

Electricity Supply Agreement—Terms of Service
Connecticut - Commercial & Industrial—Energy Lock™



MINT ENERGY CONTACT	CUSTOMER PAYMENTS
Name: Mint Energy, LLC Street Address: One Rounder Way, Suite 220 City, State, Zip: Burlington, MA 01803 Phone: (877) 611-6468 Fax: (888) 701-2520 Email: custserv@mintenergy.net	For payment by check, please send to: Mint Energy, LLC Department 1510 P.O. Box 4110 Woburn, MA 01888-4110

Public Utilities Regulatory Authority (PURA) Contact Information			
Address	Telephone	Web and Email	CT Rate Board:
10 Franklin Square New Britain, CT 06051	800-827-2837(Toll Free) 860-827-1553 (General)	Website: www.ct.gov/pura Email: pura.information@ct.gov	www.energizeCT.com

RIGHT TO CANCEL: If your monthly demand is less than or equal to 500kW, you have the right to cancel this service agreement until midnight of the third business day after the date of this agreement. To cancel this service agreement, you can contact Mint Energy by telephone at (877) 611-6468, by email to custserv@mintenergy.net or by mail to Mint Energy, LLC, 1 Rounder Way, Suite 220, Burlington, MA 01803.

APPLICABLE FEES: This ESA contains an Early Termination Fee. The circumstances of when that fee would be charged, and how it will be calculated, are described in detail in Section M below.

Agreement: This Electricity Supply Agreement—Terms of Service and all addenda attached hereto form the Agreement (the “Agreement” or “ESA”) between Mint Energy, LLC (“Mint Energy”) and Customer (as specified above) (each a “Party” and collectively the “Parties.”)

Enrollment Authorization: Customer has read and agrees to the provisions contained in this ESA. Customer acknowledges receiving Mint Energy’s Environmental Disclosure Label with, and on the date of its signing of, this ESA. Customer authorizes Mint Energy to enroll Customer with its local Electric Distribution Company (“EDC”) as Customer’s electricity supplier. Customer understands that it may only designate one company as its retail electric supplier for each account and that there may be a fee charged by its current supplier to switch to Mint Energy. By signing this ESA and/or accepting electricity supply, Customer (facsimile signature accepted as if it were an original) the undersigned below warrants and represents that he/she is legally authorized to enter into this ESA on behalf of Customer. By executing this ESA, Mint Energy does not guarantee its ability, but will make commercially reasonable efforts, to enroll the account(s) listed above on each account’s meter reading date in the Intended Start Month/Year. **Customer also agrees and understands that supply of electricity under this ESA by Mint Energy is expressly conditioned upon Mint Energy’s (1) review and approval (in its absolute discretion) of Customer’s creditworthiness and (2) verification of the accuracy of all Customer-provided information with respect to electricity usage and Account information provided.**

CONNECTICUT MANDATORY DISCLOSURES

ASSIGNMENT OR TRANSFER OF CONTRACT – CHECK BOX BEFORE SIGNING: By checking this box and initialing the line below, Customer consents and agrees that Mint Energy may assign its rights and obligations under this ESA to another Licensed Electric Supplier. In the event of an assignment, Customer will be sent

notification, by both US mail and by email, as least 45 days prior to the intended transfer date. If you choose not to give consent, you will be switched to Standard Service if and when other contracts are assigned. Price and terms of this ESA will not, and cannot, be modified, changed, or altered by any assignment of this Agreement or assignment of any rights and obligations hereunder.

INITIAL HERE TO CONSENT TO THE TERMS PROVIDED IN ABOVE PARAGRAPH: _____

PRICE COMPARISON: When comparing the rates of different suppliers to those of your utility, the “Price” contained in this agreement should only be compared against the generation service charge from your utility. Whether you take your electricity supply from a competitive electric supplier or from your utility company, you will still pay charges for electricity transmission and distribution to directly to your local utility. The Energy Lock rate is guaranteed not to change for the Initial Term, subject to Sections L and P of this agreement.

