud relating in way to Dealer's participation in the Program; or (vii) a security breach impacting borrower information. In its sole discretion, Company may assume the defense of any claim or cause of action subject to indemnification by Dealer, in which event Dealer will fully cooperate and assist Company in asserting applicable defenses.

8. Term/Termination.

(a) Company may terminate or suspend Dealer's participation in the Program, and this Agreement, at any time, if (i) Dealer breaches this Agreement; (ii) there are an excessive number of disputes between Dealer and borrowers; (iii) Company determines in its sole discretion that circumstances relating to Dealer have or could create harm to or loss of goodwill to the Program or Company; or (iv) Dealer fails to complete employee training related to the Program required this Agreement. Company may also terminate this Agreement or Dealer's participation in the Program, without cause, upon fifteen (15) days prior written notice to Dealer. Dealer may terminate this Agreement, without cause, on fifteen (15) days prior written notice to Company. This Agreement will automatically terminate if a petition in bankruptcy is filed involving Dealer.

(b) Notwithstanding the termination of this Agreement by either party, this Agreement will continue to apply to all Loans relating to consumer financing for heat pumps and other energy-saving home products or services provided to customers or borrowers under the Program before the date of termination.

9. Company's Disclaimer of Warranties. COMPANY MAKES NO REPRESENTATIONS AND GRANTS NO WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, BY STATUTE OR OTHERWISE, AND COMPANY SPECIFICALLY DISCLAIMS ANY OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, OR EXPRESS OR IMPLIED. DEALER AGREES AND UNDERSTANDS THAT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL COMPANY, ANY OF ITS AFFILIATES AND DIVISIONS, AND ANY OF THEIR OFFICERS, DIRECTORS, STOCKHOLDERS, PARENTS, SUBSIDIARIES, EMPLOYEES, AGENTS, VENDORS, LICENSORS, OR OTHER THIRD-PARTY PROVIDERS BE HELD LIABLE TO YOU UNDER ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT, STRICT LIABILITY, STATUTORY OR OTHERWISE) FOR ANY DAMAGES OR LOSSES, WHETHER DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY, ARISING OUT OF OR RELATING TO THE PROGRAM.

10. Company's Holdback of Loan Proceeds. In the event Company becomes aware of a borrower's complaint relating to Dealer's sale or installation of a heat pump or other energy-saving home product or the provision of services eligible for financing under the Program, Company may, in its sole discretion, holdback the tendering of loan proceeds under the Program until Dealer has addressed the borrower's complaint to Company's satisfaction.

11. Assignability. Dealer may not assign this Agreement, or its rights or obligations hereunder, without the prior written consent of Company. Company may, without Dealer's consent, assign this Agreement to an affiliate or to any entity that acquires the division of Company's business that operates the Program, or transfer or securitize all or any portion of the Loans or any related rights or interests therein. Dealer may not use third-parties to perform its obligations hereunder without prior written consent of Company.

12. Amendment. This Agreement may be amended by Company by posting changes on www.getsmartfinancing.com (the "Website"). Dealer shall monitor the Website for amendments to the Agreement on a regular basis. Dealer's continued participation in the Program after the

posting of an amendment on the Website will constitute Dealer's agreement to be bound by such amendment. Unless an amendment expressly states otherwise, the amendment shall be effective as to all Loans whether established or incurred before or after the effective date of such amendment. If you object to any amendment to this Agreement or become dissatisfied with the Program, Dealer's sole recourse shall be to terminate its participation in the Program, in accordance with the pertinent terms of this Agreement.

13. Non-Waiver; Remedies Cumulative. No delay by any party hereto in exercising any of its rights hereunder, or in the partial or single exercise of such rights, shall operate as a waiver of that or any other right. No right under any provision of this Agreement may be waived except in writing and then only in the specific instance and for the specific purpose for which such waiver was given. The rights and remedies provided for in this Agreement are cumulative and are not exclusive of any other rights, powers, privileges or remedies provided for by law or in equity.

14. Governing Law. This Agreement and all rights and obligations hereunder, including, but not limited to, matters of construction, validity and performance, shall be governed by and construed in accordance with the laws of the State of Alabama. Notwithstanding any statute or law to the contrary, Dealer agrees that any claim or cause of action arising out of or relating to this Agreement or the Program must be filed within one (1) year after the claim or cause of action arose or be forever barred and waived. Any disputes or legal proceedings arising out of or relating to this Agreement or the Program shall be resolved on an individual basis and Dealer waives any right to pursue any claims or causes of action against Company on a class action basis or on bases involving claims or causes of action brought in a purported representative capacity on behalf of other Dealers or others similarly situated. THE PARTIES HERETO WAIVE THEIR RIGHT TO REQUEST A TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING IN ANY COURT OF LAW, TRIBUNAL, OR OTHER LEGAL PROCEEDING ARISING OUT OF OR INVOLVING THIS AGREEMENT OR RELATING TO ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

