



Summer Energy Northeast, LLC  
5847 San Felipe Street, Suite 3700  
Houston, TX 77057  
888-594-9299  
[www.summerenergy.com](http://www.summerenergy.com)

March 26, 2018

NHPUC 30MAR'18AM11:14

NHPUC  
21 South Fruit Street, Suite 10  
Concord, NH 03301

Attn: Executive Director

**RE: DM 13-237, Summer Energy – Updated Terms and Conditions**

Enclosed please find an original and two paper copies of Summer Energy Northeast's Residential/Small Commercial contract for use after November 1, 2017.

In addition to the original and two paper copies, Summer Energy has also submitted an electronic copy to [executive.director@puc.nh.gov](mailto:executive.director@puc.nh.gov) as required.

Please feel free to contact me if you have any issues or concerns.

Thank You,

A handwritten signature in black ink, appearing to read "Raymond Rivera", written over a horizontal line.

Raymond Rivera  
Summer Energy Northeast, LLC

## SUMMER ENERGY NORTHEAST, LLC

### RESIDENTIAL ELECTRICITY SALES AGREEMENT AND TERMS OF SERVICE

This Electricity Sales Agreement and the following Terms of Service are for the purchase of residential electricity from Summer Energy Northeast, LLC ("Summer Energy") under a fixed price plan. Your contract governing this purchase of residential electricity consists of this Electricity Sales Agreement, the Disclosure Summary, the Terms of Service, and your telephonic, written or electronic authorization to initiate service and begin enrollment with Summer Energy ("Letter of Authorization")(collectively, the "Agreement"). As your Competitive Electricity Power Supplier ("CEPS"), Summer Energy will arrange for the delivery of electricity from your utility/local distribution company ("LDC") (each "LDC" being Eversource Energy, Liberty Utilities, Unitil, or New Hampshire Electric Cooperative) to your service location pursuant to this Agreement. The words "we," "us," and "our" also refer to Summer Energy, and the words "you" and "your" refer to you, our customer.

**Eligibility:** This Agreement is for residential only. If you receive service under this Agreement and are not a residential customer, you will be charged the prevailing price per kWh charged to our month-to-month discretionary variable price commercial customers Summer Energy's commercial customer agreement (including terms of service) which will become effective upon receipt.

**Pricing:** For **Fixed Price Plans**, the number of months of your Initial Term is set forth in your Electricity Sales Agreement. Your price for electric generation service provided by us is also set forth in your Electricity Sales Agreement. There is no monthly base charge. Your price covers your cost for energy commodity (all generation sources), scheduling, capacity, settlement and other ancillary services. Your price does not include any other charges including, but not limited to, the price of transmission and distribution, the systems benefits charge, stranded cost recovery charge, all other LDC charges, fees and assessments and taxes. That price will remain fixed until the end of your Initial Term; provided, however, that such price may be increased by us to reflect increased costs or charges resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs on Summer Energy that are beyond Summer Energy's control (see also the "Change in Law or Regulation" section below). After the end of your Initial Term, this Agreement will continue on a month-to-month basis and your price will become variable. That price may be higher or lower each month at our discretion.

**Term and Renewal:** Subject to the rescission period described in the Rescission section, your Agreement with us becomes effective when you physically or electronically sign your Electricity Sales Agreement. For **Fixed Price Plans**, the number of months of your Initial Term is set forth in your Electricity Sales Agreement. The Initial Term will commence on the date your electricity supply is switched by your LDC to Summer Energy, and will continue for the number of months indicated. After the end of your Initial Term, this Agreement will continue on a month-to-month basis and your price will become variable. That price may be higher or lower each month at our discretion. At least forty-five (45) days and no more than sixty (60) days prior to the end of the Initial Term, we will notify you in writing of the terms of renewal of this Agreement and of your right to renew, reject or renegotiate this Agreement. While receiving service on a month-to-month basis, either you or Summer Energy may terminate this Agreement at any time without notice, subject to payment of any applicable early termination fees.

If you are being charged a variable price, we set that price each month based on our evaluation of various market conditions. Market conditions that we might consider include, among other things: the prevailing price of wholesale natural gas or electricity on the market, costs involved in moving the electricity from the generator to your LDC, our total acquisitions costs for the electricity (including, where applicable, transmission costs and line losses), and the prevailing prices offered by your LDC and other competitors.

**Billing:** You will receive a bill monthly from your LDC which will include the price for electric generation service provided by Summer Energy, plus charges from your LDC and applicable taxes. LDC charges may vary in accordance with applicable rules and tariffs. Any bill issued by us will conform to the bill format requirements of the New Hampshire Public Utilities Commission. Further, Summer Energy reserves the right to include or cause to be included in any subsequent bill, adjustments to the charges for electric generation service related to previous billings, previous billing errors, meter read errors, miscalculation of taxes or other errors or omissions, whether such bills are issued by your LDC or by us.

**Payments:** Your LDC will send you a monthly bill. Your bill will include our energy generation charge, as well as your LDC's charges, fees and assessments (including electricity delivery charges). You must make payment directly to your LDC for our charges and the LDC charges on or before the due date of the bill, as determined by the LDC. The rules of the LDC's tariff filed with the New Hampshire Public Utilities Commission will apply to the billing, payment and collection of monies you will owe. Amounts payable directly to your LDC will be subject to a late fee or other charge as specified by your LDC in its applicable tariff.