A. Definitions of Terms used in This Agreement:

1. “**ESA**” refers to this Agreement, the Mint Energy Electricity Supply Agreement
2. “**Interval Data Customer**” is a customer whose electric meter provides not only information on how much electricity is used, but also how much is used in a particular span of time, usually on an hour-by-hour basis
3. “**ISO**” refers to the Independent System Operator, the entity that manages the wholesale power market and electricity transmission grid. For Connecticut, this entity is ISO-New England (“**ISO-NE**”).
4. “**kWh**” or kilowatt-hour is a unit of measurement of electricity used.
5. “**EDC**” refers to the Electric Distribution Company, the company that maintains the wires, poles, and other infrastructure that physically delivers electricity to customers.
6. “**Load Profile**” refers to Measurements of a customer's electricity usage over a period of time which shows how much and when a customer (or a class of customers) uses electricity. Load profiles can be used by suppliers and transmission system operators to forecast electricity supply requirements and to determine the cost of serving a customer.
7. “**Load Zone**” refers to a defined area within the operational area of the ISO. For purposes of this agreement, the relevant load zone is the State of Connecticut.
8. “**NEPOOL**” refers to the New England Power Pool, a voluntary association of power producers, EDCs, and other power market participants operating and transacting business in the 6 New England states. Many of **NEPOOL**’s grid management functions are now overseen by ISO-New England.
9. “**RTO**” refers to the Regional Transmission Organization, the entity that manages the electricity transmission grid. For Connecticut, this entity is ISO-New England.
10. “**Supplier**” refers to an Electric Supplier, as defined in §16-245 of the General Statutes of Connecticut (Conn. Gen. Stat.).

B. Product: Mint Energy’s Energy Lock™ is an all-inclusive pre-determined per-kWh rate, full-requirements electricity supply product that aims to provide Customer with budget certainty on its electricity supply contracts. Mint Energy will sell and deliver, or caused to be delivered, and Customer will purchase and receive, or cause to be received, during the term of this ESA, electricity for each account provided.

C. Customer Class: By signing this Agreement, Customer warrants that its aggregate monthly demand is less than 100 kilowatts.

D. Term of Supply: Mint Energy will determine (i.e., using the scheduled EDC/ meter reading date) the Supply Start Date for each account provided after its receipt of Customer’s signed ESA. The Supply Start Date will occur on the meter read date following acceptance of an enrollment by the EDC, and will be

indicated on Mint Energy's first invoice to Customer. Customer remains responsible for all charges and fees related to service prior to such service start date. The Initial Term will begin on the Supply Start Date, and will continue until the meter reading date during the last month of the Initial Term specified in this ESA (the "Initial Term"). After the Initial Term expires, the ESA will continue for successive twelve (12) month Renewal Terms at a rate to be determined by Mint Energy, and sent to Customer via written notice ("Renewal Notice"), no earlier than sixty (60) but no later than thirty (30) days before the end of the Initial Term or any Renewal Term ("Renewal Rate"). The Customer may decline service at the Renewal Rate and terminate this ESA without obligation by sending Mint Energy notice of Customer's intent to opt-out (via email with the phrase "ESA Opt-Out" in the subject line to custserv@mintenergy.net or by fax, telephone, or mail), which Mint Energy must receive no later than fifteen (15) days prior to the start of any Renewal Term. Customer may decline to continue receiving electricity supply under this ESA, and instead be switched to basic service with the EDC. If Customer does not decline service, this ESA's term will continue, as modified by the Renewal Notice, and Customer agrees to purchase and receive electricity during the Renewal Term for twelve months as described herein. However, if Customer gives Mint Energy fifteen (15) days written notice to terminate prior to the end of the Initial Term or any Renewal Term, termination will take place, at the latest, on the first scheduled meter reading taking place after the fifteenth (15th) day of such notice in accordance with the terms herein.

