

# OUR ELECTRICITY AGREEMENT

## Constellation NewEnergy, Inc.

### P.O. Box 4911, Houston, TX 77210

#### DISCLOSURE STATEMENT

<p><b>Price:</b></p> <p><b>Fixed:</b></p> <p><b>Length of Agreement and End Date</b></p> <p><b>Process Customer may use to Rescind the Agreement without Penalty</b></p> <p><b>Amount of Early Termination Fee and Method of Calculation.</b></p> <p><b>Amount of Late Payment Fee and Method of Calculation.</b></p> <p><b>Renewal Terms.</b></p> <p><b>Conditions under which Savings to the Customer are Guaranteed.</b></p>	<p>I may terminate my agreement without an early termination fee provided I will be required to pay for the usage I have incurred until my accounts are disenrolled.</p> <p>If I receive a single bill from the Utility for both the supply and delivery of electricity and I do not pay my invoice on time, the Utility may assess late charges and fees and/or disconnect services in accordance with NYPSC rules and regulations on the termination of service to nonresidential customer under 16 NYCRR Section 13.3. If I receive one bill for my electricity and one bill from the Utility for delivery, and I do not pay my electricity supply bill on time, I may be subject to a 1.5% monthly interest charge on unpaid amounts.</p> <p>Because the Utility price may vary during the Term of this agreement, savings are not guaranteed.</p>
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#### TERMS & CONDITIONS

I want Constellation NewEnergy, Inc., ("Constellation") to supply my home or business with all the electricity I need, subject to the eligibility requirements of my local utility, ("Utility"), acceptance by Constellation, and applicable tariffs authorized by the Federal Energy Regulatory Commission ("FERC"). By signing this agreement, I acknowledge that this agreement is an agreement to initiate electricity supply service and to begin enrollment with Constellation. Constellation is approved by the New York State Public Service Commission ("NYPSC") to act as an Energy Service Company ("ESCO") and has entered into a service agreement with my Utility. The NYPSC does not regulate the price of electricity or other charges found in this agreement. I am at least 18 years old and fully authorized to enter into this agreement.

1. **Constellation Services.** Constellation will supply my full requirements for electricity for my home or business at the price and on the terms and conditions specified in this agreement. Constellation is a retail marketer of electricity and not my local distribution utility.
2. **Local Utility Services.** My Utility will continue to deliver electricity to my home or business, read my meter, send my bill for Utility Charges and, unless I choose separate billing, my supply charges, and will continue to make repairs. My Utility will also respond to emergencies and provide other traditional utility services. I understand that I am not required to choose a competitive supplier, and may continue to have the Utility supply my electricity.

3. **Point of Delivery.** All electricity sold will be delivered to the point of interconnect between the New York Independent System Operator and my Utility, which will be considered the point of delivery at which the sale occurs and title passes from Constellation to me.
4. **Term.** Constellation will begin supplying my electricity on the next applicable meter read date after the Utility processes my enrollment. My agreement with Constellation will continue until the end date specified on my Enrollment Form or Welcome Letter ("Term"), unless our agreement is renewed or terminated pursuant to Section 10 or 11 of this agreement.
5. Constellation must provide me with 15 calendar days' notice before cancelling service under this agreement.
6. I am not required to prepay for energy services under this agreement.
7. If I am a residential customer, Constellation may not make any material changes in the terms or duration of this agreement without my express consent. The NYPSC Uniform Business Practices, which are available at <http://www3.dps.ny.gov/W/PSCWeb.nsf/All/8DD2B96E91D7447E85257687006F3922?OpenDocument>.
8. Constellation reserves the right to assign this agreement to another ESCO.
9. **Price.** Each month my bill will be calculated by multiplying (i) the price of electricity per kilowatt hour ("kwh") by (ii) the amount of electricity used in the billing cycle plus (iii) applicable taxes, fees, and charges levied by my Utility for distribution and other services. In accordance with the NYPSC, my price shall be no greater than the average prior 12 month Utility rate as of the date this agreement is signed by both myself and Constellation, plus an added premium of not more than 5%.

