

NEW YORK RESIDENTIAL & SMALL COMMERCIAL TERMS AND CONDITIONS

Electricity Supply Service
Direct Energy Services, LLC

1. Terms of Service. These Terms and Conditions together with the Customer Disclosure Statement (defined below), which is incorporated herein by reference, constitute the agreement (“Agreement”) between you and Direct Energy Services, LLC (“Direct Energy” or “us”). Your Customer Disclosure Statement will either be included as a section of the enrollment consent form or will accompany these Terms and Conditions.

2. Agreement to Purchase Energy. We will supply your full requirements for retail electricity, as delivered to you by your Local Distribution Utility (“LDU”), subject to the terms and conditions of this Agreement.

3. Agency. You appoint us as your agent to provide retail electric service, including electric transportation, transmission and related services appropriate to provide that service to you.

4. Eligibility. For electric service, you must (a) be eligible to receive service from your LDU and stay eligible for such service during the Term of this Agreement and (b) meet all eligibility requirements to enable Direct Energy to provide electric service. We can terminate this Agreement by giving you notice if you are not eligible.

5. Term of Agreement. The “Initial Term” of this Agreement can be found on the Customer Disclosure Statement. The Initial Term will continue for the number of monthly billing cycles as indicated on the Customer Disclosure Statement. The Agreement does not automatically renew. We will notify you before the end of your Initial Term regarding renewal and require your affirmative consent to continue the Agreement. Any such written notice and/or Renewal Notice(s) will be sent at least thirty (30) days and no more than sixty (60) days prior to the end of the Initial Term this Agreement and will apprise you of any proposed changes in the terms and conditions of this Agreement and of your right to extend, terminate or renegotiate this Agreement.

6. Rate Plan(s).

a.

Fixed Rate – 105% Trailing Rate Plan. If you enroll in our Fixed Rate – 105% Trailing Rate Plan, your electricity supply rate per kWh for the Initial Term of this Agreement will be no greater than 105% of your LDU’s 12-month trailing monthly energy supply rate, and includes Gross Receipts Tax (when

applicable) and excludes other taxes and regulated charges from the utility, including but not limited to, delivery and distribution charges. By way of example only, if your LDU’s applicable trailing 12-month rate was \$0.10 per kWh, our rate for this plan could be as high as \$0.105 per kWh, but no higher. Accordingly, this plan does not guarantee savings over the utility’s supply rate.

b. Fixed Rate – Renewable Energy Plan.

If you enroll in our Renewable Energy Plan, you are agreeing to purchase energy from Direct Energy that is at least 50% renewable as per the terms directed in the New York Public Service Commission (“NYPSC”) Order Issued on December 12, 2019 in Cases 15-M-0127, 12-M-0476, and 98-M-1343. This plan does not guarantee savings over the utility rate. Direct Energy may either purchase electricity directly from qualifying renewable generating facilities or may purchase renewable energy credits (“RECs”) associated with qualifying renewable energy production. Because customer demand and the availability of electric generation from renewable energy facilities both vary from hour to hour and from season to season, Direct Energy reserves the right to take up to three (3) months following the close of a calendar year to make up any deficiency in any volumes of renewable electricity or any RECs required for compliance with your Plan. At the end of any fixed rate term, you will be returned to default utility service unless we obtain your affirmative consent to continue for another term.

7. Billing. Our charges for electric service and other charges will appear in your service bill from your LDU. Your LDU calculates and determines your usage and charges, if applicable. Your LDU bills will specify when payments are due, and you agree to pay your bill as required by your LDU. Your payments may be pro-rated in accordance with procedures adopted by the NYPSC. If you receive residential service, your LDU may offer budget, levelized, or other payment plans, as provided in New York’s Home Energy Fair Practices Act (“HEFPA”). The LDU’s measurement of electricity will be definitive for the purpose of calculating your charges under this Agreement. This determination may include any combination of actual meter reading usage, usage estimations or pro-rated usage.

