

Electricity Supply Agreement—Terms of Service

Rhode Island - Commercial & Industrial—Energy Lock™



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 authorizes Mint Energy to enroll Customer with its Local Distribution Company (“LDC”) as Customer’s electricity supplier. If Customer is currently on standard offer service from National Grid, there may be a market adjustment charged or credited to Customer by National Grid on the last utility bill for which Customer is enrolled in standard offer service. 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 Agreement 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) provided 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 accounts provided.**

MINT ENERGY CONTACT

Name: Mint Energy, LLC
Street Address: One Rounder Way, Suite 220
City, State, Zip: Burlington, MA 01803
Phone: (877) 611-6468
Fax: (888) 611-6468
Email: custserv@mintenergy.net

CUSTOMER PAYMENTS

For payment by check, please send to:
Mint Energy, LLC
Department 1510
P.O. Box 4110
Woburn, MA 01888-4110

- A. Product:** Mint Energy 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.
- B. Customer Class:** By signing this Agreement, Customer warrants that its aggregate monthly demand for all Accounts provided is less than ten (10) kilowatts.
- C. Term of Supply:** Mint Energy will determine, (i.e., using the scheduled LDC/utility meter reading date), the Supply Start Date for each account provided after its receipt of Customer’s signed ESA. The Supply Start Date will be indicated on Mint Energy’s first invoice to Customer, and 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, 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 written 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 or mail), which Mint Energy must receive no later than fifteen (15) days prior to the end of the Initial Term or any Renewal Term. Customer may decline to continue receiving electricity supply under this ESA, and instead be switched to basic service with the LDC. If Customer does not decline service, the ESA’s term will continue, and Customer agrees to purchase and receive electricity during the Renewal Term for twelve months as described herein. If Mint Energy does not provide thirty-day prior written notice of the Renewal Rate in accordance with the process described in this Section B, then the ESA will continue on a month-to-month basis for successive one (1) month Renewal Terms at the Holdover Rate described in Section E of this ESA until Customer or Mint Energy gives the other written notice to terminate, after receipt of which at any time, termination will take place, at the latest, on the first scheduled meter reading taking place after the thirtieth (30th) day of such notice in accordance with the terms herein.
- D. 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 email to custserv@mintenergy.net or by fax to 888-611-6468. In any case, Customer’s LDC 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 LDC 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. Mint Energy may not physically cut off electric service to consumers.

- E. 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 on Page 1 of the ESA. The Energy Price includes, among other things, charges for electricity, capacity, congestion, losses, ancillaries, and charges for compliance with the Rhode Island Renewable Energy Standard.
1. In the case that Mint Energy does not provide 30-day prior written notice of the Renewal Rate in accordance with the process described in Section B above, then for a Renewal Term or other period following end of Customer's Initial Term, Customer's Energy Price will be equal to a **Holdover Rate** determined as the sum of a variable, index-based **Hourly Index Rate** and a monthly variable **Retail Adder**. The Holdover Rate (the price of electricity during the Renewal Term) may be higher than the standard offer rate charged by your local electric distribution company (NGRID).
 - i. The **Hourly Index Rate** will be either the Real Time or Day-Ahead Locational Marginal Price, or a combination thereof (including energy cost, system congestion costs and transmission and distribution line losses), for the appropriate Rhode Island load zone expressed in \$/MWh and published by ISO-NE for the applicable hour, divided by 1,000 to convert to \$/kWh. For purposes of this ESA, Customer's hourly kWh usage will be determined in the following manner. Mint Energy will, in its reasonable discretion, either (a) apply a suitable, commercially reasonable hourly load profile, to scale Customer's monthly metered kWh usage to hourly increments or (b) use Customer's actual hourly meter reading provided by Customer's LDC.
 - ii. **Retail Adder** ("RA") is an aggregate monthly variable rate that includes various administrative, market, and other costs and fees associated with the purchase, sale, and delivery of electricity to retail customers. The RA will be fixed at the rate specified above during Customer's Initial Term and will be determined using a variable market-based rate for purpose of calculating and billing any Holdover Rate. The RA generally includes, among other items, the following general categories of charges: **Capacity Charges** contain costs associated with Mint Energy's obligation to provide capacity, as required by ISO-NE. If Capacity Charges are not included in the RA, they will be listed as a separate and additional charges on Customer's invoice; **Renewable Energy Certificate Charges** ("RECs") contain costs associated with Rhode Island Renewable Energy Standard compliance; **Ancillary Charges** include, but are not limited to, scheduling and related charges; fees levied by ISO-NE on Mint Energy, such as: NCPC, Regulation Charges, GIS, Locational Forward Reserve, Real-Time Reserves, Load Response, etc.; and **Service Fees**, which, for this ESA, will not exceed \$0.015 per kWh, containing marketing, regulatory, billing administrative, and other Mint Energy and third-party intermediary fees, costs, and charges.
 2. **Risk Associated with Variable Holdover Rate:** Electricity prices may be subject to substantial volatility based on economic conditions, fuel prices, seasonal electricity demands, generator outages, weather, and other factors. Past results regarding particular electricity products are not necessarily an indication of future results. Electricity supplied directly through the ISO-NE administered day-ahead and real-time energy markets can involve substantial direct and indirect costs, including but not limited to capacity and ancillary service costs, credit assurances, and NEPOOL and ISO expense assessments. In addition, participation in these markets may require processes such as load forecasting, scheduling, and settlement in accordance with ISO-NE market rules.
 3. Customer's Energy Price (either the Energy Lock™ Rate, Renewal Rate, or the Holdover 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.**
 4. Customer is responsible for paying LDC delivery charges as well as any other applicable charges.
 5. If Customer used a third-party representative (e.g., a broker or consultant) to secure this Agreement, Customer's Energy Lock™ and/or Holdover Rate may include a fee assessed by such representative for its services to Customer.
- F. Billing and Payment Methods:** Customer will be billed monthly for electricity supply provided hereunder via either (a) the **Consolidated Billing Method**, under which Customer will receive a single invoice from its LDC containing charges from both the LDC for its transmission, distribution, and other charges, and Mint Energy's electric supply charges or (b) the **Dual Billing Method**, where the LDC and Mint Energy will bill for their respective charges separately. Customer may be assigned to either Billing Method 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 LDC for its transmission, distribution, and other charges will be sent to Customer by their LDC on a separate invoice, and shall be the sole responsibility of Customer.