If you are ever billed by Summer Energy, you agree to pay Summer Energy's charges in full within twenty (20) days from the date we mailed the bill to you. Bills shall be deemed past due and delinquent at the close of business on the day the bill is due. Late payments, delinquent or past due balances for amounts payable directly to us may result in a late fee equal to the lesser of one and one-half percent (1.5%) per month or the interest rate posted in your LDC's tariff. If you fail to remit payment when due, then, in addition to any other remedies we may have, we have the right to terminate the Agreement upon thirty (30) calendar days' written notice, provided that you do not make payment or correct the problem that caused the termination within the thirty (30) day period. A \$25 insufficient funds fee per transaction will be assessed for any payment made directly to us not processed due to insufficient funds or credit availability for any method of payment including checks, bank drafts or credit/debit card transactions. If any payments made by you directly to us are rejected two times in a one-year period, the only form of payment acceptable will be a certified check, money order or electronic funds transfer. If you make a payment for a lesser amount, which includes a statement or letter indicating that the lesser payment constitutes full payment, we may accept such payment without prejudice to any other rights and remedies that we may have against you and we may apply it to your account(s) as a partial payment. Summer Energy has a variety of bill payment options for bills issued directly by Summer Energy. For more details, please visit [www.summerenergy.com](http://www.summerenergy.com) or call us at the numbers listed below.

**Credit and Deposits:** Summer Energy may use credit reporting agencies to document and evaluate your credit and/or payment history. If you do not meet our credit standards or cannot demonstrate satisfactory credit, in accordance with the federal Equal Credit Opportunity Act, 15 U.S.C. Sections 1691 through 1691f, Summer Energy may require a deposit from you or may refuse to provide service. If a deposit is required, the amount shall follow all regulatory requirements and will be requested prior to beginning service with Summer Energy. Summer Energy will apply any cash deposit held on your behalf plus any accrued interest to the outstanding balance on your final bill, if applicable, and any excess amount will be refunded to you. Any deposit you provide us with be held in your name in our records. We may apply an early termination fee to any deposit you have provided us.

**Termination and Early Termination Fee:** We may terminate this Agreement and cause your electric generation service to be switched to your LDC, under its Default Service, as a default service provider if you fail to pay amounts due to us or otherwise fail to perform your obligations under this Agreement. Your LDC's Default Service rate for electric generation service may be higher than the rate under this Agreement for such service. We will notify you in writing at least ten (10) business days prior to cancellation of this Agreement for non-payment or other failure of performance or such other period as may be required by applicable rules.

You may terminate this Agreement without paying any early termination fee should you change the location of your residence and provide sufficient proof to us. If your new location is also in one of the LDC service territories served by Summer Energy, you may contact us for service. To terminate this Agreement, you may call, email or fax us at the contact numbers provided below. To terminate this Agreement, we may write or email you at the contact information provided for you or that you have otherwise provided to us.

If we terminate your service due to your failure to pay amounts due us, or otherwise perform your obligations under this Agreement, or if you terminate your service under this Agreement after the rescission period described in the Rescission section expires and prior to the completion of the Initial Term (by switching to another CEPS, LDC service or by contacting us), you will be assessed the early termination fee, if any, specified in your Disclosure Summary. If your termination requires an early meter read or other special action by your LDC, you may be charged a fee established by the LDC. Regardless of the method or reason for termination of the Agreement, you are responsible for payment of all outstanding charges incurred through the date on which the termination is effected by the LDC.

Subject to any applicable early termination fee, you may terminate this Agreement at any time with no advance notice. Customer may terminate this Agreement by notifying Summer Energy, contracting with another Supplier, contracting with an aggregator granted agency authority, or contacting the Local Utility to select utility default service.

**Rescission:** You have the right to rescind this Agreement without fees or penalties of any kind in accordance with each of the options outlined below, (each, as applicable, the “Rescission Period”). To do so, you may call us toll free at 888-594-9299, you may fax us toll free at 888-594-9350 during the customer service hours referenced in the Contact Information section or you may email us at [service@summerenergy.com](mailto:service@summerenergy.com).

- i. Within 5 business days from the date of electronic delivery of this Agreement
- ii. Within 6 business days from the postmarked date when this Agreement is delivered via the U.S mail
- iii. Within 10 business days from the date of electronic delivery if the customer was enrolled through an in-person solicitation at Customer’s residence; or
- iv. Within 11 business days from the postmarked date when this Agreement is delivered via the U.S Mail if the customer was enrolled through an in-person solicitation at Customer’s residence.