You also agree to review your bills in a timely manner, and if there are any inaccuracies with the portion of the bill for our services, you agree to notify us so we can help resolve the issue.

8. Your Right of Rescission and Termination.

Residential and Small Commercial customers may

rescind this Agreement within three (3) business days after receiving a copy of it ("Rescission Period") without an early cancellation fee. Thereafter, Residential and Small Commercial customers may terminate service under this Agreement at any time; provided, however, such customers will be required to pay any applicable early termination fee established in the Customer Disclosure Statement. To terminate service under this Agreement, contact us at our Customer Service Contact Center (see Section 22 for contact information). If you terminate service with us, your service will be switched to your LDU and termination will become effective at the end of the next switching cycle following your request for termination.

9. Termination by Us. We can terminate this Agreement as provided in Section 5 of this Agreement or for any of the following reasons by providing you fifteen (15) days' advance written notice: (a) fraudulent or misrepresented information was used to secure this Agreement; (b) you rescind your information release authorization provided in Section 13 below; (c) we determine that your credit is inadequate; (d) you change your physical address or location without complying with the requirements of Section 11 of this Agreement; (e) a court or administrative agency takes action that renders ineffective any material provision of this Agreement, prohibits material performance under the Agreement, or otherwise constitutes a material adverse change for us; (f) a Force Majeure Event that materially impacts our service; (g) you breach this Agreement. If terminated, your service will switch to the LDU no later than the end of the second following billing cycle.

10. Effect of Termination. Upon termination, you will be returned to LDU services unless you choose another energy service company. A final bill will be sent for charges through the date your service ends within twenty (20) calendar days after the final scheduled meter reading by your LDU (or, if access to your meter is unavailable, an estimate of your usage will be used for the final bill, which will be trued-up when the final meter reading is performed). Upon your request for termination, we will provide you with a termination verification number.

11. Transfer. If you relocate within the LDU service territory, this Agreement will continue for the remainder of the Term for services at your new location. You are responsible for (1) calling your LDU (see the Customer Disclosure Statement for contact information) to inform them of your request to transfer your LDU service to another location; (2) obtaining your new

account information from your LDU; and (3) contacting us using the information in Section 22, to provide your new account information and location to complete the transfer of service. You understand that this Agreement will automatically terminate if you relocate outside the LDU service territory, or if the requested service location is not served by the LDU. You must provide to us, at the address provided in Section 22, written proof of your new location outside the LDU service territory. In connection with your relocation in accordance with this Section 11, you will not be charged an early termination fee.

12. Assignment. You are responsible for payment to us. You may not assign or delegate this Agreement to anyone without our prior written consent. We may assign or delegate this Agreement to anyone, and that includes transferring our financial interest in your account. If such an assignment is made, and if required by law, we will provide written notice no later than thirty (30) calendar days prior to the transfer date. The notice shall include details of the assignment and your right to choose another supplier or to return to full utility service. After assignment, Direct Energy will have no further obligations under this Agreement.

13. Your Authorization to Release Your Information for Use and Sharing. By entering into this contract, you authorize us to act on your behalf under your utility's tariffs in accordance with the rules and regulations of the state public utility commission ("PUC") where you take service. You further acknowledge that this contract provides authorization for your local utility to release all information regarding your energy supply account(s) to us so we can provide the services described herein. This information may include, but is not limited to, usage information, billing determinants, bill cycle, budget billing status, address, account type, tax exemption status, rate service class, load profile, demand data, meter number, special account exceptions, public assistance status, existence of medical emergencies or disability, tax status and eligibility for economic development or other incentives, standard service status, electronic interval data when available, credit information when applicable, and all other data and information permitted by law to be disclosed to us to provide our services.

We also obtain information about you as outlined in our privacy policy (posted on our website) such as when you voluntarily provide personal information to us, use our website or mobile applications, or when we add information about you to your account profile from publicly available sources.

We will maintain the confidentiality of your personal information including your name, address, telephone

number, email, account numbers, energy usage and historic payment information as required by applicable PUC regulations as well as federal and state laws.