- E. **Manner of Termination:** Customer may terminate supply by Mint Energy under this ESA, in whole or with respect to any single account included, by providing written notice to Mint Energy either by mail, telephone, email to custserv@mintenergy.net or by fax to 888-701-2520. In any case, Customer's EDC will then be solely responsible for implementing the termination of enrollment from Mint Energy. Moreover, Customer will remain responsible to Mint Energy for all charges for electricity delivered until the day Customer's EDC completes implementation of Customer's election to stop electricity supply (the "Enrollment Drop Date") and Customer may be responsible for an Early Termination Fee as specified in this ESA. Mint Energy may terminate this ESA and supply of electricity hereunder either for cause, as specified elsewhere in this ESA, or for no cause by written notice given to Customer no later than five (5) business days prior to the expiration of the Initial Term or any Renewal Term.
- F. **Price:** Customer agrees to pay charges in cents per kWh as specified herein for electricity consumption during the Term. During the Initial Term, the **Energy Price** will be the **Energy Lock™ Rate** shown above. The Energy Price includes, among other things, charges for electricity, capacity, congestion, losses, ancillaries, and charges for compliance with the Connecticut Renewable Portfolio Standards. The **Energy Lock™** rate may be higher or lower when compared with the EDC Default Service rate.
1. For a Renewal Term or other period following end of Customer's Initial Term, Customer's Energy Price will be equal to a new **Renewal Rate**, to be determined by Mint Energy, and sent to Customer via the Renewal Notice.
 2. Customer's Energy Price (either the Energy Lock™ Rate or the Renewal Rate, as may be the case) do not include any applicable taxes or permissible pass-through charges. **A completed tax exemption certificate (if allowable) must accompany this ESA. If no certification is attached, Mint Energy will treat sales to Customer as subject to taxes (as may be applicable) and will process Customer's account accordingly.**
 3. Customer is responsible for paying EDC delivery charges as well as any other applicable charges.
 4. If Customer used a third-party representative (e.g., a broker or consultant) to secure this Agreement, Customer's Energy Lock™ and/or Renewal Rate may include a fee assessed by such representative for its services to Customer.
- G. **Billing and Payment Methods:** Customer will be billed monthly for electricity supply provided hereunder

via either (a) **Consolidated Billing**, under which Customer will receive a single invoice from its EDC containing charges from both the EDC for its transmission, distribution, and other charges, and Mint Energy's electric supply charges or (b) **Dual Billing**, where the EDC and Mint Energy will bill for their respective charges separately. Customer may be assigned to either Consolidated or Dual Billing at the sole discretion of Mint Energy. Any change to Customer's billing method after Customer's first bill made by Mint Energy will not be effective until at least 30 days have passed from sending of such notice.

1. Under the Dual Billing method, payments for Mint Energy's electric supply charge should be made directly to Mint Energy, to the address indicated on the invoice. Full payment due must be received by Mint Energy during normal business hours (i.e., by 5 p.m.) within twenty five (25) calendar days from the date upon the invoice ("Payment Date"). Should such date fall on a weekend or nationally recognized holiday, such payment will be due on the next business day. If full payment is not received by the Payment Date, it will be considered late. Charges from the Customer's EDC for its transmission, distribution, and other charges will be sent to Customer by their EDC on a separate invoice, and shall be the sole responsibility of Customer.
2. Under Consolidated Billing, payments should **not** be sent to Mint Energy, but rather to Customer's EDC. All payments should be made in accordance with Customer's EDC's applicable tariffs.
3. Regardless of billing method, failure to make full payment on such terms will be considered a material breach of this Agreement, resulting in the imposition of late payment charges. Additionally, Customer may be reported to a credit agency, and will subject Customer to default, termination, and other relevant ESA provisions. Late and partial payment balances will be subject to charges calculated and accrued on a daily basis at the maximum rate of interest permissible by law or applicable regulations. In addition, Customer will reimburse Mint Energy for any fees we incur related to late payments or insufficient credit, returned checks, or collecting Customer's outstanding invoices, including reasonable attorney's fees. Upon termination of this ESA, Customer agrees to pay invoices for any electric supply charges, or any portion thereof, that may be found to have been actually used by the Customer during the term of this ESA and not previously billed.