**Information Release Authorization:** We will not release confidential customer information without written authorization from you. Confidential customer information includes, but is not limited to your name, address, email address and telephone number; and your individual customer payment information. Your signature on the Letter of Authorization herein or your consent to enrollment if you are enrolled telephonically through Third-Party Verification (“TPV”) or electronically is your authorization for us and our agents to obtain and review information regarding your credit history from credit reporting agencies, and information from your LDC, including: consumption history, billing determinants, payment history, credit information, public assistance status, medical emergency status, your status as elderly, blind or disabled, tax-exempt status and eligibility for economic development or other incentives. Such information will not be disclosed to a third party unless: (i) required by law, (ii) such disclosure is to a third party service provided under contract with Summer Energy not to disclose such information and to use such information solely for the purposes of providing services to Summer Energy, or (iii) as provided below. These authorizations shall remain in effect as long as the Agreement is in effect. We reserve the right to reject your enrollment or terminate our Agreement with you in the event these authorizations are rescinded or you fail to meet or maintain satisfactory credit standing as determined by us. If you fail to remit payment in a timely fashion, we may report the delinquency to a credit reporting agency. If you have provided an email address, notices sent via email shall constitute written notice under this Agreement.

**Dispute or Complaints:** If you have a billing or other dispute involving our service, please contact our Customer Service Department at the contact numbers provided below or emailing [service@summerenergy.com](mailto:service@summerenergy.com). You must still pay your bill in full, but may deduct the specific billing amount in dispute while the charges remain in dispute. The dispute or complaint relating to a residential customer may be submitted by us or you at any time to the New Hampshire Public Utilities Commission pursuant to its complaint handling procedures by calling the New Hampshire Public Utilities Commission Consumer Services Division or online through its website. You must continue to pay all undisputed billing amounts and any such payment shall be refunded if warranted by the New Hampshire Public Utilities Commission’s decision. The New Hampshire Public Utilities Commission can be reached: by telephone toll free at 800-852-3793; in writing at: New Hampshire Public Utilities Commission, 21 South Fruit Street, Suite 10, Concord, NH 03301-2429; or by visiting [www.puc.nh.gov](http://www.puc.nh.gov). If you have any general questions or would like information regarding the competitive retail energy market, including information about CEPSs and your rights and responsibilities, you may call the New Hampshire Public Utilities Commission at that telephone number.

**Low-Income Programs and Electric Assistance Program (“EAP”):** Please contact your LDC to obtain information about social service agencies and programs that are available to low income customers for bill payment assistance. These programs include The Electric Assistance Program (EAP), which can help income eligible customers pay their electric bills by providing discounts ranging from 8% to 76%, depending on income and household size. EAP is a discount electric rate available to a qualifying residential customer by its LDC. **If you are currently on such a rate with your LDC, we suggest that you not enroll with Summer Energy as the program benefits do not apply to our charges.**

For more information about the EAP, please go to the following website:

<http://www.puc.nh.gov/Consumer/electricassistanceprogram.htm>

For information about other bill payment assistance programs contact the local Community Action Agency (“CAA”) by either calling the New Hampshire Public Utility Commissions (“NHPUC”) at 1-800-852-3793 or 603-271-2431 (within NH) or visiting the NHPUC online at: <http://www.puc.nh.gov/Consumer/communityactionagencies.htm>

**24 Hour Service Outage Reporting:** Your LDC is responsible for the distribution lines, meters and meter data and the quality of the power entering your home. Your LDC is required to respond to your electricity outages and emergencies.

To report an electricity outage or emergency, please call your LDC toll free:

Eversource (f/k/a Public Service of New Hampshire)	1-800-662-7764
Granite State Electric Company (d/b/a Liberty Utilities)	1-855-349-9455
Unitil Energy Systems, Inc. (UES)	1-800-852-3339
New Hampshire Electric Cooperative (NHEC)	1-800-343-6432

You should also contact your local emergency personnel, if appropriate.

**Customer Protections:** Residential electricity services provided under this Agreement are protected by this Agreement, and the rules and regulations of the New Hampshire Public Utilities Commission. Summer Energy will provide you at least thirty (30) calendar days’ advance notice prior to any cancellation of service to you. You may obtain additional information by contacting Summer Energy at the contact numbers provided below. You may also contact the New Hampshire Public Utilities Commission at 800-852-3793.

**Nondiscrimination:** Summer Energy does not deny service, require a prepayment or deposit for service or otherwise discriminate based on a customer’s race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, level of income, disability, familial status, location of a customer in an economically distressed geographic area, or qualification for low income or energy efficiency services. However, we may refuse service to anyone for any other reason permitted by applicable rules.

**Contract Changes:** Summer Energy may make non-material, non-price related changes to the Agreement by providing you with advance notice. If we make any changes that are material to your Agreement, we will send you a written notice between thirty (30) and sixty (60) calendar days prior to making such changes explaining the changes and requesting your consent.

**Third-Party Program Change:** Summer Energy reserves the right to change or cancel at any time without notice any benefits, rewards, or bonuses provided to customers that may be provided by a third party.

**Change in Law or Regulation:** In the event that there is a change (including changes in interpretation) in law, regulation, rule, ordinance, order, directive, filed tariff, decision, writ, judgment or decree by a governmental authority, or in the event any of the foregoing which is existing as of the date of this Agreement is implemented or differently administered including, without limitation, changes in tariffs, protocols, market rules, load profiles, and such change results in Summer Energy incurring additional costs and expenses in providing the services contemplated herein, these additional costs and expenses may, at our option, be assessed in your monthly bills for service as additional pass-through charges, to the extent permitted by applicable rules.