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#### 10. **Automatic Renewal of the Agreement.**

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#### 12. **Billing and Payment.**

- o **Budget Billing.** If I have chosen Budget Billing, my monthly payment will be determined as follows: Constellation will use my previous bills and projected future energy costs to estimate my annual electricity costs, given my pricing plan. Approximately every 3 months, Constellation will review my account and will change the amount I pay, if necessary, to ensure that I am making appropriate payments based on the amount of electricity I have been using. At least once a year, Constellation will calculate the difference between what I have paid and what my actual energy costs have been during the year. If I have paid more than is required, Constellation will adjust the amount of future Budget Billing, or credit the excess payment to the Constellation portion of my electricity bill. If I have paid less, Constellation will adjust the amount of my future Budget Billing or bill me for the difference.
- o **Bill Payment and Collection.** I may receive a single bill for both my electricity and the delivery of such electricity from either Constellation or my Utility, or each may invoice separately. My bill must be paid within 20 days of the invoice date. If I do not pay my bill, I may be subject to termination of my electricity supply service and the suspension of my distribution service under procedures approved by NYPSC. If any of my checks are returned, I will be required to pay the maximum fee allowed by law. If I am a non-residential customer, failure to make full payment of Constellation charges due on any consolidated bill prepared by my local utility will be grounds for disconnection of utility services and electricity supply service in accordance with NYPSC rules and regulations on the termination of service to non-residential customers under 16 NYCRR Section 13.3. If I have chosen to be billed separately for supply, Constellation can provide me with an estimated bill only under limited circumstances and if Constellation clearly indicates on the bill that it is based on estimated usage. If I have difficulty paying my bill, I may be eligible for third party billing or deferred payments through my Utility. I can contact my Utility for details about available programs.
- o **Consumer Protection.** The services provided by Constellation are governed by the terms and conditions of this agreement, the New York State Public Service Commission rules and regulations and orders, including the Uniform Business Practices and other applicable requirements, and including, for residential customers, the New York State Home Energy Fair Practices Act. Constellation will provide at least 15 calendar days' written notice before cancelling service under this agreement. Any payments I make on a consolidated bill will be allocated in accordance with procedures adopted by the NYPSC and my Utility. I may obtain additional information by contacting Constellation at 1-855-465-1244 or the NYPSC at 1-888-697-7728.
- o **Dispute Resolution and Class Action Waiver.** IF THERE'S AN ISSUE THAT NEEDS TO BE RESOLVED, THIS SECTION OUTLINES WHAT'S EXPECTED OF BOTH MYSELF AND CONSTELLATION. If I have a question about my bill or any other matters with respect to this agreement, I may contact Constellation by calling Customer Care at the toll-free number in Section 15; or by sending a letter to the address in Section 15; or by sending an email to the email address in Section 15. Constellation will refer all complaints to a representative who in good faith will

use reasonable efforts to reach a mutually satisfactory solution. If I am still not satisfied, I may contact a Constellation supervisor, and he or she will respond promptly. In the event of a billing dispute or a disagreement involving Constellation's services hereunder, the parties will use their best efforts to resolve the dispute. You should contact Constellation by telephone or in writing as provided above. For consumer complaints that cannot be resolved with Constellation, you may contact the New York Department of Public Service (DPS). DPS complaints may be directed as follows: Website: <http://www.dps.ny.gov/complaints>; Phone: DPS Helpline at 1-800-342-3377 (M-F 8:30am-4:00pm); or Mail: Office of Consumer Services, NYS Department of Public Service, 3 Empire State Plaza, Albany, NY 12223. You must pay your bill in full, except for the specific disputed amount, during the pendency of the dispute, and such payment shall be refunded if warranted.

