

## NY Commercial Terms and Conditions

1. **Agreement to Sell and Purchase Energy.** This is an agreement between Polaris Power Services, LLC (“Polaris”), an independent Energy Services Company (“ESCO”), and you (“Customer”) under which Customer authorizes Polaris to initiate natural gas and/or electricity supply service and begin Customer’s enrollment with Polaris (“Agreement”). Subject to the terms and conditions of this Agreement, Polaris agrees to sell and Customer agrees to purchase and accept all the natural gas and/or electricity required to serve Customer’s account(s) listed on Schedule A of this Agreement. Polaris does not guarantee savings under this Agreement. Customer’s local distribution company (“LDC”) will continue to deliver the natural gas and/or electricity supplied by Polaris. Polaris is not affiliated with and does not represent Customer’s LDC. Customer acknowledges and agrees that they are the authorized decision maker to select or change energy suppliers for the accounts listed in Schedule A of this agreement.
2. **Information Release Authorization.** Customer authorizes Polaris to obtain and review information regarding Customer’s credit history from credit reporting agencies and information from Customer’s LDC, which shall include, but not be limited to, the following: consumption history, billing determinants, account numbers, credit information, public assistance status, existence of medical emergencies, status as to whether Customer has a medical emergency, is needy, elderly, blind, or disabled; data applicable to cold weather periods under section 32(3) of the NY Public Service Law; information pertaining to section 33 of the NY Public Service Law; tax status; and eligibility for economic development or other incentives (collectively, “Customer Information”). This information may be used by Polaris to determine whether it will commence and/or continue to provide energy supply service to Customer and will not be disclosed to a third party unless required by law. Customer’s execution of this Agreement shall constitute authorization for the release of this information to Polaris. Polaris reserves the right to refuse to provide service to Customer under this Agreement if it is unable to obtain the necessary Customer Information or it obtains Customer Information that it considers unsatisfactory. This authorization will remain in effect during any initial or renewal term of this Agreement; provided, however, that Customer may rescind this authorization at any time by providing written notice to Polaris or by calling Polaris at 1-833-726-3243. Polaris reserves the right to cancel this Agreement in the event Customer rescinds such authorization. The data obtained pursuant to this authorization may be retained by Polaris for a period of four years post-termination of this Agreement consistent with the statute of limitations for contractual disputes and may be used by Polaris in connection with any ongoing business or legal purpose with respect to its obligations under the Agreement, or to offer additional products or services to Customer during the Term, or any Renewal Terms, or at any time in the four year period after the Agreement terminates, or as contained in any derivative work created by Polaris in association with its business as a retail energy provider.
3. **Pricing:** Customer’s pricing under this Agreement shall be as follows:
  - a. Fixed: Unless otherwise agreed to in writing, the Price for services provided in this Agreement is set forth on the Customer Disclosure Statement. Fixed prices may be modified due to a subsequent change in a law, rule, regulation, tariff, or regulatory structure, see section 16 below. The applicable taxes will be added to all the prices herein. Fixed rate pricing includes Energy, Capacity, Line Loss, Ancillary Services, Gross Receipt Taxes, Renewable Requirements (if applicable), TOTS (NY Only), ZECs (NY Only) and Third-Party Fee (if applicable). In NY, sales tax is not included in your fixed rate and will be displayed as a separate line item on your utility invoice.
  - b. Variable: If Variable, the monthly price shall reflect the wholesale cost of natural gas and/or electricity (including commodity, capacity, storage, line losses, and balancing), transportation to the Delivery Point, and other market-related factors, plus all applicable taxes, fees, charges and Polaris’ profit margin.
  - c. Swing Provision: For fixed price service, unless otherwise agreed upon in writing, if usage in any month exceeds the level of usage in the same month in the previous year (“Base Load”) by \_\_\_\_\_ % or more, customer will be charged a variable price for all usage in excess of the Base Load and the fixed price for usage up to the Base Load. If the usage in any month falls by \_\_\_\_\_ % or more below the Base Load, the Customer will be charged the Fixed Price for all usage and shall be charged for hedging, cash out costs, settlement and/or balancing costs related to the positive difference between the Base Load and actual consumption (“True Up”). The True Up will be billed to the customer in either the form of a blended rate on the customer’s future LDC invoice or as a separate invoice from Polaris.