2. Under the Complete Billing Method payments should **not** be made directly to Mint Energy, but rather to Customer's LDC. All payments should be made in accordance with Customer's LDC'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 one and one-half percent (1.5%) per month. In addition, Customer will reimburse Mint Energy for any fees we incur related to late payments or insufficient credit, or collecting Customer's outstanding invoices, including reasonable attorney's fees. Moreover, returned checks or other dishonored payments will result in the application of a \$35.00 insufficient funds fee. 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.

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

H. Customer Service/Emergency Contact: Mint Energy, LLC is registered as a Non-Regulated Power Producer with the Rhode Island Public Utilities Commission and operates in Rhode Island under the authority granted in RI PUC Docket No. **D-96-6(J4)**. 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. 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 LDC at its emergency phone number. National Grid: 1-800-548-8000.

I. 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.

J. 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 LDC 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 LDC, 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 LDC necessary to enroll Customer.

K. Material Change in Usage: Mint Energy requests that Customer provide notification promptly whenever Customer has knowledge its kilowatt demand or kWh usage will deviate in a material fashion from historical usage patterns, and provide estimates of related deviations.

L. Early Termination Fee

1. *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. Fifty dollars (\$50.00) per full calendar month that the Enrollment Drop Date precedes the expiration of the Initial Term or Renewal Term.
2. 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.
3. 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.

- M. 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 LDC default service: (i) as soon as permitted by RIPUC 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 LDC 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.
- N. 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 LDC 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).
- O. 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 Rhode Island Renewable Energy 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.
- P. 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. FOR THE AVOIDANCE OF DOUBT, MINT ENERGY WILL HAVE NO LIABILITY WHATSOEVER FOR ANY PRODUCTS OR SERVICE PROVIDED TO CUSTOMER BY PATRIOT ENERGY GROUP AND BILLED FOR BY MINT ENERGY.
- Q. 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.

- R. 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.
- S. Assignment:** Mint Energy may assign its rights and obligations under this ESA to a third party without Customer consent or notice, including sale of all or substantially all the assets or merger or consolidation involving Mint Energy. 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.
- T. 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.
- U. 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.
- V. 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.
- W. 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 LDC delivers the electricity to Customer's facilities.
- X. Severability:** If any provision of this ESA shall be 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.
- Y. Consent to Electronic Communications:** 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 a withdrawal of consent will become effective two (2) business days after the Company receives your written notice of withdrawal. Thereafter, all forms, documents and information will be provided to you on paper.
- Z. 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.