



Confidential

Maine - Medium and Large Commercial &  
Aggregated Account Small General Service  
**Terms of Service**

**These Terms of Service govern your company's purchase of electricity generation services from Actual Energy, Inc. Please keep a copy for your records.**

- 1. Purchase and Sale:** These Terms of Service together with the Electric Service Agreement ("ESA") and Attachment A - Account List ("Attachment A") collectively form the "Agreement." Subject to acceptance of this Agreement by Actual Energy Inc. ("Company") and in accordance with the terms of the Agreement, Actual Energy Inc. agrees that it will sell and deliver to you ("you" or "Customer") and you agree to receive Generation Service for the service addresses in Attachment A. Customer's electricity consumption amount is not subject to a maximum or minimum usage limit.
- 2. Term of Generation Service:** The Customer's Generation Service term will begin on the Generation Service term start date and continue on a month-to-month basis, until Customer's 30-day written notice of termination is received by Company after a minimum 30-day Generation Service period, whereby Company will terminate Customer's service at the end of Customer's billing cycle on the next Transmission and Distribution Utility ("TDU") meter reading and will bill Customer for amounts owed.
- 3. Enrollment start-date:** The Generation Service term start date will be determined after the Company makes best efforts to enroll Customer's TDU accounts on Attachment A on the Desired Start Date, but your TDU will determine the final Generation Service term start date based on your utility cycle date. Your first bill will reflect this Generation Service term start date.
- 4. Billing:** Customer will continue to receive a bill from its TDU for its delivery service as it does now, and it will receive a separate bill from Actual Energy Inc. for the Generation Service portion of its service. Customer's payment is due net 10 days from the invoice date via Electronic Funds Transfer ("EFT") only, per Company's acceptance of Customer's valid EFT form, which is specifically incorporated into this Agreement. The Company's initial and continuing obligation to service Customer is expressly conditioned on Customer's successful initial EFT set up and continued viability. If Customer's EFT lapses, or Customer otherwise fails to pay its bill in a timely manner, Company may cancel this Agreement upon ten (10) days written notice without any liability to Customer. If you fail to make payment by the due date, interest charges will accrue daily on outstanding amounts from the due date until the bill is paid in full at a rate of 0.95% per month, or the highest rate permitted by law, whichever is less. Additionally, if Customer's full payment is not received by the date due and not timely cured, it will be considered late, and may be reported to a credit agency.
- 5. Contact Information:** Actual Energy, Inc. 74 Route 6A Sandwich, MA 02563 or call toll free 844-822-8825, or [customercare@actualenergy.com](mailto:customercare@actualenergy.com).  
Customer Service Contact: [customercare@actualenergy.com](mailto:customercare@actualenergy.com)  
Customer Billing Contact: [customercare@actualenergy.com](mailto:customercare@actualenergy.com)
- 6. Contract Rate and Pricing Structure:** The Customer's electric service contract price (the "Purchase Price") is an Indexed Variable Rate composed of a generation rate based on either the Real-Time or Day-Ahead wholesale hourly Locational Marginal Price ("RTLMP or DALMP") or a combination thereof plus all additional energy costs associated with serving the Customer including, but not limited to, capacity, renewable energy credits ("RECs") and similar state required renewable program costs, line losses, ancillary costs such as system congestion, NCPC, wholesale transmission and distribution. In addition the company charges a \$0.01/kWh fee. Capacity will be charged based on the Customer's ICAP tag as defined by the Utility/TDU) and ISO-NE, with service elements and pricing shown on your monthly bill. Certain rate elements will be averaged into separate billing categories and adjusted from time to time as needed to match the Company's final costs to serve the Customer. The Company does not guarantee the Customer savings on their energy bill. The Purchase Price does not include increases in costs and charges which arise from, or relate to, any ISO adjustments, power pool or TDU program that is supplemented, amended or otherwise modified from time to time by a change in law(s). Any such costs are in addition to the Purchase Price and will be passed through to Customer from Company. Further, settlement costs in accordance with ISO-NE market rules are the Customer's responsibility.