H. **Title and Risk of Loss:** Title, liability and risk of loss associated with the electricity purchased and sold hereunder shall pass from Mint Energy to Customer at the delivery point for each account provided.

I. **Customer Service/Emergency Contact:** Mint Energy, LLC operates in Connecticut under the authority granted in CT PURA Docket No. **10-08-10**. For customer complaints, general inquiries about Mint Energy accounts, and non-emergency issues, contact Mint Energy toll free at (877) 611-6468 or by mail at 1 Rounder Way, Suite 220, Burlington MA, 01803 Attn: Customer Service, or by email at custserv@mintenergy.net. In the event of an electric-related emergency such as a power outage and/or pole, wires, or equipment service needs, Customer agrees to call the EDC at its emergency phone number—United Illuminating Co. ("UI"): 1-800-722-5584; Eversource (formerly CL&P): 1-800-286-2000.

J. **Credit Requirements:** Mint Energy reserves the right to request a credit history on an applicant for service prior to offering or at any time during the term of this ESA. Mint Energy reserves the right to refuse service to any entity that does not meet Mint Energy's minimum credit requirements. If Mint Energy determines, before offering service or at any time during the term of this ESA that Customer's credit is or becomes unsatisfactory, Mint Energy may require, upon written request, and Customer will provide, a security deposit in an amount determined by Mint Energy in a commercially reasonable manner, and compliant with all applicable rules and regulations. Should Customer not provide a requested security deposit, Customer will be in material default.

K. **Consent to Obtain Usage Data and Information Disclosure:** By executing this ESA and/or accepting delivery of electricity under this ESA, Customer authorizes Mint Energy to obtain, and its EDC to release to Mint Energy for purposes related to account establishment, any Customer account information,

including historical usage information, interval data, account number, and payment history. Specifically, Customer consents to the release to Mint Energy, from its EDC, any Real Time Meter data, including demand (kW), usage (kWh) and/or kVA data, at both the interval and summary level for all accounts and service addresses provided. Customer further authorizes Mint Energy to release confidential and other information to Customer's EDC necessary to enroll Customer.

- L. **Material Change in Usage:** If Customer's average electricity consumption over the last twelve (12) months was 30,000 kWh/mo. or greater, Customer will promptly (at least five (5) business days prior to such event or circumstance) advise Mint Energy of any event or circumstance that is likely to cause Customer's electricity consumption during the current month, or any future month, to be 25% more or less than Customer's historical usage patterns, including, without limitation, opening or closing a facility, increases or decreases in operation hours, furnace outages, boiler shutdowns, installation and/or operation of (except for the purpose of emergency back-up) an alternative on-site electricity generation (e.g., solar, thermal, waste-to-energy) or storage (e.g., wheeling) and additions or maintenance of equipment (a "Material Change"). Customer agrees and understands that Mint Energy expressly relies on Customer's historical usage (and Customer's representations regarding the above) in providing Customer with the Energy Lock™ rate on Page 1 of the ESA. Customer recognizes that in the event of such a Material Change, Mint Energy, in its sole discretion, may modify or cancel this ESA (including, changing rates provided for herein to account for additional risk and costs attributable to such customer deviations in usage). In any event, Customer shall be solely responsible for, and agrees to pay or reimburse (as the case may be), any charges, penalties, fees, or other expenses incurred or assessed (or reasonably anticipated to be incurred or assessed) as a result of the usage and demand changes described herein. In addition to, and notwithstanding, the above, upon the occurrence of a material change in usage under this section, Mint Energy may, at its discretion, terminate this ESA without penalty, and in such an event, Customer agrees to pay any retroactive charges or other amounts which Mint Energy incurs as a result.