Our use and sharing of your information will be consistent with the purposes and uses disclosed in our privacy policy, as amended from time to time and posted on our website. Your information may be disclosed if required by law, such as pursuant to a lawfully issued subpoena or other legal process. Further, you understand that your information may be disclosed to an affiliate or a third-party to provide services or products to you, and any disclosure of such information will be made under confidentiality obligations not to disclose such information and to use it solely for the purpose of providing services to you or improved products to us. This authorization also allows us to contact you about our other products and services and to share information about your account with any affiliate, third-party vendor or marketing partner we use to provide services to you. We reserve the right to share your information with our affiliates and marketing partners, to the extent permitted by law and/or as authorized when you provide your consent.

If you do not wish for us to use or share information about your account in the manner described above, you may cancel this contract by calling us at our contact information listed herein.

14. Consumer Protections: Residential and non-residential service is governed by the terms and conditions of this Agreement and the NYPSC's rules, regulations and requirements, orders including the Uniform Business Practices (UBP) and by other applicable requirements including the NYS Home Energy Fair Practices Act (HEFPA). You may obtain additional information about consumer protections at our Customer Service Contact Center or from the NYPSC. You may contact the NYPSC at 1-800-342-3377, by writing to the NYPSC at: New York State Public Service Commission, Department of Public Service – office of Consumer Affairs, Three Empire State Plaza, Albany, NY 12223, or through its website at : www.dps.ny.gov/complaints. The NYPSC monitors complaints against all energy companies. An excessive number of complaints may result in an energy service company no longer being eligible to supply electricity in New York State. The telephone number for inquiries and complaints about alternative suppliers is 1-888-697-7728.

15. Customer Complaints and Dispute Resolution: If you have questions about our prices or our service, you should call us at the contact information listed below. If you are not satisfied with the response from our Customer Care representative, you may ask that your questions be referred

to one of our supervisors, who will respond promptly. Pursuant to the Home Energy Fair Practices Act, if you remain unsatisfied with our attempts to resolve the issue, you may seek assistance from the NYPSC or request information from the NYPSC regarding your consumer protection rights. Complaints may be directed as follows: Website: www.dps.ny.gov/complaints; Phone: DPS Helpline at 1-800-342-3377 (M-F 8:30am – 4:00pm); or Mail: Office of Consumer Services, NYS Department of Public Service, 3 Empire State Plaza, Albany, NY 12223.

THE EXCLUSIVE MEANS FOR RESOLVING DISPUTES ARISING OUT OF OR RELATING TO THIS CONTRACT IS THROUGH THE CONSUMER COMPLAINT PROCEDURES ENACTED PURSUANT TO HEFPA (16.N.Y. Comp. Codes R. & Regs HEFPA) (16 N.Y. Comp. Codes R. & Regs. § 12), AND YOU WAIVE ANY RIGHT TO FILE ANY ACTION OR SUIT BEFORE ANY COURT OF LAW, EXCEPT AS MAY BE PERMITTED PURSUANT TO ARTICLE 78 OF THE NEW YORK CIVIL PRACTICE LAW AND RULES (Article 78).

Class Action Waiver and Waiver of Jury Trial: BY ENTERING INTO THIS CONTRACT, YOU AND WE ARE GIVING UP THE RIGHT TO SEEK REMEDIES IN COURT AND FILE OR PARTICIPATE IN CLASS OR COLLECTIVE LEGAL ACTIONS, AND THE RIGHT TO A JURY TRIAL, OTHER THAN AS MAY BE PERMITTED BY HEFPA OR ARTICLE 78.