**Attorney Fees:** If you fail to timely pay the amounts due under this Agreement and we refer your outstanding balance to an attorney or collection agent for collection, or if we file a lawsuit, or collect your outstanding balance through probate, bankruptcy or other judicial proceedings, then you agree to pay reasonable fees and expenses (including attorney’s fees) that we incur in the collection process.

**Force Majeure:** We will endeavor in a commercially reasonable manner to provide service, but we do not guaranty a continuous supply of electrical energy. Events that are out of our control (“Force Majeure Events”) may result in interruptions in service. We will not be liable for any such interruptions. We do not generate your electricity, nor do we transmit or distribute electricity to you. Therefore, you agree that we are not liable for damages caused by Force Majeure Events including, but not limited to, acts of God, acts of any governmental authority, including the New Hampshire Public Utilities Commission, accidents, strikes, labor trouble, required maintenance work, inability to access the LDC system,

nonperformance of the LDC, delay of deregulation or changes in laws, rules, regulations, practices or procedures of any governmental authority, or any cause beyond our control. If a Force Majeure Event occurs, which renders Summer Energy unable to perform in whole or in part under this Agreement, our performance under this Agreement shall be excused for the duration of such event.

**Limitation of Liability:** UNLESS OTHERWISE EXPRESSLY PROVIDED HEREIN, ANY LIABILITY UNDER THIS AGREEMENT WILL BE LIMITED TO DIRECT ACTUAL DAMAGES AS THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED AND NEITHER PARTY WILL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, INCLUDING LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, WHETHER IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISIONS OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT. THE LIMITATION IMPOSED ON REMEDIES AND DAMAGE MEASUREMENT WILL BE WITHOUT REGARD TO CAUSE, INCLUDING NEGLIGENCE OF ANY PARTY, WHETHER SOLE, JOINT, CONCURRENT, ACTIVE OR PASSIVE, PROVIDED NO SUCH LIMITATION SHALL APPLY TO DAMAGES RESULTING FROM THE WILLFUL MISCONDUCT OF ANY PARTY.

### **Representations and Warranties**

SUMMER ENERGY MAKES NO REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT, AND SUMMER ENERGY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER WRITTEN OR VERBAL, EXPRESS OR IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

### **Assignment**

You may not assign this Agreement, in whole or in part, or any of your rights or obligations hereunder, without the prior consent of Summer Energy. Summer Energy may: (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial agreement; (ii) transfer or assign this Agreement to an affiliate of Summer Energy; (iii) transfer or assign this agreement to any person or entity succeeding to all or substantially all of the assets of Summer Energy; and/or (iv) transfer or assign this agreement to a certified CEPS. Summer Energy Northeast shall provide you with thirty (30) days written notice of any such assignment. In the case of (ii), (iii) or (iv), any such assignee shall agree in writing to be bound by the terms and conditions hereof. After assignment, Summer Energy Northeast will have no further obligations under this Agreement.

### **Disclosure Label**

Prior to initiation of service with us, after initiation of service with us at least annually, and upon request, our Disclosure Label will be provided to you and is also available to you by visiting our website at [www.summerenergy.com](http://www.summerenergy.com). You may also receive this Disclosure Label by calling us at 888-594-9299 or emailing us at [service@summerenergy.com](mailto:service@summerenergy.com). This Disclosure Label contains certain information on the fuel mix and emissions characteristics associated with our electricity plan products.

### **Governing Law**

This Agreement shall be governed and construed, enforced and performed in accordance with the laws of the State of New Hampshire, including applicable rules of the New Hampshire Public Utilities Commission.

### **Forward Contract**

This Agreement and the transaction hereunder will constitute "forward contracts" as defined in Section 101(25) of Title 11 of the United States Code (the "Bankruptcy Code"). You and Summer Energy agree that (i) Summer Energy is a "forward contract merchant" as defined in Section 101(26) of the Bankruptcy Code, (ii) the cancellation or termination rights of the parties will constitute contractual rights to liquidate transactions that will not be abridged by any filing of any petition as set forth in Section 556 of the Bankruptcy Code, (iii) any payment related hereto or made hereunder will constitute a

“settlement payment” as defined in Section 101(51A) of the Bankruptcy Code, and (iv) the exceptions to the applicability of sections of the Bankruptcy Code as set forth in Sections 362(b)(6), 546(e), 553(a)(2)(B)(ii), 553(a)(3)(C), and 553(b)(1) shall apply. The text of these referenced Bankruptcy Code provisions may be found at [http://uscode.house.gov/download/title\\_11.shtml](http://uscode.house.gov/download/title_11.shtml).

### **Title, Risk of Loss and Indemnity**

You will be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of the electricity after it reaches your electric meter. We shall cease to have title to and risk of loss related to the electricity when it is delivered to the point where the LDC facilities interconnect with your meter. You will indemnify, defend and hold harmless Summer Energy from any and all claims for any loss, damage or injury to persons or property including, without limitation, all consequential, exemplary or punitive damages arising from or related to any act or incident occurring after title to the electricity has passed to you.

### **Non-Waiver**

No waiver by any party hereto of any one or more defaults, by the other party in the performance of any of the provisions of this Agreement shall be construed as a waiver of any other default or default whether of a like kind or different nature.

