



# ELECTRIC and GAS ENROLLMENT AGREEMENT

Customer Service: (844) 344-2672  
www.allchoicenergy.com

Customer Name/Business Name: (as it appears on the bill)			Date: _	
Contact/DBA Name: (person signing)		Telephone:		
Service Address:	City:	State:	Zip:	
Billing Address: (if different)	City:	State:	Zip:	
Email Address:	<input type="checkbox"/> By checking this box, I agree to allow All Choice Energy LLC. and its affiliates to use my contact information (cellphone, email, address) for notification regarding my gas and/or electric service and any other promotional or sales opportunities that may be available to me.			

## ACCOUNT INFORMATION

Electric Utility: Con Edison <input type="checkbox"/>		Gas Utility: Con Edison <input type="checkbox"/> Keyspan LI <input type="checkbox"/> National Grid <input type="checkbox"/>	
Electric Account Number:		Gas Account Number:	
Electric Rate: Variable <input type="checkbox"/> Fixed: <input type="checkbox"/> Fixed Term _____ months 30% Renewable <input type="checkbox"/> Fixed Rate _____ per KWH		Gas Rate: Variable <input type="checkbox"/> Fixed: <input type="checkbox"/> Fixed Term _____ months Fixed Rate _____ per term	

## CUSTOMER DISCLOSURE STATEMENT

### RESIDENTIAL AND SMALL COMMERCIAL ENERGY SALES AGREEMENT NEW YORK MARKETS

You ("Customer") hereby authorize All Choice Energy, LLC ("All Choice Energy" or "ESCO") to change your electricity and/or gas supplier, as the case may be, to All Choice Energy, and to supply your home or small business with all the services you need, subject to the eligibility requirements of your local electric or gas utility ("Utility"). Those services are subject to the information provided in your enrollment documentation, this Energy Sales Agreement (this "Agreement") and the attached New York Terms and Conditions.

PRICE	Fixed Rate or Variable Rate. Your rate ("Rate"), which will determine the price you pay for your supply Services, is specified below.
DETERMINATION OF VARIABLE RATE	If you selected a variable rate, your Rate for your Service will vary based on several factors as outlined below ("Variable Rate").  <b>Gas Variable Rate</b> shall reflect each month the wholesale cost of natural gas (including commodity, capacity, storage and balancing), transportation to the Delivery Point, and other market-related factors, plus all other taxes, fees, assessments, government charges and charges levied by your Utility for distribution and other services and taxes, fees and charges levied by Company or any other entity authorized to levy taxes, fees or charges for or related to the Services. This may include, but shall not be limited to, utility taxes, gross receipts taxes, and sales or use taxes imposed on Company and/or you by federal, state, and/or local authorities that Company passes through to you (the "Fees").  <b>Electricity Variable Rate</b> shall each month reflect the cost of electricity obtained from all sources (including energy, capacity, settlement, ancillaries), related transmission and distribution charges and other market-related factors, plus the Fees.
DETERMINATION OF FIXED RATE	If you selected a <b>Fixed Rate</b> , your Rate for your Service is as specified on the Enrollment form and guaranteed not to change for the time specified on the enrolment form.  The Agreement is subject to any future legislation, orders, rules, regulations or Utility tariff or policy changes. If there is a change in any law, rule or pricing structure, including but not limited to a change in Capacity charges in NYISO, that results in Company being prevented, prohibited or frustrated from carrying out the terms of the Agreement, Company may terminate this Agreement upon 15 days' written notice to you, or, upon 30 days' written notice to you, change your Rate or modify terms in this Agreement so that it complies with such law. In the event of a change in Capacity charges, or other similar third party charges that are not set by the Company and that materially impact pricing, the Company may pass through such charges upon 30 days' advance written notice to you. This provision applies to all rate plans, whether fixed or variable.
AGREEMENT LENGTH; END DATE	For Variable Rate Service, the Term is month to month. For Fixed Rate Service, the Term is specified on the enrollment form. For more details see Section 2-TERM of the New York Terms and Conditions.
RESCISSION	If you are a residential customer, you may rescind this Agreement, without fees or penalties of any kind, at any time prior to midnight of the third business day after you received this written Agreement ("Rescission Period").
EARLY TERMINATION FEES AND METHOD OF CALCULATION	If you selected a Variable Rate, no early termination fees will apply. For residential customers that selected a Fixed Rate, the early termination fee listed in your Enrollment Documentation will apply to each Service you terminate after the Rescission Period, but before your Term or Renewal Term ends, or if you Default. Notwithstanding the foregoing, for all residential customers the early termination fee will be no greater than \$100 if the remaining term of the Agreement is less than 12 months and \$200 if the remaining term of the Agreement is 12 months or more. For small commercial customers, see Section 4-RESCISSION; TERMINATION of the New York Terms and Conditions.
LATE FEES	Any bill not paid in full by its due date will incur a late payment fee of 1.5% per month on overdue balances.
RENEWAL	For any Fixed Rate plan, you will receive notice from Company (between thirty and sixty days prior to the end of your Term) that you will be enrolled: (i) on the Fixed Rate plan provided in the notice (unless you choose, in accordance with Section 4, to cancel within three (3) business days after receiving the first billing statement at which time no termination fee will apply), or (ii) on the Company's Variable Rate plan available at such time and you may cancel at any time without any termination fees.
GUARANTEED SAVINGS	You understand that unless you have been offered a Rate in writing confirmed by the Company that expressly provides otherwise, this Agreement offers no guaranteed savings.