Arbitration Alternative: IF A COURT OR THE NYPSC DETERMINES THAT THE PROVISION IN THE "CUSTOMER COMPLAINTS AND DISPUTE RESOLUTION" SECTION ABOVE RELATING TO THE EXCLUSIVE MEANS OF RESOLVING DISPUTES IS INVALID, VOID, UNENFORCEABLE, INAPPLICABLE OR OTHERWISE DEFECTIVE, THEN ANY DISPUTE, CONTROVERSY OR CLAIM ARISING OUT OF, RELATING, TO OR IN CONNECTION WITH THIS CONTRACT, SHALL EITHER BE (i) FINALLY RESOLVED BY ARBITRATION BEFORE THE AMERICAN ARBITRATION ASSOCIATION ("AAN.") CONDUCTED UNDER THE AAA CONSUMER ARBITRATION RULES, OR (ii) AT THE ELECTION OF EITHER PARTY, BROUGHT IN NEW YORK SMALL CLAIMS COURT ("SMALL CLAIMS COURT"), IF THE DISPUTE OR CLAIM IS WITHIN THE SCOPE OF THAT COURT'S JURISDICTION. THE ABILITY TO CONDUCT DISCOVERY IN ARBITRATION IS LIMITED AND THE ARBITRATOR'S DECISION IS SUBJECT TO VERY LIMITED REVIEW BY COURTS. THE

ARBITRATOR CAN AWARD THE SAME DAMAGES AND OTHER RELIEF THAT A COURT CAN AWARD JUDGEMENT ON THE ARBITRATOR'S AWARD IN ANY COURT HAVING JURISDICTION IF YOU FILE FOR ARBITRATION, THE AAA RULES LIMIT THE FEES AND COSTS THAT YOU WILL PAY TO THE AAA AND ARBITRATOR, YOU WILL STILL BE RESPONSIBLE FOR YOUR OWN LEGAL FEES AND COSTS, AS IF YOU WERE IN COURT, BUT THE ARBITRATOR MAY AWARD YOU THOSE FEES TO THE EXTENT AUTHORIZED BY LAW. THE ARBITRATION WILL BE HELD IN NEW YORK IN A LOCATION DETERMINED BY THE ARBITRATOR. THE ARBITRATOR SHALL HAVE THE POWER TO RULE ON A NY CHALLENGE TO HIS OR HER JURISDICTION OR TO THE VALIDITY OR ENFORCEABILITY OF THIS ARBITRATION PROVISION, AS WELL AS THE CLASS ACTION WAIVER SET OUT ABOVE.

COPIES OF THE AAA CONSUMER ARBITRATION RULES AND ADDITIONAL INFORMATION ABOUT ARBITRATION ARE AVAILABLE AT THE AAA'S WEBSITE:
[HTTPS://WWW.ADR.ORG/RULES](https://www.adr.org/rules).

AAA MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING. IF A COURT OR THE AAA DETERMINES THAT THE PRECEDING SENTENCE PROHIBITING CLASS ARBITRATION IS INVALID OR UNENFORCEABLE, THEN THE REMAINING PORTIONS OF THIS ARBITRATION PROVISION WILL REMAIN IN FORCE.

THIS ARBITRATION PROVISION SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

16. Confidentiality. If you are not receiving service for residential use, the parties will keep the terms and conditions of this Agreement confidential, except as may be required to provide service or to meet the requirements of any regulatory body.

17. Title. All electricity sold under this Agreement shall be delivered to a location considered the "Point of Delivery", which for electricity shall be at the New York Independent System Operator load bus (located outside of the municipality where you reside), which shall constitute the point at which title transfers and the sale occurs. We shall indemnify and hold you harmless from all taxes, royalties, fees or other charges incurred with respect to the electricity before title passes.

18. Warranty. This Agreement, including any attachments, makes up the entire Agreement between the parties. WE MAKE NO REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT, AND WE EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

19. Force Majeure. Except as expressly provided in this section, a Party claiming Force Majeure will be excused from its purchase obligations under this Agreement as long as it provides prompt notice of the Force Majeure and uses due diligence to remove its cause and resume performance as promptly as reasonably possible. During a Force Majeure, you will not be excused from your responsibility for Balancing Charges nor from your responsibility to pay for services received under this Agreement. "Force Majeure" means occurrences beyond a Party's reasonable control, including, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of terrorism, civil disturbances, explosions, breakage, shortage and/or unavailability of transmission facilities. The inability of a Party to make payments is not a Force Majeure event.