### **Third-Party Rights**

Nothing in this agreement shall create, or be construed as creating any express or implied rights in any person or entity other than you and us.

### **Taxes**

Except as otherwise provided in this Agreement or by law, all taxes due and payable with respect to your performance of your obligations under this Agreement, shall be paid by you. Any lawful tax exemption will only be recognized on a prospective basis from the date you provide to us (*not* the LDC) valid tax-exemption certificate(s).

### **Renewable Energy and Renewable Energy Credits**

If you have selected a renewable energy product from us, the following provision applies: We will, either directly and/or through our affiliate(s), retire, on your behalf, Renewable Energy Credits (“RECs”) resulting from electricity generated from renewable energy sources, which may include solar, wind, geothermal, biomass, biogas or low-impact hydro, in an amount matching your usage (or applicable percentage of usage, if applicable) in a calendar year. Such energy sources will be located in, or connect to, the electricity grid anywhere in North America. Each REC represents 1,000 kilowatt hours. You will not have electricity from a specified generation facility delivered directly to your meters; but, through this product, you can support generators of renewable energy that provide electricity to the electricity grid. Renewable energy source availability and generation varies hour-to-hour and from season-to-season, as does all customer electricity usage. Like all electric suppliers, Summer Energy relies on regional system power from the grid to serve our customers’ minute-by-minute consumption. But, through retirement of RECs by us, and/or our affiliate(s), on behalf of customers, we will cause enough renewable energy to be delivered to the electricity grid to match your usage (or applicable percentage of usage, if applicable). We may take up to three (3) months after the end of a calendar year to retire RECs needed to fulfill this product. Neither Summer Energy nor any of its affiliates will be liable to you or any other party for any advertising assertions made by you related to this product including, without limitation, any claim or liability arising from a representation made as to the “green” or “carbon free” nature of the electricity of this product.

### **Disclosure of Risks and Costs Associated with Variable, Real-Time or Index Price Electricity Products:**

**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 Prices:** Past or current prices for these particular electricity products are not necessarily an indication of future prices. Prices may be higher in the future.

**Additional Costs**

Electricity supplied directly through the ISO-New England-administered day-ahead and real-time energy markets can involve substantial direct and indirect costs including, but not limited to capacity and ancillary services 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-New England market rules.

**Summer Energy Contact Information**

Business Name: Summer Energy, LLC

Website: [www.summerenergy.com](http://www.summerenergy.com)

Email: [service@summerenergy.com](mailto:service@summerenergy.com)

Address:

5847 San Felipe Street #3700

Houston, TX 77057

Fax Toll Free 888-594-9350

Customer Service Toll Free 888-594-9299

Customer Service Hours:

Monday - Friday

8:00 a.m. – 7:00 p.m. Central Time

Saturdays 9:00 a.m. – 1:00 p.m. Central Time

Closed Sundays and holidays.

**Complete Agreement**

This Agreement, including the Disclosure Summary, these Terms of Service, and the Letter of Authorization, contains all terms, conditions and agreements in any way related to, or arising out of, the sale and purchase of electricity. This Agreement supersedes all prior agreements whether written or oral.

**IN THE CASE OF WRITTEN, TELEPHONIC OR ELECTRONIC ENROLLMENT, EXECUTION OF THIS AGREEMENT SHALL BE DEEMED TO HAVE BEEN EFFECTED PURSUANT TO THE METHODS AUTHORIZED BY THE NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION.**



**SUMMER ENERGY NORTHEAST, LLC  
COMMERCIAL FIXED RATE PRODUCT  
New Hampshire- Terms of Service**

These Terms of Service ("TOS"), along with Business Authorization, and any documentation of your enrollment authorization collectively constitute the Agreement ("Agreement") set forth the terms and conditions under which a commercial customer ("Customer," "you" or "your") will receive electric service, from Summer Energy Northeast, LLC or ("we", "our" and "us") a certified Competitive Electricity Power Supplier ("CEPS"). By entering into this Agreement, Customer hereby: 1) appoints us to arrange for purchase and delivery of electricity (including volume balancing and billing) from any source on Customer's behalf for the period of time defined in this Agreement; and 2) Customer hereby requests that all electric service associated with Customer's name and/or address or electric service identifiers ("ESIDs") be transferred to us under the terms and conditions of this Agreement. Summer Energy Northeast, LLC and Customer may be referred to herein individually as a "Party" or together as "Parties." Please retain the Contract Documents for your records. A copy of the Contract Documents is available to Customer upon written request.

**Customer Information:** By entering into this Agreement, Customer authorizes its utility/local distribution company ("LDC") to release to us any information that is necessary or required to become the CEPS for Customer, including, but not limited to: Customer's address, account numbers, and historical usage information.