By signing below, I agree to have All Choice Energy LLC as my Gas and/or Electric supplier based on the terms above.

Customer Signature:		All Choice Energy LLC.:	
Print Name:		Print Name:	
Relationship/Title:	Date:	Title:	Date
Agent Name:		Agent ID #:	



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www.allchoiceenergy.com

## ELECTRIC and GAS ENROLLMENT IDENTIFICATION FORM

Place Customer ID here

### Customer Acknowledgement (Customer must initial each one)

1. \_\_\_\_\_ The sales representative clearly identified themselves as a representative of All Choice Energy LLC. and not from my local utility.
2. \_\_\_\_\_ I understand that All Choice Energy LLC. is a licensed provider of Gas and Electricity in New York State and it is not mandatory for me to choose them as my supplier.
3. \_\_\_\_\_ I am over 18yrs of age and are authorized to execute this agreement and choose All Choice Energy LLC as my alternate supplier gas and or electricity.
4. \_\_\_\_\_ I authorize All Choice Energy LLC. to contact my local utility on my behalf to receive and provide information necessary to choose All Choice Energy LLC. as my Gas and/or Electric supplier.
5. \_\_\_\_\_ I understand that I will still receive one bill from my local utility and All Choice Energy LLC's charges will appear on the supply portion of this bill. I also understand that my local utility will continue to deliver my gas and/or electricity to my location and my local utility will continue to maintain and service as they always have, and that I should call the local utility in case of any utility related emergencies.
6. \_\_\_\_\_ I authorize All Choice Energy LLC and its affiliates to call the number provided to obtain any additional information that may be required to complete my enrolment with All Choice Energy LLC. I also authorize All Choice Energy LLC and its affiliates to contact me by phone or email provide with any addition offers that may be available to me.

**All Choice Energy LLC. for Quality and protection of your account requires Photo Identification to be provided by authorized individual to confirm your identity. By Signing below, I consent to having my photo Identification provided to All Choice Energy LLC. for the purpose described above and I acknowledge my enrolment with All Choice Energy LLC. as my Gas and/or Electric Supply.**

Customer Signature:		All Choice Energy LLC.:	
Print Name:		Print Name:	
Relationship/Title:	Date:	Title:	Date
Agent Name:		Agent ID #:	



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**NOTICE OF CANCELLATION**

Transaction date: \_\_\_\_\_

YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FOR AN EXPLANATION OF THIS RIGHT.

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE (3) BUSINESS DAYS FROM THE ABOVE DATE. IF

YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN TEN (10) BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED. TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE TO:

**ALL CHOICE ENERGY LLC.  
3 SCHOOL STREET SUITE 101B  
GLEN COVE, N.Y. 11542**

NOT LATER THAN MIDNIGHT OF \_\_\_\_\_ (DATE).