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- 7. Customer Usage: Customer's hourly kWh usage will be determined using Customer's actual hourly meter reading provided by Customer's (TDU) when available, or the TDU standard load profile and a good faith Company estimate using Customer's historical usage data and other relevant information when Customer does not have an hourly meter, or TDU hourly information is not available. If Company receives actual data that varies substantially from Company's good faith estimate, Company will reconcile the estimated charges and adjust them as needed in subsequent invoices.
8. Consumer Protection Notice (for Aggregated Account Small General Service customers only): Although Customer's accounts are non-residential Small General Service accounts, due to its aggregate account usage exceeding 100,000 kWh annually, and being a sophisticated business customer, by taking service from Actual Energy under this Agreement, the consumer protections for Small General Service Customers within Chapter 305 § 4 will not apply, excluding Customer's right to rescind this ESA as stated below, and the minimum term of service with Actual Energy, which is 30 days.
9. Right of Rescission (for Aggregated Account Small General Service customers only): YOU HAVE A RIGHT TO RESCIND THIS ESA WITHOUT PENALTY WITHIN FIVE (5) CALENDAR DAYS FROM RECEIPT OF THIS ESA. TO EXERCISE YOUR RIGHT TO RESCIND THIS ESA, YOU MAY CONTACT US BY PHONE, MAIL, OR EMAIL USING THE CONTACT INFORMATION ABOVE.

10. Disclosure of Risks and Costs Associated With Real-Time or Indexed Electricity Products:

Maine regulations require that electricity suppliers, brokers and aggregators provide the following disclosure to customers regarding electricity products in which the prices paid by consumers vary with changes in wholesale electricity prices, other energy prices, or an energy price index.

Volatility Risk: Electricity prices may be subject to substantial volatility based on economic conditions, fuel prices, seasonal electricity demands, generator outages, weather and other factors.

Future Performance: Past results regarding particular electricity products are not necessarily an indication of future results.

Additional Costs: Electricity supplied directly through the ISO-NE administered day-ahead and real-time energy markets can involve substantial direct and indirect costs, including but not limited to capacity and ancillary service costs, credit assurances, and NEPOOL and ISO expense assessments. In addition, participation in these markets may require processes such as load forecasting, scheduling, and settlement in accordance with ISO-NE market rules.

Acknowledged: (Customer Authorized Representative must initial) \_\_\_\_\_

- 11. Credit Worthiness: At any time, the Company may require that you provide information to us so that we may evaluate your creditworthiness. If the Company has commercially reasonable grounds to believe Customer's creditworthiness or performance under this Agreement has or may become unsatisfactory or if you have failed to pay at least two bills, not reasonably in dispute, within 45-days from the date of receipt of each such bill, Customer will have committed a Material Default pursuant to Section 17(a) herein and other applicable sections, and after notice, Company will have the options listed there to cancel Customer's service and terminate this Agreement without liability, and immediately collect all amounts due and owing. Further, in the event of such Material Default by Customer, in pursuing amounts due and owing, Company may recover all reasonable costs equivalent to the Company's actual out-of-pocket expenses, including reasonable attorney fees and court costs, and this and reasonably related terms will survive the termination of this Agreement.