20. Remedies and Limitations of Liability. THE ONLY REMEDY IN ANY CLAIM OR SUIT YOU BRING AGAINST US WILL BE DIRECT, ACTUAL DAMAGES YOU HAVE INCURRED. YOU WAIVE ANY RIGHT TO ANY OTHER REMEDY IN LAW OR EQUITY. NEITHER YOU NOR WE WILL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES. IN ADDITION TO THE PROVISION OF SECTION 19 ABOVE, WE ARE NOT LIABLE FOR ANY LOSS OR DAMAGE RESULTING FROM (A) INTERRUPTIONS TO, OR SHORTAGES OF, ELECTRICITY SUPPLY, OR (B) ERRORS IN THE QUANTITY, QUALITY AND MEASUREMENT OF ELECTRICITY. THESE LIMITATIONS APPLY WITHOUT REGARD TO THE CAUSE OF ANY LIABILITY OR DAMAGE.

21. Indemnification and No Third-Party Beneficiaries. You are responsible for, and will immediately indemnify us against, any and all loss or damage resulting from (a) your failure to fully comply with this Agreement; or (b) your use or misuse of electricity after it is delivered to you. There are no third-party beneficiaries to this Agreement.

22. Contact Information.

Direct Energy - You may contact our Customer Service Contact Center at 1-866-348-4194. Our hours are Monday through Friday 8:00 a.m. to 8:00 p.m. EST and Saturday 8:00

a.m. to 5:00 p.m. EST, (hours subject to change without notice). You may also correspond in writing at: Direct Energy Customer Service Contact Center, PO Box 180, Tulsa, OK 74101-0180. Always include your account number in your correspondence.

Your LDU – Contact information for your LDU is below, as applicable to your specific LDU:

Central Hudson Gas and Electric: 1-800-527-2714; Consolidated Edison of NY: 1-800-752-6633; Corning Natural Gas: 1-607-936-3755; National Grid (KED-NY): 1-718-643-4050; National Grid (KED-LI): 1-800-490-0045; National Grid: 1-800-892-2345; National Fuel Gas: 1-800-444-3130; NYSEG: 1-800-572-1131; Orange and Rockland: 1-877-434-4100; or Rochester Electric: 1-800-743-1701.

New York State Public Service Commission – You may contact NYPSC at 1-800-342-3377 or by writing to the NYPSC at: New York State Public Service Commission, Department of Public Service - Office of Consumer Affairs, Three Empire State Plaza, Albany, New York 12223, or through its website at: <http://www.dps.state.ny.us>. The telephone number for inquiries and complaints about alternative suppliers is 1-888-697-7728.

23. Venue and Choices of Law. Venue for any lawsuit related to this Agreement shall lie exclusively in the State of New York. Further, this Agreement shall be construed under and shall be governed by the laws of the State of New York, without regard to the application of its conflicts of law principles.

24. Taxes and Laws. Except as otherwise provided in the Agreement or provided by law, any and all taxes due and payable with respect to the performance of your obligations under this Agreement shall be paid by you. The parties' obligations under this Agreement are subject to any validly issued present and future legislation, orders, rules or regulations of a duly constituted governmental authority having jurisdiction over this Agreement or over the services to be provided herein.

25. Emergency Services. While your energy supply will be provided by Direct Energy, your energy delivery service shall continue to be provided by your LDU. In the event of an electric outage, service interruption or other emergency, you should immediately call your LDU at the contact information provided in Section 22.

26. Parties Bound. This Agreement is binding on the parties to this Agreement and their respective successors and permitted assigns.

27. Environmental Disclosure Label. You may access Direct Energy's Environmental Disclosure label associated with your account by visiting directenergy.com and selecting

"State Information" from the website menu, then New York, then Environmental Label. This information is updated periodically following the requirements of the NYPSC.