**I HEREBY CANCEL THIS TRANSACTION.**

Buyer's Signature \_\_\_\_\_ Date \_\_\_\_\_

Buyer's Name \_\_\_\_\_

Account/Service number \_\_\_\_\_



**New York State Public Service Commission**

**Your Rights as an Energy Services Company Consumer**

**(ESCO Consumers Bill of Rights)**

*Customers can purchase energy from an Energy Services Company (ESCO) or from a traditional utility. If you choose to purchase energy from an ESCO you are entitled to:*

- A clear description of the services offered by the ESCO.
- Receive energy delivery and 24-hour emergency services from your utility company.
- Clear procedures for switching energy suppliers, including information about the enrollment process.
- Disclosure, in simple and clear language, of the terms and conditions of the agreement between you and the ESCO including:
  - price and all variable charges or fees;
  - length of the agreement;
  - terms for renewal of the agreement;
  - cancellation process and any early termination fees, which are limited by law; and of conditions, if any, under which the ESCO guarantees cost savings.
- Rescind an agreement with an ESCO within three days of receiving the agreement, if you are a residential customer.
- A description of how pre-payment agreements work, if offered.
- Notice from the ESCO, no less than thirty days prior to the contract renewal date, of the renewal terms and the options you have as a customer.
- A fair and timely complaint resolution process.
- Provision of any written documents (contracts, marketing materials, and this ESCO Consumers Bill of Rights) in the same language used to enroll you as a customer.

If you are a residential customer you are also entitled to the rights and protections of the Home Energy Fair Practices Act (HEFPA) which requires that all utility customers be treated fairly with regard to application for service, customer billing, and complaint procedures. For more information go to: [www.dps.ny.gov/resright](http://www.dps.ny.gov/resright).

ESCOs that do not assure these consumer rights could lose their eligibility to provide service in New York.

Please report any complaints to the Department of Public Service at 1-800-342-3377

(8:30 am – 4:00 pm), by mail at Office of Consumer Services, NYS Department of Public Service, 3 Empire State Plaza, Albany, NY 12223, or online at: [www.dps.ny.gov](http://www.dps.ny.gov).

You can find more information about your energy alternatives by visiting: [www.AskPSC.com](http://www.AskPSC.com)

## **NEW YORK TERMS & CONDITIONS**

You authorize All Choice Energy, LLC ("Company") to change your electricity and/or gas supplier to the Company and to supply your home or small business with all the Services you need, subject to the eligibility requirements of your local electric or gas utility ("Utility"). Your Enrollment Documentation, which includes the Residential and Small Commercial Energy Sales Agreement New York Markets, your Welcome Letter, and these Terms and Conditions, creates your agreement with the Company ("Agreement") and supersedes any oral or written statements made in connection with this Agreement or the supply of your Services. Capitalized terms used herein have the meaning ascribed to them within the Agreement, including in the "Definitions" section herein.

1. **SERVICES** Upon successful completion and receipt of all customer enrollment requirements, Company will supply Services for your home or small business. Company is a retail marketer of Services and is not your Utility. Your Utility will continue to deliver Services to your home or small business, read your meter, send your bill and make repairs and charge you for its services related to delivering your commodities. Your Utility will also respond to emergencies and provide other traditional utility services. You understand that you are not required to switch your Services to Company. There is no charge for starting or stopping Service; however, an early contract termination fee may apply as described herein.

2. **TERM** Company will begin supplying your Services when the Utility switches your account to the Company. For Variable Rate Service, your Agreement will continue for 30 days thereafter (the "Term"). Unless otherwise agreed to upon completion of the Term, this Agreement will renew on a month-to-month basis with a monthly Variable Rate methodology with no change to the remaining terms (the "Renewal Term"). For any Variable Rate plan, you will not receive a renewal notice as you have chosen the Company's variable rate plan that is a month-to-month plan that you may cancel, or the Company may cancel by providing you notice as required by law. For Fixed Rate Service, your Agreement will continue for a term of \_\_\_\_\_ months thereafter (the "Term"), and if applicable for the Renewal Term. For any Fixed Rate plan, you will receive notice from the Company (between thirty and sixty days prior to the end of your Term) that you will be enrolled: (i) on the Fixed Rate plan provided in the notice (unless you choose to cancel within three (3) business days after receiving the first billing statement at which time no termination fee will apply), or (ii) on the Company's Variable Rate plan available at such time and you may cancel at any time without any termination fees. Typically, it takes one to two billing cycles for your Service to be switched from your Utility to the Company, but there may be a delay before the Utility Switches Services and you understand that Company is not responsible for any such delays.