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- 12. Consent to Obtain Usage Data and Information:** By executing this Agreement and/or accepting delivery of electricity under this Agreement, Customer authorizes Actual Energy to obtain, and TDU to release to Actual Energy for purposes related to account establishment, any Customer account information, including historical usage information, interval data, account number, and payment history. Specifically, Customer consents to the release to Actual Energy, from its TDU, any Meter data, including demand (kW), usage (kWh) and/or kVA data, at both the interval and summary level for all accounts and service addresses listed in Addendum A. Customer further authorizes Actual Energy to release confidential and other information to Customer's TDU necessary to enroll Customer.
- 13. Notice of Opt-Out Fee:** Customer's termination of standard offer service may require the payment of a fee, as required by Chapter 301 of the Maine Public Utilities Commission's rules. This is a regulatory fee, and it is not imposed by competitive electricity providers. You are encouraged to review the applicability of Chapter 301 in advance of accepting service from a competitive electricity provider.
- 14. Notices:** Notices, correspondence, and address changes shall be in writing and delivered by regular or electronic mail, facsimile, or similar means or in person. Notice by facsimile, electronic mail, or hand delivery shall be deemed to have been received on the date and time delivered (after 5 p.m. deemed received on next Business Day) and notice by overnight mail or courier are deemed received two Business Days after it was sent. All notices shall be provided to the person and addresses specified herein, or to such other person and address as a Party may from time to time specify in writing to the other Party.
- 15. Taxes:** "Taxes" shall mean all taxes and fees imposed on the purchase and sale of electric energy by any Governmental Authority. Customer will be responsible to pay and indemnify Company for all Taxes hereunder (excluding Actual Energy's income taxes).
- 16. Force Majeure:** "Force Majeure" shall mean an event beyond the reasonable control of the Party claiming Force Majeure that could not have been prevented by the exercise of due diligence. If either Party is rendered unable by Force Majeure to carry out, in whole or part, its obligations under this Agreement, such Party shall give notice and provide full details of the event to the other Party in writing as soon as practicable after the occurrence of the event. During such Force Majeure period, the obligations of the Parties (other than the obligation to make payments then due or becoming due with respect to performance prior to the event) will be suspended to the extent required. The Party claiming Force Majeure will make all reasonable attempts to remedy the effects of the Force Majeure and continue performance under this Agreement with all reasonable dispatch; provided, however, that no provision of this Agreement shall be interpreted to require Company to deliver, or Customer to receive, electric energy at points other than the delivery point(s). Force Majeure shall not include Customer's economic loss (e.g., Customer's loss of a markets or supply chain(s)).
- 17. Events of Default:** "Event of Default" means, with respect to a Party alleged to have taken or been affected by any of the actions set forth below in this section (the "Defaulting Party"): (a) the failure by the Defaulting Party to make, when due, any payment required under this Agreement if such failure is not remedied within five (5) Business Days after written notice of such failure is given to the Defaulting Party by the other Party ("Non-Defaulting Party"), or (b) any material information or representation or warranty made or presented by the Defaulting Party in this Agreement and/or any attachment to this Agreement, and Actual Energy's Customer Service Application Form proves to have been false or misleading in any material respect when made or ceases to remain true during the Term; or (c) the failure by the Defaulting Party to perform any covenant set forth in this Agreement and for which a remedy is not provided herein and such failure is not excused by the other Party in writing or by Force Majeure or cured within five (5) Business Days after written notice thereof to the Defaulting Party; or (d) the failure of the Defaulting Party to provide Performance Assurance in accordance with the Credit Worthiness Section above; (e) the Defaulting Party: (1) makes an assignment or any general arrangement for the benefit of creditors or (2) otherwise becomes Bankrupt or Insolvent.
- 18. Remedies Upon an Event of Default:** If an Event of Default occurs, after any cure periods have expired or if such Event of Default has not been cured in a timely fashion for any reason, upon such date, the Non-Defaulting Party shall have the right to terminate this Agreement effectively immediately and terminate all accounts hereunder and/or suspend performance without liability.