15. Further Assurances. Each party hereto agrees to execute all such further documents and instruments and to do all such further things as any other party may reasonably request in order to give effect to and to consummate the transactions contemplated hereby. **16. Notices.** All notices must be given in writing and either hand delivered, mailed first class, postage prepaid,

or sent via overnight courier (and will be deemed to be given when so delivered or mailed), in the case of Dealer, to the address set forth in the Dealer's signature block appearing on the last page of this Agreement and, in the case of Company, to the attention of Karla Shoemaker, Sales Manager, Alabama Power Company, 1200 6th Avenue North, Birmingham, AL 35203. In lieu of the foregoing notice requirement, Company may elect to provide notice to Dealer by an e-mail sent to the e-mail address contained in the signature block for Dealer appearing on the last page of this Agreement.

17. **Force Majeure.** Neither party shall be deemed to be in breach of this Agreement if it fails to perform any obligation and such failure is a result of a force majeure event. As used herein, "force majeure event" shall mean any of the following: acts of God, fire, earthquake, acts of war or terrorism, explosion, accident, nuclear disaster, riot, material changes in applicable laws or regulations, including but not limited to a change in state or federal law, or other event beyond a party's reasonable control, rendering it illegal, impossible or untenable for such party to perform as contemplated in, or to offer electronic access to the Program on the terms contained in this Agreement.

18. **Program Marks.** Dealer is prohibited from using the Program Marks, as defined below, other than as expressly authorized in writing by Company. Program Marks means the brands, emblems, trademarks, service marks and/or logos that identify Company and/or the Program as well as the intellectual property and proprietary rights in the Program. Additionally, Dealer shall not use the Program Marks other than to display signage, advertising, and other forms depicting the Program Marks that are provided to Dealer by Company. Dealer shall not use the Program Marks in such a way that Dealer's customers could believe that the products or services offered by Dealer are sponsored or guaranteed by owners of the Program Marks. Dealer shall not allow any third-party to use the Program Marks or copy, modify, reproduce, republish, post, transmit, sell, license, create derivative works from, reverse engineer, distribute or use any Program Marks without Company's written approval and, in such case, only in accordance with such written approval. Dealer recognizes and acknowledges that it has no ownership rights in the Program Marks.

19. Compliance Obligations. Dealer further agrees to cooperate with Company to ensure ongoing security and protection of all customer's and borrower's data and personal information and to ensure that the Program complies in all respects with all federal, state and local statutes, codes, ordinances, regulations, laws (including laws relating to unfair, deceptive or abusive acts or practices), published regulatory guidelines and regulatory interpretations, judicial or administrative orders and interpretations, and, in the case of Company, regulatory guidance, orders or directives ("applicable laws"). Dealer will ensure that all processes applicable to the Program created by Dealer comply with applicable laws. Dealer also acknowledges that it will be liable for any losses incurred by Company as a result of such errors and violations of applicable laws attributable to Dealer.

20. No Third-Party Beneficiaries. Nothing in this Agreement is intended to confer or does confer any rights or benefits upon any other entity or person or to make any other entity or person a third-party beneficiary of this Agreement.

21. Entire Agreement. This Agreement is the entire agreement of the parties with respect to the subject matter hereof and supersedes all other prior understandings and agreements whether written or oral. Any representations or agreements that may have been made by any party before Dealer's execution of this Agreement with respect to such matters are void, and neither of the parties has relied on any such prior representations in executing this Agreement. If any provision of this Agreement is held to be invalid, void or unenforceable, all other provisions shall remain valid and be enforced and construed as if such invalid, void or unenforceable provision had never been part of this Agreement.

22. Independent Dealer. None of the terms, conditions or provisions of this Agreement create any partnership, joint venture, or agency relationship between Dealer and Company.

23. Required Documents from Dealer. As a condition precedent to Dealer's participation in the Program, Dealer shall provide Company with (1) certificate(s) of insurance, properly completed and signed by an authorized insurance company representative, evidencing the insurance required under this Agreement; and (2) a copy of Dealer's current business privilege license issued by the county where the Dealer's business is located. Dealer shall not be authorized to participate in the Program unless and until it provides Company with the above-

described documents. In addition, Dealer shall annually email certificates of insurance to the Company at KASHOEMA@SOUTHERNCO.COM as evidence of the continued maintenance of the minimum insurance coverage required under this Agreement.

24. **Headings.** All headings in this Agreement are for convenience only and have no legal effect.

The duly authorized representatives of each party to this Agreement has executed the same below.

DEALER: Owner or Primary Proprietor must sign

Signed _____

Printed Name _____

Title _____

Date _____

ALABAMA POWER COMPANY

Signed  _____

Printed Name Wade H. Mundy

Title Business Strategy Manager

Date 08/27/2021