3. **PRICE** Each month you will pay for the Services you consume. If you have an Electric Variable Rate plan, your bill will be calculated by multiplying your Rate by the amount of electricity you consumed in kilowatt-hours during the billing cycle, plus any applicable Fees. If you have a Gas Variable Rate Plan, your bill will be calculated by multiplying your Rate by the amount of gas you consumed in ccfs, or therms, as the case may be, during the billing cycle, plus any applicable Fees. Depending on your Utility's billing practices, your Rate during the billing cycle may be applied pro rata, resulting in a blended rate of the previous month and the current month Rate. If your price is based on an estimated usage for such Services, the Company has the right to bill you on actual usage when such information is made available and you have the obligation to pay Company for such actual usage amounts. If you have a Fixed Rate plan for electricity, each month you will pay a fixed price of \_\_\_\_\_ per kWh, plus, in each case, all applicable taxes. If you have a Fixed Rate plan for gas, each month you will pay a fixed price of \_\_\_\_ per dth plus, in each case, all applicable taxes.

4. **RESCISSION; TERMINATION** To terminate or rescind this Agreement, you must notify Company as detailed in Section 12 or your Utility in accordance with the notice procedures provided by the Utility. Please provide your name, address, phone number, account number and a statement that you are rescinding or terminating the Agreement. Rescission is effective immediately. Termination will be processed immediately but is effective upon your Utility processing your termination and you are obligated to pay for the Services provided pursuant to this Agreement until you are returned to your Utility or an alternative supplier. A final bill will be rendered within twenty (20) days after the final scheduled meter reading or if access is unavailable, an estimate of consumption will be used in the final bill, which will be trueed up subsequent to the final meter reading. If you are a small business customer and selected a Fixed Rate, your early termination fee for each Service is equal to the Remaining Contract Quantity times the greater of (i) Contract Price less Market Price at the time of the Termination, or (ii) \$0.02/kWh or ccf/therm. Remaining Contract Quantity shall mean the total estimated usage for the period remaining in the Term or Renewal Term of this Agreement at the time of termination, based on your historical usage or Company's estimated usage calculated in a commercially reasonable manner. The Market Price for the remainder of the Term or Renewal Term will be determined by Company in a commercially reasonable manner.

If there is a material adverse change in your business or financial condition (as determined by Company in its discretion) or if you fail to meet your obligations under this Agreement or pay or post any required security deposit, then, in addition to any other remedies that it may have, Company may terminate this Agreement upon 15 days' written notice to you.

If you are a residential customer and terminate this Agreement prior to the end of the Term or Renewal Term, as the case may be, or if Company terminates this Agreement due to your breach, you shall pay the Company \$100 of the remaining term is less than 12 months and \$200 if the remaining term is 12 months or more.

The Company may terminate this Agreement upon 15 days' written notice to you.

5. **BILLING AND PAYMENT** The Services you purchase from Company will be included in your Utility monthly bill or in a separate invoice from Company. If from the Utility, the Utility will set your payment due date and the payment address. Customer payments remitted in response to a consolidated bill shall be pro-rated (when so required) in accordance with procedures adopted by the New York State Department of Public Service. Company may assign and sell customer accounts receivable to the Utility. Any bill not paid in full by its due date will incur a late payment fee of 1.5% per month on overdue balances. You may be liable for the costs the Company incurs if Company must terminate your bill for failure to pay, such as collection costs or attorney fees. Company shall have the right to setoff and net against any undisputed amounts owed by you under this Agreement, and the Company shall additionally have the right to setoff and net against any deposit or security provided by you pursuant to this Agreement any amounts, charges or damages owed by you to Company. You will be billed and pay Company for the Services based on meter readings and consumption information that Company receives from your Utility ("Billing Quantity"). For commercial accounts, Company will have the option to adjust the Billing Quantity for fuel and line loss retained by your Utility and interstate transporters from the Purchased Quantities. You are responsible for paying and reimbursing Company for all applicable Fees. If you are tax exempt, you must furnish Company an exemption certificate before your Service commences. In the event of a failure to remit payment when due by a residential customer, Company may terminate Service and seek suspension of distribution Service in conformance with the Home Energy Fair Practices Act ("HEFPA").

6. **CUSTOMER INFORMATION** All authorizations provided herein will remain in effect for the Term and, if applicable, the Renewal Term, of this Agreement; however, authorization may be rescinded by you at any time by contacting Company.

a. **Credit Requirement.** You authorize Company to review your credit history. If you fail to meet Company credit criteria, you understand that Company may refuse or terminate Service or provide a substitute product. You may be required to promptly provide Credit Enhancements to continue Service if there is a deterioration in your credit rating or a Usage Increase.

b. **Customer Information.** You authorize Company to obtain your Customer Information from your Utility. This Agreement provides authorization for the Company to contact you about our other products and services or share information about your account with any designated partner or with any third-party vendor the Company uses to provide services and rewards to you. The Company reserves the right to share your Customer Information with Company Agents, to the extent permitted by law.