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- 19. Limitation of Liability:** For breach of this Agreement, the liability of the defaulting party shall be limited as set forth in this Agreement, and all other damages or remedies hereby are waived. If no remedy or measure of damages is expressly provided, the liability of the defaulting party shall be limited to direct actual damages only and all other damages and remedies are waived. In no event shall either party be liable to the other party for consequential, incidental, punitive, exemplary or indirect damages in tort, contract, or under an indemnity provision herein.
- 20. Indemnification:** Except as limited in the Limitation of Liability Section herein, each Party (the "Indemnifying Party") shall indemnify, defend and hold the other Party harmless from claims, demands and causes of action asserted against the indemnitee by any person arising from or out of any: (i) breach of this Agreement by the Indemnifying Party, or (ii) the negligence or willful misconduct of the Indemnifying Party, its employees, contractors, subcontractors, agents and/or representatives in the performance of its obligations pursuant to this Agreement.
- 21. Representations and Warranties:** As a material inducement to entering into this Agreement, each Party, represents and warrants to the other Party: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary to perform this Agreement; (b) it has all regulatory authorizations, permits and licenses necessary for it to legally perform its obligations under this Agreement; (c) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents or any contract to which it is a party or any law, rule, regulation, order, writ, judgment, decree or other legal or regulatory determination applicable to it; (d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any equitable defenses; (e) it is not Bankrupt or Insolvent and there are no reorganization, receivership or other arrangement proceedings pending or being contemplated by it, or to its knowledge threatened against it; and (f) it has read this Agreement and fully understands its rights and obligations under this Agreement, and has had an opportunity to consult with an attorney of its own choosing to explain the terms of this Agreement and the consequences of signing it. Customer further represents and warrants to Company throughout the term of this Agreement that **it is a Medium or Large Non-Residential Customer or an Aggregated Account Small General Service Non-Residential Customer and that no facility or account listed on Attachment A is classified by the applicable utility as a residential account unless otherwise allowed by the Maine Public Utilities Commission.** Apart from any warranty that is expressly set forth in this Agreement, Company and its successors, assigns and delegates make NO WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PURPOSE. Regarding the services Company provides, or the activities Customer undertakes, pursuant to this Agreement, Company acts solely as counter-party in all transactions with Customer under this or any other Agreement. Accordingly, Company has no duty to advise Customer or exercise judgment on Customer's behalf as to the merits or suitability of any transactions that Company proposes to enter into with Customer.
- 22. Assignment:** Customer may not assign this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the Company. The Company may sell, transfer, pledge, or assign the accounts, revenues, or proceeds due to it under this Agreement, which shall not require Customer consent or further notice. The Company may assign its obligations under the Agreement to another licensed retail electric provider or other entity as permitted by law.
- 23. Change in Law:** In the event that there is a change in law, administrative regulation, or any fees or costs imposed by the applicable ISO or a Governmental Authority, or a change in ISO/RTO Operations, market structure, congestion zone design, or protocols, and such causes the Company to incur capital, operating, or other costs relating to the provision of services contemplated herein, such costs shall be passed through to Customer, provided that, in the event such a change in law renders performance under this Agreement illegal, the Parties shall meet as soon as practicable to attempt to renegotiate the Agreement to comply with such change. If the Parties are unable to amend the Agreement, the Parties' obligations hereunder shall terminate upon the earlier of the date the change in law becomes effective or on the date Customer commences service with a retail energy provider in lieu of Company.



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- 24. Governing Law:** THIS AGREEMENT AND ALL MATTERS ARISING OUT OF OR RELATING TO IT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS, WITHOUT REGARD TO ANY CONFLICTS-OF-LAW PRINCIPLE THAT DIRECTS THE APPLICATION OF ANOTHER JURISDICTION'S LAWS. EACH PARTY CONSENTS TO THE PERSONAL JURISDICTION IN ANY FEDERAL OR STATE COURT WITHIN MASSACHUSETTS AND WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION RELATING TO THIS AGREEMENT.
- 25. Miscellaneous:** This Agreement, any appendix or exhibit attached hereto, and any transactions executed in accordance with this Agreement constitute the entire agreement between the Parties and supersedes any other agreements, written or oral, between Customer and Company concerning the subject matter of this Agreement. There are no prior or contemporaneous verbal, written, or other agreements or representations affecting the same subject matter other than those expressed hereof. No amendment, modification or change will be enforceable unless in writing and executed by both Parties.
- 26. No waiver Provision:** No waiver by any Party of any one or more defaults by the other Party in the performance of any of the provisions of this Agreement will be construed as a waiver of any other default or defaults whether of a like kind or different nature. No delay or failure by Company in enforcing any part of this Agreement shall be deemed a waiver of any of its rights or remedies. If any provision of this Agreement is found to be illegal or unenforceable, the other provisions shall remain effective and enforceable to the greatest extent permitted by law. All confidentiality and indemnity rights will survive the termination of this Agreement. This Agreement may be executed in several counterparts, each of which will be an original and all of which constitute one and the same instrument. In any action or proceeding to collect amounts due under this Agreement, the prevailing Party shall be entitled to recover its collection costs and expenses, including reasonable attorneys' fees, from the other Party.
- 27. Verification:** Customer also understands that Generation Service under this Agreement is conditioned upon Actual Energy's verification of the accuracy of all Customer-provided information with respect to electricity usage and Addendum A. Actual Energy, Inc. is licensed by the Maine Public Utilities Commission to sell electricity as a Competitive Electricity Provider under Docket No. 2020-00018.