4. **Term:**
  - a. Fixed: If Customer is receiving a fixed rate, this Agreement shall commence as of the date set by Customer’s LDC and shall continue in full force and effect until the service end date set forth on the first page of this Agreement (the “Initial Fixed Price Term”). If the service start date established by the Customer’s LDC is delayed for any reason due to no fault of Polaris (e.g., blocked account, customer delay, etc.), then the original intended service end date for this Agreement, determined by the term length set forth on the first page of this Agreement and the original projected service start date, will remain as the service end date or adjusted, at Polaris’s discretion, unless otherwise agreed to in writing by Customer and Polaris. Customer acknowledges that Polaris will not have any financial obligation due to a delayed start date. No less than 30 days prior to the expiration date of the Initial Term, Polaris will notify Customer in writing and/or electronically, that this agreement will automatically continue at a variable rate unless terminated by customer. Upon Customer request of cancellation, Polaris will submit a request to the LDC to return Customer back to the LDC at the next available meter-read.
  - b. Variable: If Customer is receiving variable pricing, this Agreement shall commence as of the date set by Customer’s LDC and shall continue until either party cancels or terminates this Agreement by providing at least 30 days’ written notice of such termination to the other. There will be no charge to Customer for canceling variable price natural gas and/or electric supply service from Polaris if Customer does so in accordance with the terms of this Agreement. Polaris Contact information: Customer may contact Polaris’s Customer Service Center at **1-866-362-9800**, Monday through Friday 9:00AM-4:00PM EST (contact hours’ subject to change). Customer may also contact Polaris Energy by mail at: 65 Ramapo Valley Rd, Mahwah, NJ 07430 or [inf@polairpwr.com](mailto:inf@polairpwr.com).
5. **Termination:** For the purposes of this Agreement; the reasons of termination are defined as follows: Customer (i) fails to pay any amount, when due, with respect to this Agreement; (ii) is subject to a bankruptcy event; (iii) makes any representation or warranty that is false or misleading in any material respect; (iv) the removal of any or all properties or accounts listed on such Schedule A; (v) fails to provide financial security to the other party within two (2) business days of the other party’s demand, when such demand is based on the other party’s reasonable good faith belief that the ability of the defaulting party to perform its obligations under this Agreement is materially impaired; or (vi) fails to perform any other material obligation imposed upon it by this Agreement. Polaris reserves the right to rescind Matrix-Priced contracts at any time.
6. **Early Termination Fee:** As an Early Termination Fee (“ETF”), if Customer terminates this Agreement prior to the end of the Fixed Rate Term, or if Polaris terminates this Agreement due to Customer’s breach of this Agreement, Polaris has the right, without notice, to suspend performance and may terminate this Agreement at any time during the continuance of such event of default, upon which it will calculate in a commercially reasonable manner a settlement amount equal to its total Losses and Costs, if any, resulting from termination of this Agreement. Costs shall include, but not be limited to, reservation fees, reasonable attorneys’ fees, and other similar third-party transaction expenses incurred by a party in terminating, liquidating, or entering into new arrangements which replace any obligations assumed by such party due to the termination of this Agreement. Losses shall mean an amount equal to the nominal value of the economic loss to such party, exclusive of Costs, resulting from termination of this Agreement. The settlement amount will be due within ten (10) business days after the non-defaulting party has notified the defaulting party of the settlement amount. The non-defaulting party is obligated to respond and act in a commercially reasonable manner and mitigate its damages, liabilities, Losses and Costs.

7. **Rescission:** There is no rescission period for commercial customers.
8. **Telephonic Communications:** Customer agrees that by accepting this Agreement and providing to Polaris, its affiliates and/or assigns, your phone number, which can include a landline and or/mobile number, Polaris, its affiliates and/ or assigns may call and/or text you with an auto dialer and/or pre-recorded information.
9. **Title, Risk of Loss:** Title to, control of, and risk of loss of the Purchase Quantities supplied under this Agreement will transfer from Polaris to Customer at the Sales Point(s). Polaris and Customer agree that transactions under this Agreement are originated and consummated outside the jurisdictional limits of the municipality, county, or other taxing authority where Customer's service address(es) is located.