**BOTH CONSTELLATION AND I AGREE TO RESOLVE ALL DISPUTES RELATING TO OR ARISING OUT OF THE INTERACTIONS BETWEEN CONSTELLATION (INCLUDING ITS AFFILIATES, AGENTS, EMPLOYEES, DIRECTORS, OFFICERS AND ASSIGNS) ONLY BY ARBITRATION OR BY AN INDIVIDUAL ACTION IN SMALL CLAIMS COURT. THERE'S NO JUDGE OR JURY IN ARBITRATION, AND THE PROCEDURES MAY BE DIFFERENT, BUT AN ARBITRATOR CAN AWARD THE SAME DAMAGES AND RELIEF TO ME AND MUST HONOR THE SAME TERMS IN THIS AGREEMENT AS A COURT WOULD. IF THE LAW ALLOWS FOR AN AWARD OF ATTORNEYS' FEES, AN ARBITRATOR CAN AWARD THEM TOO. BOTH CONSTELLATION AND I ALSO AGREE THAT:**

- A) The federal arbitration act applies to this agreement and governs any arbitration between Constellation and me. Prior to initiating any arbitration, Constellation and I both agree to try to resolve any dispute informally. To initiate informal dispute resolution, contact our customer care department in one of the ways identified in Section 14. Constellation will assign someone to attempt to resolve the dispute.
- B) If the dispute is unable to be resolved informally within ninety (90) days after the Party raising it informed the other in writing of the nature and basis of the dispute and made a written demand ("Demand"), either Party may seek formal arbitration. Any arbitration will be governed by the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (collectively, "AAA Rules") of the American Arbitration Association ("AAA"), as modified by this agreement, and will be administered by the AAA. The AAA Rules are available online at [adr.org](http://adr.org), or by calling the AAA at 1-800-778-7879. The arbitrator is bound by the terms of this agreement and all issues are for the arbitrator to decide, except that issues relating to the scope and enforceability of the arbitration provision are for the court to decide. This dispute resolution provision does not preclude you from bringing any issues you may have to the attention of any governmental authorities.
- C) **CONSTELLATION AND I BOTH AGREE THAT THIS AGREEMENT DOES NOT ALLOW CLASS ACTIONS IN COURT OR CLASS ARBITRATIONS, EVEN IF THE AAA PROCEDURES OR RULES WOULD ALLOW SUCH PROCEDURES. RELIEF MAY BE AWARDED ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF WARRANTED BY THE PARTY'S INDIVIDUAL CLAIM. IF FOR SOME REASON, THE CLASS ACTION WAIVER IS UNENFORCEABLE THEN THE AGREEMENT TO ARBITRATE WILL NOT APPLY.**
- D) Any arbitration hearings will take place in the county of my billing address. If I am unable to pay the AAA filing, administration, and arbitrator fees for any arbitration properly initiated seeking damages up to \$10,000, Constellation will pay such amounts. Otherwise, the payment of these amounts will be governed by the AAA Rules. In addition, for claims less than \$10,000, any arbitration hearing may be held telephonically.
- E) If the arbitrator issues me an award that is greater than the value of our last written settlement offer made prior to an arbitration hearing, then Constellation will pay me three times the amount of the award; and my attorney twice the amount of attorneys' fees, and reimburse any expenses reasonably incurred for pursuing my claim in arbitration . If the award in my favor is lower than Constellation's offer then Constellation will only pay me the amount of the award. Any arbitration award will be final and binding and judgment confirming the award shall apply only to the specific case to enforce the award in that case.
- F) **IF FOR ANY REASON A CLAIM PROCEEDS IN COURT, CONSTELLATION AND I BOTH AGREE THAT BOTH PARTIES ARE WAIVING A RIGHT TO A JURY TRIAL.** This dispute resolution provision shall survive termination of this agreement.
- G) Nothing in this agreement shall impair my right to make an informal or a formal complaint to the NYPSC.