M. **Early Termination Fee**

1. **Definitions:** For purposes of calculating the Early Termination Fee:
 - i. **Remaining Volume:** for the purposes of this Section M, the total number of kWhs that Mint Energy, in its sole discretion, estimates it would have provided to Customer under this ESA during the period of time remaining in Customer's Initial Term—or any applicable Renewal Term(s)—had both Parties continued to perform as though this ESA remained continuous and in effect for the entirety of such Term.
 - ii. **Market Price:** for the purposes of this Section M, a good faith, commercially reasonable approximation (as calculated by Mint Energy) of a price(\$/kWh) which Mint Energy reasonably believes it would be able to liquidate the Remaining Volume with a willing counterparty in an arm's length transaction within a commercially reasonable time of the breach or early termination.
2. **Early Termination Fee:** Should an Enrollment Drop Date occur before the expiration of the Initial Term or Renewal Term and such Enrollment Drop Date occurs more than thirty (30) days prior to the end of such Term, Customer will pay an **Early Termination Fee** ("ETF"), equal to the **sum** of the following two amounts:
 - i. Any outstanding fees due to Mint Energy for electricity and related services it has provided to Customer pursuant to this ESA before the Enrollment Drop Date, including late fees for any overdue payments;
 - ii. The liquidated amount, if greater than zero, determined by the following formula:
(Energy Lock™ Rate – Market Price) × Remaining Volume

3. Both Parties further acknowledge and agree that the Early Termination Fee defined herein is a reasonable approximation of harm or loss, not a penalty or punitive in any respect, and neither an exclusive remedy for Mint Energy, nor intended to serve as a cap or other limitation on the amount of liquidated damages Mint Energy may otherwise claim or recover.
 4. The Parties agree that in no event is Mint Energy required to unwind any underlying wholesale transactions relating to Customer's projected consumption or Remaining Volume. Moreover, should Mint Energy unwind all or part of any such underlying transactions, Mint Energy is not required to account to Customer regarding such unwinding or liquidation.
 5. The Parties agree that the ETF shall apply to any Renewal Term, subject to a change in any law, rule, regulation, ordinance, statute, judicial decision, administrative order and the like. Furthermore, the Parties agree that should the application of an ETF be disallowed for any certain period of time, the ETF shall be ineffective for only that period of time and effective for all other times.
- N. **Termination of ESA by Mint Energy/Customer Default:** Mint Energy reserves the right to terminate this ESA without damages or liability to Mint Energy of any kind, and may return Customer to EDC default service: (i) as soon as permitted by PURA regulations, if Customer fails to make timely payment of all amounts due Mint Energy on the due date, which also specifically includes when payment is declined by Customer's financial institution for non-sufficient funds or any other reason; (ii) after ten (10) days written notice, if the EDC is unable to read Customer's meter for two (2) consecutive months; (iii) if the Customer fails to post a security deposit under the provisions of the Credit Requirements section herein within ten (10) days of a written request for deposit; (iv) if any information, representation, or warranty Customer made in this ESA proves to have been false or misleading in any material respect, or ceases to remain true during the Term, and within five (5) business days of such, if Customer does not provide written notice to Mint Energy correcting such false or misleading information; (v) if Customer files a petition or otherwise commences, authorizes or acquiesces to the commencement of a proceeding or cause of action with respect to it under any bankruptcy proceeding or similar laws for the protection of creditors, or has such a petition filed against it; (vi) absent written agreement to the contrary and Mint Energy's consent, if Mint Energy ceases to be the sole supplier of electricity for the accounts provided, including but not limited to, on-site generation of any kind by Customer, without prior written notice to, and consent of Mint Energy; (vii) Excluding (i) through (vi) above, Customer materially defaults on any other obligations under this ESA, provided such default is not remedied within three (3) days of its awareness, or Mint Energy's notice, whichever occurs earliest; or as soon as lawfully allowed thereafter. In the event service is terminated in accordance with this section, Customer will pay the Early Termination Fee, and/or, if applicable, damages incurred by Mint Energy as provided in this ESA.
- O. **Force Majeure:** Except for Customer's obligation to make payments when due, neither Party will be liable to the other for any delay or failure to perform its obligations under this ESA caused by occurrences not caused by such Party. Such occurrences include but are not limited to an act of God or public enemy, storm, earthquake/natural forces, war, riot, public disturbance, labor action, non-performance of the EDC or ISO/RTO, or unavailability of transmission or distribution facilities. The affected Party or Parties will be excused from such performance and any further performance required under this ESA for whatever period is reasonably necessary to alleviate the effects of the Force Majeure. Force Majeure will specifically not include: (a) when Customer shuts down, sells, or relocates its facilities; or (b) any economic loss of Customer's (e.g., Customer's loss of its own product/service markets or supply chains, or any Customer losses dependent on an energy market).
- P. **Changes in Law, Market Structure, Electricity Needs or Classifications:** If there is a change in or implementation of (1) law, rule, regulation, ordinance, statute, judicial decision, administrative order and the like; (2) material change in ISO/RTO operating guidelines or protocols, load or capacity zone