7. **PHONE COMMUNICATION POLICY** You will be asked by the Company or its agents or affiliates to provide consent to the Company's Phone Communication Policy. Our policy is that if you provide your phone number, which may include your wireless number, the Company and its Agents may text or call you with auto dialed or pre-recorded promotional or product information. Your consent and acceptance of this policy is not a condition of purchase and may be revoked at any time.

8. **DISPUTE PROCEDURES RESOLUTION AND MANDATORY AGREEMENT TO ARBITRATE ON AN INDIVIDUAL BASIS** If you have billing questions or would like to make an inquiry about the Company's terms of service, you may contact the Company as indicated in Section 12. In the event of a dispute or a disagreement under this Agreement, the parties will use their best efforts to resolve the dispute. If you are not fully satisfied after discussing your dispute with the Company, you may, without prejudice, contact the New York State Department ESCO Hotline at 1-888-697-7728.

Regardless of whether you choose to pursue your dispute with the New York Department of Public Service, your right to pursue individual arbitration with the Company will not be impacted under this Agreement as set forth below.

You and the Company both agree to resolve Disputes (as defined below) only by arbitration or in small claims court (for qualifying claims), subject to specific exceptions listed herein. The parties expressly agree that they are waiving their right to sue in court and that arbitration is the parties' sole remedy to resolve disputes. There is no judge or jury in arbitration, the procedures may be different, and is subject to very limited review by a court. An arbitrator, however, can award you the same damages and relief, and must honor the same terms in this Agreement, as a court would. If the law allows for an award of attorneys' fees, an arbitrator can award them too. In addition, you and the Company also both agree that:

a. "Disputes" are any claims or controversies against each other related in any way to, or arising from the Company's services, this Agreement, or any related agreements, including but not limited to, billing, services and practices, policies, contract practices (including enforceability), service claims, privacy, or advertising, even if it arises after your services with the Company have terminated. Disputes include any claims that: (a) you bring against the Company or any of its employees, agents, affiliates, or other representatives; (b) you bring against a third party that are based on, relate to, or arise from the Company's services, this Agreement or any related agreements; or (c) that the Company brings against you. It also includes, but is not limited to, claims related in any way to, or arising from any aspect of the relationship between you and the Company, whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory.

b. Except as otherwise provided under Section 13(f) below, the Federal Arbitration Act, 9 U.S.C. § 1 et seq. (the "FAA") applies exclusively to this agreement to arbitrate, and this agreement to arbitrate is intended to be broadly interpreted. The arbitrator's decision and award is final and binding, with some exceptions under the FAA, and judgment on the award may be entered in any court with jurisdiction.

c. Prior to initiating arbitration, a party must first send to the other, by certified mail, a written notice of dispute ("Dispute Notice"). The Dispute Notice to the Company should be addressed to the Notice Address listed in Section 12. The Dispute Notice must (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought ("Demand"). If the Company and you do not reach an agreement to resolve the claim within 30 days after the Dispute Notice is received, you or the Company may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by the Company or you shall not be disclosed to the arbitrator.

d. Unless we each agree otherwise, the arbitration will be conducted by a single neutral arbitrator and will take place in the county (or parish) of the Service Address.

e. The arbitration will be conducted by: (a) a neutral third-party arbitrator mutually agreed upon by you and the Company; or (b) the American Arbitration Association (the "AAA"). The arbitration will be governed by the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (collectively, "AAA Rules") of the AAA, as modified by this Agreement. Where the terms of this agreement to arbitrate conflict with the AAA Rules, the terms of this agreement to arbitrate shall override and govern. The AAA Rules are available online at adr.org, by calling the AAA at 1-800-778-7879, or by writing to the Notice Address for the Company, which is listed in Section 12. The arbitrator is bound by the terms of this agreement to arbitrate. All issues are for the arbitrator to decide, except that issues relating to the scope and enforceability of the arbitration provision are for the court to decide. If your claim is for \$10,000 or less, we agree that you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the AAA Rules. If your claim exceeds \$10,000, the right to a hearing will be determined by the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based. Upon your request, and you supplying appropriate documentation, the Company will reimburse your administrative costs for the arbitration over and above the costs associated with filing a case in court. If, however, the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all such fees will be governed by the AAA Rules. However, nothing in this paragraph will require or allow you or the Company to arbitrate on a class- wide, representative or consolidated basis. An arbitration award and any judgment confirming it apply exclusively to the specific case. The arbitration award and judgment cannot be used for any other case except to enforce the award itself.