1. **Term & Renewal:** This Agreement shall commence on the date of the initial meter reading by the applicable Utility and continue for the period indicated in your Authorization ("Initial Term"). Customer may terminate this Agreement at any time without notice, subject to payment of any applicable early termination fees. If you fail to terminate your Agreement, your service will automatically continue on a month-to-month basis after the expiration of your Initial Term on a default renewal product, which is a variable price product whose price will be determined by current market conditions at the sole discretion of Summer Energy Northeast, LLC until cancelled by either you or Summer Energy Northeast, LLC. Customer acknowledges that we cannot guarantee a switch of Customer's account to us by a specific date and hereby holds harmless Summer Energy Northeast, LLC from any liability for, or arising out of, delays in this process not due to Summer Energy Northeast, LLC.
2. **Product Types: Fixed Rate Plan:** Fixed Rate Plans have a term of at least (six) 6 months. The price of a fixed rate plan may only change during your Initial Term to reflect actual changes in state or independent service organization (ISO's) administrative fees charged to loads, changes to market structure including capacity charges, or changes resulting from federal, state or local laws, or ISO rates that impose new or modified fees or costs on us that are beyond our control. Price changes resulting from these limited circumstances do not require us to provide you with advanced notice.
3. **Material Changes:** We will provide Customer with at least thirty-five (35) calendar days' advance written notice of any Material Change in this Agreement, either in Customer's bill or in a separate mailing. The changes will become effective on the date stated in the written notice. Customer may cancel this Agreement before the effective date of the Material Change, as identified in the advance written notice provided to Customer, without any Early Termination Fee. A Material change is not a change in price due to end of term of initial contract.
4. **Early Terminations:** In the event that we, or our activities hereunder, becomes subject to regulations of any kind whatsoever under any law, government body action or ISO action that has the effect of materially changing the circumstances from those that exist on the effective date of this Agreement then we may pass through the economic effects to Customer of such change or we may unilaterally terminate this Agreement without Customer's consent upon at least thirty (30) calendar days written notice to Customer without any obligation, payment or otherwise, to Customer or an Early Termination Fee.
5. **Early Termination Fee:** Subject to any applicable early termination fee, you may terminate this Agreement at any time with no advance notice. Customer may terminate this Agreement by notifying Summer Energy, contracting with another Supplier, contracting with an aggregator granted agency authority, or contacting the Local Utility to select utility default service. If Customer terminates this Agreement or defaults as described in Section 12 and/or 13 of this Agreement, then, unless otherwise provided herein, an Early Termination Fee shall be immediately due and paid by Customer to us. If you cancel this Agreement for any other reason before the end of the initial term you will be assessed an Early Termination Fee ("ETF") that is equal to three (3) highest months billing in a 12-month period. If the 12-month usage is not available, then the usage will be based on the three (3) highest months in the historical period available. The ETF is equal to 3 times the sum of the Energy Charge, Demand Charge if applicable, Base Charge if applicable, and TDSP Pass-Through charges on the invoice prior to the final invoice.
6. **Right of Rescission:** For switch requests, Customer has the right to rescind Customer's request for Summer Energy Northeast, LLC to become its REP without any Early Termination Fee in accordance with each of the options outlined below:
  - i. within 5 business days from the date of electronic delivery of this Agreement and Welcome Letter,
  - ii. within 6 business days from the postmarked date when this Agreement and Welcome Letter is delivered via the U.S mail
  - iii. within 10 business days from the date of electronic delivery if the customer was enrolled through an in-person solicitation at Customer's residence; or
  - iv. within 11 business days from the postmarked date when this Agreement is delivered via the US Mail if the customer was enrolled through an in-person solicitation at Customer's residence.

To rescind this Agreement, Customer shall give notice to us in writing via regular mail at 5847 San Felipe St Suite 3700 Houston, Texas 77057 or by email at [sales@summerenergy.com](mailto:sales@summerenergy.com) or by facsimile at 1 (888) 594-9350 or by calling 1 (888) 594-9299. Regardless of the method or reason for termination or cancellation of this Agreement, Customer is responsible for the payment of any and all services provided to Customer before or after



the termination or cancellation of this Agreement. If Customer requests that the LDC read its meter before the normal meter read date Customer may be charged a fee as set by the respective LDC.