10. **Agency:**
  - a. **Gas:** Customer hereby designates Polaris as agent to (a) arrange and administer contracts and service arrangements between Customer and Customer's LDC and between Customer and the interstate transporters of Customer's natural gas (including capacity release, re- release and recall arrangements); (b) nominate and schedule with interstate pipeline(s) the transportation of Customer's natural gas supplies from the Sales Point(s) to the Delivery Point(s), and with the LDC for the transportation of the Customer's natural gas supplies from the Delivery Point(s) to the Customer's end- use premises; and (c) aggregate, if necessary, Customer's natural gas supplies with such supplies of other customers served by Polaris to qualify for LDC transportation service, and to address and resolve imbalances (if any) that may arise during the term of this Agreement. As Agent of Customer, Polaris will schedule the delivery of supplies of natural gas at the Sales Point(s) necessary to meet the Customer's city gate requirements based on the consumption and other information that Polaris receives from the LDC. The Sales Point(s) for the natural gas will be a point or points located outside of New York State selected from time to time by Polaris to assure service reliability. The Delivery Point(s) for the natural gas transported by the interstate pipeline(s) will be the city gate stations of the LDC. As Customer's agent, Polaris agrees to arrange for the transportation of the natural gas supplied under this Agreement from the Sales Point(s) to the Delivery Point(s) and from the Delivery Point(s) to the Customer's end-use premises. These services are provided on an arm's-length basis.
  - b. **Electric:** Customer hereby designates Polaris as Customer's agent for the purpose of arranging, contracting for, and administering transmission services (including those provided by Customer's LDC) for the delivery of electricity. The Sales Point(s) for electricity will be one or more points on the NYISO-administered transmission system (located outside of the jurisdictional limits of the municipality of Customer's service address location), selected from time to time by Polaris to assure service reliability. The Delivery Point(s) for electricity will be one or more points at which Polaris, as Customer's agent, has arranged for the delivery of electricity to Customer or to a third party (such as Customer's LDC) for Customer's account. These services are provided on an arm's-length basis.
11. **No Warranties:** POLARIS MAKES NO REPRESENTATIONS, WARRANTIES, AFFIRMATIONS OF FACT, OR PROMISES, EXPRESS OR IMPLIED, OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT AND POLARIS EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE.
12. **Limitation of Liability:** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE NEW YORK LAW, NEITHER CUSTOMER NOR POLARIS WILL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, EXEMPLARY, PUNITIVE, INCIDENTAL, OR INDIRECT DAMAGES ARISING FROM ANY CLAIM OR LEGAL PROCEEDING BETWEEN CUSTOMER AND POLARIS, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR LOST REVENUES. THE REMEDY FOR ANY CLAIM OR SUIT AGAINST POLARIS WILL BE LIMITED TO DIRECT ACTUAL DAMAGES, WHICH SHALL NOT EXCEED THE AMOUNT OF CUSTOMER'S SINGLE LARGEST MONTHLY INVOICE DURING THE PRECEDING 12 MONTHS. CUSTOMER SHALL NOT PURSUE OR RECOVER ANY ADDITIONAL DAMAGES OR AMOUNTS FROM POLARIS, AND HEREBY WAIVES ALL OTHER REMEDIES IN LAW OR EQUITY. THESE LIMITATIONS APPLY WITHOUT REGARD TO THE CAUSE OF ANY LIABILITY OR DAMAGES. CUSTOMER AND POLARIS ACKNOWLEDGE THAT THERE ARE NO THIRD-PARTY BENEFICIARIES TO THIS AGREEMENT.
13. **Arbitration of Disputes, Waiver of Jury Trial, and Participation in Class Actions:** POLARIS AND CUSTOMER SHALL NOT BE PERMITTED TO JOIN OR CONSOLIDATE COMPLAINTS, CLAIMS, OR DISPUTES INVOLVING OTHERS, NOR SHALL ANY COMPLAINTS, CLAIMS, OR DISPUTES BE BROUGHT OR MAINTAINED AS A CLASS ACTION OR IN ANY REPRESENTATIVE CAPACITY. POLARIS AND CUSTOMER UNDERSTAND AND AGREE THAT THEY ARE KNOWINGLY, VOLUNTARILY, AND WILLINGLY WAIVING THE RIGHT TO A TRIAL BY JURY. POLARIS AND CUSTOMER UNDERSTAND AND AGREE THAT THEY ARE KNOWINGLY, VOLUNTARILY, AND WILLINGLY WAIVING THE RIGHT TO PARTICIPATE IN OR BE REPRESENTED IN ANY CLASS ACTION OR CLASS ARBITRATION.

Any questions or complaints should be directed to Polaris's Customer Service Center. The parties are required to use their best efforts to resolve any disputes that may arise. Any unresolved disputes may be presented to a court of competent jurisdiction in New York County, New York. During the pendency of any dispute, Customer must pay all bills in full, except for the specific disputed amount, if any. Alternatively, a dispute or complaint relating to a residential customer may be submitted by either party at any time to the DPS Office of Consumer Services, New York State Public Service Commission, Office of Consumer Services, Three Empire State Plaza, Albany, New York 12223; by phone at **1-888-697-7728** or by visiting [www.dps.state.ny.us](http://www.dps.state.ny.us).