You and the Company each agree that arbitration will only be pursued on an individual basis, and will not be pursued on a class wide, representative or consolidated basis. This Agreement does not allow class, representative or collective arbitrations even if the AAA procedures or rules would. If for any reason any court or arbitrator holds that this restriction is unconscionable or unenforceable, then this agreement to arbitrate does not apply and the dispute must be brought in Court.

f. You and the Company agree that notwithstanding this agreement to arbitrate, either party may bring qualifying claims in a small claims court. In addition, this arbitration provision does not prevent you from bringing your dispute to the attention of federal, state, or local government agencies (including the New York DPS), and if the law allows, they can seek relief against the Company on your behalf.

g. If for any reason a claim proceeds in court rather than through arbitration, you and the Company agree that there will not be a jury trial. You and the Company unconditionally waive any right to trial by jury in any action, proceeding or counterclaim arising out of or relating in any way to this Agreement or the services provided by the Company. In the event of litigation, this paragraph may be filed to show a written consent to a trial by the court.

9. **EMERGENCY** In the event of an emergency such as a power failure, a downed power line, or a gas leak, you should call your Utility at the number listed below. You can also call your local emergency personnel at 911 if the emergency warrants.

*Central Hudson Gas and Electric: 1-800-527-2714 Consolidated Edison of New York (Con-Ed): 1-800-752-6633 National Grid / Niagara Mohawk: 1-800-892-2345  
New York State Electric and Gas (NYSEG): 1-800-572-1131 Orange and Rockland, also known as O&R: 1-877-434-4100 Rochester Gas and Electric: 1-800-743-1701*

10. **LIMITATIONS OF LIABILITY AND WARRANTY. THE REMEDY IN ANY CLAIM OR SUIT BY YOU AGAINST THE COMPANY WILL BE SOLELY LIMITED TO DIRECT ACTUAL DAMAGES (WHICH WILL NOT EXCEED THE AMOUNT OF CUSTOMER'S SINGLE LARGEST MONTHLY INVOICE AMOUNT IN THE IMMEDIATELY PRECEDING 12 MONTHS). ALL OTHER REMEDIES AT LAW OR IN EQUITY ARE HEREBY WAIVED BY YOU. NEITHER YOU NOR COMPANY WILL BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR ANY CONSEQUENTIAL, EXEMPLARY, PUNITIVE, INCIDENTAL OR INDIRECT DAMAGES INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR LOST REVENUES. THESE LIMITATIONS APPLY WITHOUT REGARD TO THE CAUSE OF ANY LIABILITY OR DAMAGES. THERE ARE NO THIRD-PARTY BENEFICIARIES TO THIS AGREEMENT. COMPANY DOES NOT GIVE ANY TYPE OF WARRANTY, EXPRESS OR IMPLIED, AND TO THE FULLEST EXTENT OF THE LAW, DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. COMPANY WILL NOT BE LIABLE FOR BILLING OR COMMUNICATION ERRORS AFTER 90 DAYS IF YOU DO NOT CONTACT US REGARDING SUCH ERRORS WITHIN 90 DAYS AFTER THE STATEMENT SHOWING THE TRANSACTION HAS BEEN MAILED TO YOU. IF YOU CAN SHOW A GOOD REASON (SUCH AS A LONG TRIP OR HOSPITAL STAY) KEPT YOU FROM INFORMING US, WE MAY EXTEND THE TIME PERIOD.**

11. **FORCE MAJEURE** The Company will make commercially reasonable efforts to provide natural gas and/or electricity here under, but the Company does not guarantee a continuous supply of natural gas and/or electricity to you. Certain causes and events out of the control of the Company ("Force Majeure Events") may result in interruptions in Service. In the event that the Company is rendered unable, wholly or in part, to perform its obligations under this Agreement due to events not reasonably anticipated or within either party's control, the Company will not be liable for any interruptions caused by a Force Majeure Event, and the Company is not and shall not be liable for damages caused by Force Majeure Events. Force Majeure Events shall include acts of God, fire, flood, storm, terrorism, war, civil disturbance, acts of any governmental authority, accidents, strikes, labor disputes or problems, required maintenance work, inability to access the local distribution utility system, curtailment by your Utility or the Company's transportation capacity, your Utility's appropriation of natural gas, non-performance by the Utility (including, but not limited to, a facility outage on its gas distribution lines or electric facilities), or any other cause beyond the Company's control.