- 7. Invoicing, Payment, Interest, and Credit Requirements:** You will receive a single bill from your local utility for its charges related to the delivery of electricity, including but not limited to, the price of transmission and distribution, the system benefits charge, stranded cost recovery charge, and taxes, as well as Summer Energy Northeast, LLC's charges. Your local utility will set your payment due date and inform you of the payment billing address. Your bill is subject to adjustment for any computation errors, meter misreads or other errors. Summer Energy Northeast, LLC reserves the right to assume the billing function for our services. Our charges are as specified in your Business Authorization. Bills not paid in full by the due date will incur a late-payment fee at an interest rate of 1.5% per month on unpaid balances or otherwise in accordance with your local utility's policies and procedures.
- 8. Load Change:** If Customer has a change in usage of 25% greater/lesser (+/-) during any month compared to its usage during the same period in the prior year, Summer Energy Northeast, LLC may pass through the resulting cost increases, if any, incurred by Summer Energy Northeast, LLC to serve this changed load to the Customer. Summer Energy Northeast, LLC will calculate additional costs in a commercially reasonable manner and invoice Customer accordingly. Invoice will be due and payable according to the payment terms of this Agreement.
- 9. Customer Acknowledgements:** Customer acknowledges that the LDC is solely responsible for reading Customer's meter or recorded data, as applicable, and that we cannot and do not read a Customer's meter or recorded data, but are bound by the readings and data provided by the LDC.
- 10. Credit Requirements & Deposit:** We may investigate the Customer's prior to providing service and may refuse to accept a Customer if the Customer does not meet our credit standards or if Customer cannot pay the requisite initial deposit or demonstrate satisfactory credit.
- 11. Default:** "Default" means (i) failure of either Party to make payment by the applicable due date and the payment is not made within five (5) Business Days of a written demand; (ii) either Party, its parent or guarantor, becomes Bankrupt, or (iii) failure of a Party to perform any material obligation contained in this Agreement or Transaction Confirmation except for Seller's delivery failure which the sole remedy will be Buyer's cost of cover regarding purchases of gas in a commercially reasonable manner; or (iv) failure of either Party to satisfy any representations and warranties contained in Section 13 and the failure is not cured within fifteen (15) Business Days of a written demand. The word "Bankrupt" means an entity (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent, however evidenced, (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, (e) has a secured party take possession of all or any substantial portion of its assets or (f) is dissolved or has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger). A delay of the obligations provided (i), (iii), or (iv) above caused by a Force Majeure shall not constitute a Default under this Section.
- 12.** In the event of a Default, the non-defaulting Party may: (i) withhold any payments or suspend performance (ii) upon prior written notice, provided that no notice is required with respect to Section 11(ii), accelerate any or all amounts owing between the Parties and terminate and liquidate any or all Transactions; (iii) calculate a settlement amount by calculating the Liquidation Value for each Transaction being terminated; and (iv) aggregate all settlement amounts and all other amounts owing between the Parties plus reasonable attorney's fees and costs incurred, into one single amount ("Net Settlement Amount"). Any Net Settlement Amount due from the defaulting Party to the non-defaulting Party will be paid within five (5) Business Days of written notice from the non-defaulting Party. Interest on any unpaid portion of the Net Settlement Amount will accrue daily at the Interest Rate. "Liquidation Value" shall be: (a) Where Seller is the non-defaulting Party, the positive difference if any between the contract price of the Energy for the remaining supply period for any Transaction Confirmation terminated and the market price of the Energy for the remaining supply period of such terminated Transaction Confirmation. (b) Where the Buyer is the non-defaulting Party, the positive difference, if any, between the purchase price at which Buyer obtains alternative Energy supply to cover the remaining supply period for any Transaction Confirmation terminated and the contract price of the Energy for the remaining supply period in any Transaction Confirmation terminated. The price paid by Buyer to its LDC for alternative energy supply shall be deemed "commercially reasonable." "Market Price" means the price for similar quantities of Energy at the Delivery Point during the applicable Delivery Period provided in a Transaction Confirmation.
- 13. Representations and Warranties:** Each Party hereby represents and warrants to the other Party as follows:
  - a. This Agreement constitutes a legal, valid, and binding obligation of the Party, enforceable against the Party in accordance with its terms, subject to bankruptcy, insolvency, reorganization, and other laws affecting creditor's rights generally, and with regard to equitable remedies, subject to the discretion of the court before which proceedings to obtain same may be pending; and
  - b. Customer has knowledge, understanding and experience that enable Customer to evaluate the merits and risks of entering into this Agreement;
- 14. Forward Contract:** Summer Energy Northeast, LLC and Customer acknowledge and agree that the transactions contemplated by this Agreement constitute "forward contracts" within the meaning of the United States Bankruptcy Code, and further acknowledge and agree that Summer Energy Northeast, LLC is a "forward contract merchant."
- 15. Assignment:** You may not assign this Agreement, in whole or in part, or any of your rights or obligations hereunder, without the prior consent of Summer Energy. Summer Energy may: (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial agreement; (ii) transfer or assign this Agreement to an affiliate of Summer Energy; (iii) transfer or



Version SUMCOMNH031218

assign this agreement to any person or entity succeeding to all or substantially all of the assets of Summer Energy; and/or (iv) transfer or assign this agreement to a certified CEPS. Summer Energy Northeast shall provide you with thirty (30) days written notice of any such assignment. In the case of (ii), (iii) or (iv), any such assignee shall agree in writing to be bound by the terms and conditions hereof. After assignment, Summer Energy Northeast will have no further obligations under this Agreement.