boundary or hub definitions; (3) modification of distribution company tariffs or standard terms and conditions; (4) changes in programs including, but not limited to resource adequacy, the Connecticut Renewable Portfolio Standard, and the like; or (5) electricity market structure, and such change results in Mint Energy incurring additional costs or expenses associated with providing the services described herein, such additional costs or expenses are the responsibility of the Customer and will be assessed to Customer in Mint Energy's monthly bill as an additional charge, and Customer hereby agrees to pay all such charges. Further, in the event any order of any governmental authority, regulation, or law adversely and materially impacts Mint Energy's ability to perform, Mint Energy may terminate this ESA without penalty.

- Q. Limitation of Liability:** UNLESS OTHERWISE EXPRESSLY PROVIDED HEREIN, ANY LIABILITY UNDER THIS ESA WILL BE LIMITED TO DIRECT ACTUAL DAMAGES AS THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES AND DAMAGES AT LAW OR IN EQUITY ARE WAIVED AND NEITHER PARTY WILL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, INCLUDING THOSE UNDER MASS. GEN. LAWS. C. 93A OR ANY OTHER STATE CONSUMER PROTECTION STATUTE, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, WHETHER IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISIONS OR OTHERWISE IN CONNECTION WITH THIS ESA. MOREOVER, THE LIMITATIONS IMPOSED ON REMEDIES AND DAMAGES 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 WILLFUL MISCONDUCT OF ANY PARTY.
- R. Disclaimer and Limits of Warranty:** MINT ENERGY EXPRESSLY DISCLAIMS ALL WARRANTIES REGARDING THE QUALITY OF ELECTRICITY DELIVERED TO CUSTOMER PURSUANT TO THIS ESA, WHETHER WRITTEN, ORALLY EXPRESSED, OR IMPLIED, INCLUDING, WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER UNDERSTANDS AND AGREES THAT THERE ARE NO WARRANTIES, EITHER EXPRESSED, IMPLIED, OR STATUTORY ASSOCIATED WITH THIS OFFER OR THE ELECTRICITY SERVICE SOLD HEREUNDER.
- S. Governing Law and Dispute Resolution:** This ESA, including any arbitration decision, is governed by the laws of the Commonwealth of Massachusetts, without regard to principles of conflicts of law. If necessary, venue shall be in Massachusetts courts, and both Parties waive any defense of (1) lack of personal jurisdiction or (2) *forum non conveniens*. Unless otherwise prohibited by law or specified below, any dispute arising hereunder or relating hereto shall be resolved by arbitration pursuant to the commercial arbitration rules of the American Arbitration Association ("AAA"). Such arbitration shall involve a single arbitrator (mutually selected by the Parties, or in the absence of agreement, appointed by the AAA), and shall take place in Boston, Mass., or as otherwise mutually agreed. The arbitrator shall have sole and exclusive authority to rule on any preliminary questions of law, including arbitrability. The arbitration decision shall be binding upon the Parties and judgment upon the award may be entered in any court having jurisdiction over the Party against which enforcement is sought. The cost of the arbitration will be divided equally between the Parties. However, nothing in this section is intended to prevent either Party from obtaining injunctive relief in court to prevent irreparable harm pending the conclusion of any such arbitration. Any arbitration proceedings and information disclosed in such proceedings shall be confidential. The Parties agree that all billing disputes must be made to Mint Energy in writing within twelve (12) months of the billing date, or it will be deemed waived.
- T. Assignment:** Customer agrees that Mint Energy may assign its rights and obligations under this ESA to another Licensed Electric Supplier. In the event of an assignment, Customer will be sent notification, by both US mail and by email, as least 45 days prior to the intended transfer date. If Customer chooses not to give consent, you will be switched to Standard Service when other contracts are assigned. Customer