12. **CONTACTING COMPANY** For any notice required in this Agreement or to contact us generally, you may contact the Company by (i) email, to customerservice@allchoiceenergy.com, (ii) mail, to Customer Service at 3 School Street, Suite 101B, Glen Cove, NY 11542, or (iii) phone, at 844-344-2672. Our regular office hours are Monday through Friday, 8:30 a.m. to 5:30 p.m., Eastern Time. After hours or during an emergency, please contact your Utility at the number provided in Section 9 and on page 6.

### 13. **MISCELLANEOUS**

- a. Use of Services. You must notify Company if you generate renewable energy or use net metering at your home or small business. If you use net metering, or if there is a Change in Usage, Company reserves the right to modify your Rate or terminate this Agreement and recover costs, if any. In addition, the Company has the right to refuse or terminate Services, and recover costs, if any, if your Service requirements are above the Usage Thresholds.
- b. Agency and Point of Sale. (A) If you are receiving gas service, you hereby designate Company as your agent to: (i) arrange and administer contracts and service arrangements between you and your Utility, and between you and the interstate pipeline transporters of your gas (including capacity release, re-release, and recall arrangements); (ii) nominate and schedule with the interstate pipelines the transportation of your gas from the Sales Points to the Delivery Points, and with your Utility for the transportation of your gas from the Delivery Points to your premises; and (iii) aggregate your gas with the gas supplies of Company's other customers in order for you to qualify for transportation service and to address and resolve imbalances (if any) during the term of this Agreement. As your agent, Company will schedule the delivery of a quantity of gas at the Sales Points necessary to meet your city gate requirements based on the consumption and other information that Company receives from your Utility. Company, as your agent, will arrange for the transportation of gas from the Sales Points to the Delivery Points, and from the Delivery Points to your premises; and (B) if you are receiving electric service, you hereby designate Company as your agent for the purpose of arranging, contracting for, and administering transmission services (including those provided by your Utility) for the delivery of electricity.
- c. Title; Risk of Loss. You and Company agree that title to, control of, and risk of loss of the Purchase Quantities supplied under this Agreement will transfer from Company to you at the Sales Points. Company and you agree that transactions under this Agreement are originated and consummated outside the jurisdictional limits of the municipality and county, or other taxing authority where your service address is located. If a taxing authority determines that a gross receipts tax or other tax is applicable to the sale of the electric service or gas service under this Agreement, you agree to pay such tax, as invoiced. For commercial customers only: (i) as between Company and you as a commercial customer, you will be deemed to be in exclusive control of the natural gas and/or electricity and responsible for any damage, injury, charges, transportation fees, costs or losses at and after the Sales Points, including, without limitation, any losses that Company incurs that result from having to resell, or its inability to resell, to another party natural gas and/or electricity supplies allocated for you and (ii) as between Company and you, Company will be deemed in exclusive control of the natural gas and/or electricity, and responsible for any damage, injury, charges, transportation fees, costs or losses until the natural gas and/or electricity is delivered to the Sales Points; provided, however, that in no event shall Company's liability under this Agreement exceed the difference between the reasonable price of replacing any undelivered natural gas and/or electricity and the price of natural gas and/or electricity under this Agreement.
- d. Assignment. You may not assign this Agreement without prior written consent of the Company. Company reserves the right to sell, transfer, pledge or assign this Agreement and your account, and related revenues and proceeds for financial purposes or in connection with a sale. This Agreement is binding upon the parties hereto and their respective successors and legal assigns.
- e. Change in Law/Third Party Charges. The Agreement is subject to any future legislation, orders, rules, regulations or Utility tariff or policy changes. If there is a change in any law, rule or pricing structure, including but not limited to a change in Capacity charges in NYISO, that results in Company being prevented, prohibited or frustrated from carrying out the terms of the Agreement, Company may terminate this Agreement upon 15 days' written notice to you, or, upon 30 days' written notice to you, change your Rate or modify terms in this Agreement so that it complies with such law. In the event of a change in Capacity charges, or other similar third-party charges that are not set by the Company and that materially impact pricing, the Company may pass through such charges upon 30 days' advance written notice to you. This provision applies to all rate plans, whether fixed or variable.
- f. Governing Law; Venue; Waiver of Jury Trial. Venue for any lawsuit brought to enforce any term or condition of this Agreement shall lie exclusively in the State of New York. The 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. EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL, ARBITRATION OR OTHER PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.
- g. Non-Waiver. The failure by one party to require performance of any provision shall not affect that party's right to require performance at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.
- h. Severability. If any provision of this Agreement is held unenforceable, then such provision will be automatically modified to reflect the parties' intention. All remaining provisions of this Agreement shall remain in full force and effect.
- i. Non-Reliance. You acknowledge that (i) you are not relying on any advice, statements, recommendations or representations of the Company, other than the written representations in this Agreement; (ii) that you understand the risks of entering into this Agreement, including the risk that the Company's prices may be higher than your Utility's rates, and you are capable and willing to assume those risks; and (iii) you have made your own decision to enter into this Agreement, after consultation with your own advisors to the extent you deem necessary.
- j. Complete Agreement. This Agreement constitutes the final and complete agreement between you and the Company. It is the complete and exclusive expression of the terms and conditions agreed upon for the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement.
- k. Electronic Signatures and Notices. Each party agrees that electronic signatures, whether digital or encrypted, of the parties to execute this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means any electronic sound, symbol or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or e-mail electronic signatures. Customer agrees that Company may send Customer notices via electronic means if Customer provides e-mail address or other way of communicating electronically. You have a duty to provide a correct, working email and update it accordingly; if you fail to do so, you could miss important notices.
- l. Customer Representation. I am at least 18 years old and fully authorized to enter into this Agreement. I am the authorized account holder or have been given proper and binding authorization to change the Services and enter into this Agreement on behalf of the account holder.