16. **Binding Effect:** This Agreement shall inure to the benefit of, and be binding upon, Summer Energy Northeast, LLC and Customer and their respective successors and permitted assigns.
17. **Force Majeure:** Neither Party shall be liable in damages for any act or event that is beyond its control and which could not be reasonably anticipated and prevented through the use of reasonable measures, including, but not limited to, an act of God, act of the public enemy, war, terrorism, insurrection, riot, fire, explosion, labor disturbance or strike, wildlife, unavoidable accident, equipment or material shortage, breakdown or accident to machinery or equipment, or good faith compliance with a then valid curtailment, order, regulation or restriction imposed by governmental, military, or lawfully established civilian authorities, including any order or directive of the ISO.
18. **Excuse:** If an event occurs which makes it impossible for a Party to perform this Agreement, including without limitation, any of the foregoing force majeure events, then its performance under this Agreement shall be excused for the duration of such event.
19. **LIMITATION OF REMEDIES, LIABILITY AND DAMAGES:** Summer Energy Northeast, LLC AND CUSTOMER CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF, FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNDER NO CIRCUMSTANCE SHALL SUMMER ENERGY BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF SUMMER ENERGY AND THE CUSTOMER THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, SUMMER ENERGY AND CUSTOMER ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.
20. **Dispute Resolution:** Summer Energy Northeast, LLC and Customer agree in good faith to attempt to resolve any disputes within twenty-one (21) calendar days of notice of the dispute from either party. Any written communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to the attention of the "Legal Department" at 5847 San Felipe St Suite 3700 Houston, Texas 77057. A dispute or complaint relating to a residential or small commercial customer may be submitted by either party at any time to the PUC pursuant to its Complaint Handling Rules and Procedures by calling the PUC at 1-800-852-3793 or by writing to the PUC at: New Hampshire Public Utilities Commission, Consumer Services 21 South Fruit Street, Suite 10, Concord NH 03301-2429, or through its website at [www.puc.state.nh.us](http://www.puc.state.nh.us). Customers may contact the commission if they have questions about their rights and responsibilities.
21. **UCC:** Except as otherwise provided for in this Agreement, the provisions of the Uniform Commercial Code ("UCC") shall govern this Agreement and Energy shall be deemed a "good" for purposes of the UCC.
22. **Warranty Disclaimer:** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT SUMMER ENERGY DOES NOT MAKE AND EXPRESSLY NEGATES ANY OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATION OR WARRANTY WITH RESPECT TO CONFORMITY TO MODELS OR SAMPLES, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE.
23. **Notices:** Notices to and from Customer shall be furnished in writing and shall be delivered by electronic mail, United States Postal Service standard mail, certified mail, overnight carrier, or hand delivery. Notice to and from Customer by hand delivery shall be deemed to be received by the close of the business day on which it was hand delivered (unless hand delivered after the close of business in which case it shall be deemed received at the close of the next business day). Notice to and from Customer by overnight mail or courier shall be deemed to have been received 2 (two) business days after it was sent. FOR PURPOSES OF PROVIDING NOTICE OF BANKRUPTCY TO SUMMER ENERGY, SUCH NOTICE SHALL ONLY BE EFFECTIVE IF DELIVERED TO THE FOLLOWING ADDRESS: PO BOX 460485, Houston, TX 77056.
24. **Governing Law:** THIS AGREEMENT AND THE RIGHTS AND DUTIES OF SUMMER ENERGY NORTHEAST, LLC AND CUSTOMER HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAW OF THE STATE OF IN WHICH THE ELECTRICITY IS PROVIDED, WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAWS.
25. **Non-Waiver:** No waiver by any Party hereto of any one or more defaults, by the other Party in the performance of any of the provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature.



Version SUMCOMNH031218

26. **Severability:** Except as otherwise stated herein, any provision or article declared or rendered unlawful by a court of law or regulatory agency with jurisdiction over us or Customer, or deemed unlawful because of a statutory change, will not otherwise affect the lawful obligations that arise under this Agreement.
27. **No Third Party Beneficiaries:** Nothing in this Agreement shall provide any benefit to any third party nor shall it provide any third party any claim, cause of action, remedy or right of any kind.
28. **Discrimination:** We do not discriminate, deny service, or require a prepayment or deposit for service based on a customer's race, creed, color, national origin, ancestry, sex, religion, marital status, lawful source of income, level of income, disability, familial status, location in an economically distressed geographic area, or qualification for low income or energy efficiency services.
29. **Entirety of Agreement:** It is the intention of the Parties that the Agreement shall contain all terms, conditions, and protections in any way related to, or arising out of, the sale and purchase of electricity, and supersedes any and all prior such agreements between the Parties hereto, whether written or oral, as to the provision of electric service to any of Customer's meter identification number. Both Parties have agreed to the wording of the Agreement and any ambiguities therein shall not be interpreted to the detriment of either party merely by the fact that such party is the author of the Agreement.
30. **Counterparts.** This Agreement may be executed simultaneously in multiple originals or counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument, and each of which shall be sufficient for all purposes without producing or accounting for the other counterparts hereof.
31. **No Oral Modification or Waivers.** This Agreement shall not be modified or waived orally, but only by an instrument in writing signed by the Party against which enforcement of the modification or waiver is sought.
32. **Own Judgment.** It is understood and agreed that the Parties hereto have carefully reviewed this this Agreement, that they fully understand its terms, that they sought and obtained, or had the opportunity to obtain, independent legal advice with respect to the negotiation and preparation of this Agreement, and that this Agreement has been negotiated and prepared by the joint efforts of the Parties.

SUMMER ENERGY NORTHEAST, LLC

CUSTOMER RIGHTS AND CONTACT INFORMATION

Contact Info:

**SUMMER ENERGY NORTHEAST, LLC**

5847 San Felipe Street, Suite 3700

Houston, Texas 77057

Tel Number: 713-375-2790

Toll Free: 1-888-594-9299

Toll Free Fax: 1-888-594-9350

Hours of Operation: Monday-Friday 8:00 am to 7:00 pm CST and Saturday 9:00 am to 1:00 pm CST