may not assign its rights and obligations under this ESA to a third party without the prior written consent of Mint Energy. Mint Energy may deny such assignment based on the creditworthiness of the assignee. Moreover, Customer agrees that it will not sell all or substantially all of its assets without the express prior written consent of Mint Energy. This ESA will be binding upon and will inure to the benefit of both Parties, and their respective heirs, representatives, and successors, except as otherwise limited herein.

- U. **Forward Contract:** The Parties agree that (1) this ESA is a “Forward Contract” and that (2) Mint Energy is a “forward contract merchant” for the purposes of United States Bankruptcy Code, as amended, (the “Bankruptcy Code”). The Parties further agree that any payment related hereto will constitute a “settlement payment” as defined in Section 101 (51A) of the Bankruptcy Code.
- V. **No Waiver:** Mint’s failure to act or waiver of any right or obligation hereunder, including in respect to any Default by the Customer, shall not be considered a waiver of any future right or obligation, whether of a similar or different character.
- W. **Rule of Construction:** The language in this ESA will be interpreted as to its fair meaning and not strictly for or against any Party. Any rule of construction stating that ambiguities are resolved against the drafting Party will not apply.
- X. **Indemnification:** Customer agrees to indemnify, defend, and/or hold harmless Mint Energy for: (1) Customer’s negligent or willful misconduct, including any fees, surcharges, costs, or the like emanating from transferring to or from Mint Energy’s services; or (2) any claims or suits brought against Mint Energy for any loss, damage, or injury to persons or property, including without limitation all consequential, incidental, exemplary, or punitive damages arising from or relating to the distribution or consumption of electricity at and after the point at which the EDC delivers the electricity to Customer’s facilities.
- Y. **Severability:** If any provision of this ESA is held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- Z. **Consent to Electronic Communications:** Unless Customer indicates otherwise on Page 1 of this ESA, Customer agrees to receive any notices and/or other communications from Mint Energy regarding or arising from this ESA electronically (i.e., via email, fax or other means). If at any time Customer would like to cease doing business electronically with Mint Energy with respect to this ESA, Customer must provide Mint Energy written notice of its withdrawal of consent to do business electronically, which will render this paragraph inoperative as set forth herein. Customer may withdraw consent at any time and without charge by means of certified mail or overnight delivery by a nationally-recognized delivery service to Mint Energy at the Customer Service address listed above. Such withdrawal of consent will become effective two (2) business days after the Company receives your written notice of withdrawal. Thereafter, all forms/documents/information will be provided on paper.
- AA. **Entire Agreement; Amendment:** This ESA, along with any attachments and/or addenda, constitute the entire agreement between Customer and Mint Energy relating to the subject matter hereof and supersedes any other agreements, written or oral, between Customer and Mint Energy concerning the subject matter of the ESA. Except as otherwise set forth in this ESA, this ESA may be amended only by mutual agreement between Customer and Mint Energy and any amendment will not be effective until reduced to writing and executed by both Parties. This ESA may not be amended by course of performance or course of conduct.