### **DEFINITIONS**

**"Agents"** means parties that need to know Customer Information in connection with Services and Company's affiliates and subcontractors.

**"Change in Usage"** means a change, or an anticipated or planned change, in the consumption of Services that materially exceeds your historical usage.

**"Credit Enhancements"** means cash escrow or deposit, establishing an ACH Debit relationship with Company, or providing other reasonable assurances to the Company to establish your credit worthiness.

**"Customer Information"** means account contact information, account number, meter number, billing history, payment history, historical and future electricity and gas usage, meter readings and characteristics of your electricity and gas service. It includes information obtained from the Utility as well as any information that you provide directly to Company or its Agents.

**"Default"** means: (i) failure to maintain credit requirements or provide necessary credit information or Credit Enhancements, (ii) a Usage Threshold event, (iii) a Change in Usage event, or (iv) any material breach of the requirements of, or representations made under, this Agreement.

**"Delivery Points"** means: (i) for gas transported by interstate pipelines, the city gate stations of your Utility, and (ii) for electricity, one or more points at which Company, as your agent, has arranged for the delivery of electricity to a third party (such as your Utility) for your account or at your premises.

**"Enrollment Documentation"** means any application or enrollment documents, whether in paper, electronic, internet, phone or otherwise, provided to Customer in order to commence Services, and the Welcome Letter.

**"Fees"** means taxes, fees, assessments, government charges and charges levied by your Utility for distribution and other services and taxes, fees and charges levied by Company or any other entity authorized to levy taxes, fees or charges for or related to the Services. This may include, but shall not be limited to, utility taxes, gross receipts taxes, and sales or use taxes imposed on Company and/or you by federal, state, and/or local authorities that Company passes through to you.

**"Purchase Quantities"** means all the electricity or natural gas supply, or any combination of the two, that Company must purchase to supply Services to your home or small business.

**"Rate"** means Fixed Rate or Variable Rate, as applicable.

**"Sales Points"** means: (i) for gas, a point or points located outside of the State of New York selected from time to time by Company to assure service reliability, and (ii) for electricity, a point or points on the NYISO administered transmission system located outside the municipal and county limits of your service address location, selected from time to time by Company to assure service reliability.

**"Service"** or **"Services"** means all the electricity or natural gas supply, or any combination of the two, that Company must purchase for your home or small business, as you have selected to be provided to you by Company in your Enrollment Documentation. Not all services are available in all areas.

**"Usage Thresholds"** means if your usage of Services exceeds, for (i) electricity, peak demand greater than 75kW over any of the past twelve months, or (ii) gas, usage exceeds 10,000 ccf per month or 90,000 ccf per year or the equivalent therms.

**"Welcome Letter"** means the welcome letter included in your Enrollment Documentation.