



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 supply term will begin on the supply term start date and will 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 supply service period, whereby Company will terminate Customer's service at the end of Customer's billing cycle on the next Local Distribution Company ("LDC") meter reading and will bill Customer for amounts owed.
- 3. Enrollment start-date:** The supply term start date will be determined after the Company makes best efforts to enroll Customer's LDC accounts on Attachment A on the Desired Start Date, but your Local Distribution Company will determine the final supply start date based on your utility cycle date. Your first bill will reflect this supply term start date.
- 4. Billing:** Customer will continue to receive a bill from its LDC for its delivery service as it does now, and it will receive a separate bill from Actual Energy Inc. for the supply portion of your 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 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. Rescission Rights:** YOU HAVE THE RIGHT TO CANCEL THIS AGREEMENT FOR ANY REASON, WITHOUT CHARGE OR PENALTY UNTIL MIDNIGHT ON THE THIRD DAY AFTER YOU HAVE RECEIVED WRITTEN CONFIRMATION OF THIS AGREEMENT AND THE ACCOMPANYING INFORMATION DISCLOSURE LABEL. CUSTOMER AGREES AND ACKNOWLEDGES THAT ITS OR ITS AUTHORIZED AGENT'S SIGNATURE HEREIN SERVES AS RECEIPT OF A WRITTEN CONFIRMATION OF AN AGREEMENT TO PURCHASE ELECTRICITY PURSUANT TO 220 C.M.R. 11.05(4)(D) ON THE DATE OF SUCH SIGNATURE. THE SOLE METHODS OF RESCISSION SHALL BE TIMELY NOTICE SENT VIA EMAIL TO: CUSTOMERCARE@ACTUALENERGY.COM OR BY FAX TO 855-807-8914.

Massachusetts Department of Public Utilities (DPU) Telephone: (617)305-3500 Website: <http://www.Mass.gov/dpu/> Utility Contact Information: Telephone: Eversource-Western Massachusetts at 1-877-659-6326 or Eversource-Eastern Massachusetts at 1-800-592-2000, National Grid at 1-800-465-1212
- 6. Contact Information:** Actual Energy, Inc. 74 Route 6A Sandwich, MA 02563 or call toll free 844-822-8825, or customercare@actualenergy.com.
Customer Service Contact: customercare@actualenergy.com
Customer Billing Contact: customercare@actualenergy.com

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- 7. Contract Rate and Pricing Structure:** The Customer's electric service contract price (the "Purchase Price") is a variable price 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, NCPD, 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/LDC, 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 guaranty 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 LDC 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 Buyer from Seller. Further, settlement costs in accordance with ISO-NE market rules, are the Customer's responsibility.
- 8. Customer Usage:** Customer's hourly kWh usage will be determined using Customer's actual hourly meter reading provided by Customer's Electric Distribution Company (LDC) when available, or the LDC 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 LDC 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.
- 9. Risk Associated with Variable Rate:** Electricity prices may be subject to substantial volatility based on economic conditions, fuel prices, seasonal electricity demands, generator outages, weather and other factors. Past results regarding particular electricity products are not necessarily an indication of future results. Electricity supplied directly through the ISO-NE administered 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 Company and Customer load forecasting, scheduling, and settlement in accordance with ISO-NE market rules.
- 10. 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, the Company shall provide Customer with written notice requesting a "Performance Assurance" deposit with interest in accordance with DPU regulations in an amount not to exceed two (2) times your average monthly usage of any one month, whichever is greater. If there is no relevant consumption history to determine the prior usage, then the company and the customer shall utilize their best efforts to determine an average twelve month's consumption upon which to base the maximum security deposit. Upon receipt of such notice, Customer shall have three (3) Business Days to remedy the situation by providing such Performance Assurance (which may include, without limitation, you agreeing to: (i) make a cash deposit (ii) post a letter of credit at a financially sound bank or other financial institution, or (iii) make a prepayment to us for electricity supplied under this Agreement) to ensure prompt payment by you of amounts owed or otherwise payable under this Agreement.
- 11. 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 its LDC 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 LDC, 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 LDC necessary to enroll Customer.
- 12. 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.



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- 13. 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).
- 14. 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)).
- 15. 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.
- 16. 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.
- 17. 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.
- 18. 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.



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- 19. 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 no facility or account listed on Attachment A is classified by the applicable utility as a residential account. 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.
- 20. 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.
- 21. 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.
- 22. 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.
- 23. 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.



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- 24. 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.
- 25. Verification:** Customer also understands that supply of electricity 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 Massachusetts Department of Public Utilities to provide electric supply services under License No. CS-186.