13. **Service Complaints.** If I experience service problems, I should contact my Utility by phone at:

Consolidated Edison	New York State Electric & Gas Company (NYSEG)	National Grid	Orange & Rockland	Central Hudson	Rochester Gas & Electric (RG&E)
800-752-6633	800-572-1131	1-800-642-4272	877-434-4100	800-527-2714	800-743-2110

IN AN EMERGENCY I SHOULD IMMEDIATELY CALL MY UTILITY AT:

Consolidated Edison	New York State Electric & Gas Company (NYSEG)	National Grid	Orange & Rockland	Central Hudson	Rochester Gas & Electric (RG&E)
800-752-6633	800-572-1131	1-800-867-5222	877-434-4100	800-527-2714	800-743-1701

14. **Constellation Contact Information.** I may contact Constellation by mail at Constellation NewEnergy, Inc., c/o Customer Care, P.O. Box 4911, Houston, Texas 77210, or by phone M-F 8:00 AM – 8:00 PM EST at 1-855-465-1244, or by email at [home@constellation.com](mailto:home@constellation.com). If I call Constellation during these hours regarding a utility emergency, my call will be transferred directly to my Utility. If I am calling outside of these hours I will be given my Utility's emergency phone number to call. If I call Constellation outside of these hours regarding Constellation customer service questions or complaints, I will be prompted to leave my contact information and a message and a Constellation Customer Care representative will return my call when the Customer Care center reopens.
15. **Limitation of Liability and Warranty.** CONSTELLATION AND ITS AFFILIATES WILL NOT BE RESPONSIBLE FOR ANY TYPE OF INDIRECT, INCIDENTAL SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES WHATSOEVER, INCLUDING FOR MATTERS WITHIN THE CONTROL OF THE UTILITY, REGIONAL TRANSMISSION ORGANIZATION OR THE INDEPENDENT SERVICE OPERATOR CONTROLLED ELECTRICITY GRID, WHICH INCLUDE MAINTENANCE OF ELECTRIC LINES AND SYSTEMS, SERVICE INTERRUPTIONS, LOSS OR TERMINATION OF SERVICE, DETERIORATION OF ELECTRIC SERVICES, METER READINGS OR INJURY TO PERSONS OR DAMAGE TO PROPERTY CAUSED BY THE DELIVERY OR SUPPLY OF ELECTRICITY. CONSTELLATION'S DELIVERY OBLIGATIONS CEASE AT THE UTILITY INTERCONNECT. IN NO EVENT SHALL CONSTELLATION'S LIABILITY EXCEED THE AMOUNT OF MY SINGLE LARGEST MONTHLY INVOICE DURING THE PRECEDING 12 MONTHS. ALL ELECTRICITY SUPPLY SOLD HEREUNDER IS PROVIDED "AS IS". CONSTELLATION DOES NOT GIVE ANY TYPE OF WARRANTY, EXPRESS OR IMPLIED, AND TO THE FULL EXTENT OF THE LAW, DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
16. **Force Majeure.** Constellation will not be responsible for supplying electricity to me in the event of circumstances beyond its control such as events of Force Majeure as defined by my Utility or any transmitting or transportation entity, acts of terrorism, sabotage, or acts of God, acts of any governmental authority that make our ability to perform our obligations hereunder impossible, illegal or impractical; accidents; strikes; labor disputes; required maintenance work; inability to access the Utility's system; non-performance by the Utility, or any cause beyond Constellations' reasonable control.
17. **Information Release Authorization.** By accepting this contract I authorize Constellation to obtain information from the Utility through the term including, but not limited to, account name, account number, billing address, service address, telephone number, standard offer service type, historical and future electricity usage, rate classification, meter readings, characteristics of electricity service and, when charges under this agreement are included on my Utility bill, billing and payment information from the Utility. I authorize Constellation to release that information to third parties who need to use or be aware of such information in connection with my electric generation service, as well as to its affiliates and subcontractors for marketing purposes. These authorizations shall remain in effect as long as this agreement (including any renewal) is in effect. I may rescind these authorizations at any time by either calling Constellation at 1-855-465-1244 or providing written notice to Constellation. Constellation reserves the right to reject my enrollment or terminate the agreement if I rescind these authorizations, if I fail to meet or maintain satisfactory credit standing as determined by Constellation, or if I fail to meet minimum or maximum threshold electricity consumption levels as determined by Constellation. If I fail to remit payment in a timely fashion, Constellation may report the delinquency to a creditreporting agency.
18. **Change in Law.** This agreement is subject to any future legislation, orders, rules, regulations or my Utility tariff or policy changes ("Change in Law"). In addition to Constellation's right to revise the terms and conditions of this agreement as provided in Section 7 above, this agreement may be revised at any time by Constellation upon the occurrence of a Change in Law. In the event a Change in Law occurs, Constellation will provide me written notice of the changed prices and/or terms and conditions and If I do not affirmatively consent to such a change then either party may terminate this agreement without any further obligation by notifying the other party in writing within 30 days after the date of the Change in Law notice identifying the new prices and/or terms and conditions. If I do not affirmatively consent then, my power and energy service will terminate effective as of the next meter read date after expiration of the required notice period. I will remain responsible for any unpaid balance as of the termination date but Constellation will not assess a termination payment. If there is a Change in Law, including but not limited to a change in Capacity charges in New York which results in Constellation being prevented, prohibited or frustrated from carrying out the terms of this agreement, Constellation may terminate this agreement with no further liability.

19. **Miscellaneous.** I will promptly notify Constellation if there are any material changes in my energy consumption. For purposes of accounting, both parties, accept the quantity, quality and measurements determined by my Utility. Except as provided by law I will pay all taxes due and payable with respect to customer obligations under this agreement. This agreement and the Enrollment Form or Welcome Letter reflect my entire agreement with Constellation and supersede any oral or written statements made in connection with this agreement or my electricity supply. Any changes to this agreement must be made in writing. This agreement is subject to any future legislation, orders, rules, regulations, or my Utility tariff or policy changes. There may be a delay before my Utility switches my electricity supply to Constellation; Constellation is not responsible for any such delays. I may not assign my interests and obligations under this agreement without the express written consent of Constellation. Constellation may sell, transfer, pledge, or assign the accounts, revenues, or proceeds hereof and may assign this agreement to another energy supplier, ESCO or other entity as authorized by the NYPSC. Any required notice will be considered to have been made if mailed to the appropriate party.
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# **New York State Public Service Commission**

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

### **ESCO Consumers Bill of Rights**

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

- A clear description of the services offered by the ESCO.
- Receive energy delivery and 24 hour emergency services from your utility company.
- Clear procedures for switching energy suppliers, including information about the enrollment process.
- Disclosure, in simple and clear language, of the terms and conditions of the agreement between you and the ESCO including:
  - price and all variable charges or fees;
  - length of the agreement;
  - terms for renewal of the agreement;
  - cancellation process and any early termination fees, which are limited by law; and
  - conditions, if any, under which the ESCO guarantees cost savings.
- Rescind an agreement with an ESCO within three (3) business days of receiving the agreement, if you are a residential customer.
- A description of how a pre-payment agreement works, if offered.
- Notice from the ESCO, no less than thirty (30) days prior to the contract renewal date, of the renewal terms and option you have as customer.
- A fair and timely complaint resolution process.
- Provision of any written documents (contracts, marketing materials, and this ESCO Consumer Bill of Rights), in the same language used to enroll you as a customer.

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

ESCOs that do not assure these consumer rights could lose their eligibility to provide service in New York. Please report any complaints to the Department of Public Service at (800) 342-3377 (8:30 am – 4:00 pm), by mail at Office of Consumer Services, NYS Department of Public Service, 3 Empire State Plaza, Albany, NY 12223, or online at <http://www.dps.ny.gov>.

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