14. **Applicable Laws:** This Agreement is subject to all applicable federal, state, and local laws, and the orders, rules, and regulations of the governmental agencies having jurisdiction over the subject matter of this Agreement, including the DPS. This Agreement shall be construed under and shall be governed by the laws of the State of New York without regard to the application of its conflicts of law principles. Venue for any lawsuit brought to enforce any term or condition of this Agreement or to construe the terms hereof shall lie exclusively in the State of New York.
15. **Regulatory and Other Changes:** Polaris and Customer recognize that a change in any law, rule, regulation, guideline, procedure, tariff, utility, ISO design, ICAP tag, gas capacity release, formula or formula input, demand charge, transmission value, Environmental Attribute (e.g. RECs, ZECs, carbon), Non- Market Based Rates (e.g. NTAC, SSC&D, Black Start), regulatory structure, or the interpretation or application of any of the foregoing applicable to Polaris or this Agreement by any entity, including but not limited to the LDC, Department of Public Service, New York State Public Service Commission, New York State Energy Research and Development Authority, Federal Energy Regulatory Commission or the New York Independent System Operator (each, a "Regulatory or Other Change") could materially impact a term, condition, or provision of this Agreement including, but not limited to price. Polaris and Customer further recognize that Polaris's ability to perform under this Agreement or the financial impact of a Regulatory Change that occurred prior to the date the parties executed this Agreement (the "Execution Date") may not be known until a future date. Polaris retains the right, at its sole discretion to (i) terminate this Agreement and return the Customer to the LDC at the next available meter-read date; (ii) modify this Agreement to reflect a Regulatory Change that occurs after the Execution Date, including modifying Customer's price; and/or (iii) pass through to Customer any capital, operating, commodity, or other costs it incurs as a result of a Regulatory or Other Change ("New Costs") that occurred prior to the Execution Date where such: (a) New Costs were unknown or (b) New Costs did not become effective until after the Execution Date. In all cases, Polaris shall provide 30 days' prior written notice to Customer of any termination or modification to this Agreement resulting from a Regulatory or Other Change and/or application of any New Costs.
16. **Material Changes:** Customer shall notify Polaris of any significant changes in its gas and/or electric consumption due to any material change in Customer's business. Customer shall also notify Polaris upon a substantial detrimental change to its credit worthiness. Upon such notification, Polaris and Customer may choose to negotiate new pricing terms to

account for the material change to Customer's business gas and/or electric consumption. Should no agreement be reached, Polaris shall have the discretion to determine if customer has had a material change in its business operations which cause customer to substantially deviate from its historical gas and/or electric usage, or if Customer has had a substantial detrimental change in its creditworthiness. In the event of either of these events, Polaris may terminate this Agreement upon 15 days' written notice to Customer. Furthermore, if customer fails to meet its obligations under this Agreement, or if Polaris terminates its service offerings in Customer's LDC service territory or across New York State, then, in addition to any other remedies that it may have, Polaris may terminate this Agreement upon 15 days' written notice to Customer. All other "Material Changes" do not relieve parties of their obligations under this Agreement, to the extent permissible under governing laws.

17. **Force Majeure:** Polaris will make commercially reasonable efforts to provide natural gas and/or electricity supply service hereunder, but Polaris does not guarantee a continuous supply of natural gas and/or electricity to Customer. Certain causes and events out of the control of Polaris ("Force Majeure Events") may result in interruptions in service. Polaris will not be liable for any such interruptions caused by a Force Majeure Event. A Force Majeure Event means a material or unavoidable occurrence beyond Polaris's control and shall include but not be limited to acts of God or public enemy, fire, flood, storm, hurricane, earthquake, explosion, terrorism, war, civil disturbance, pandemics, or other medical outbreaks and emergencies, acts of any governmental authority, accidents, strikes, labor disputes or problems, required maintenance work, inability to access the local distribution utility system, non-performance by the LDC (including, but not limited to, a facility outage on its gas distribution lines or electric facilities), or any other cause beyond Polaris's control.
18. **Assignment:** Polaris may sell, transfer, pledge, or assign the accounts, revenues, or proceeds hereof, in connection with any financing agreement or receivables purchase program, and may, upon 30 days' prior written notice to you, assign this Agreement to another energy supplier, energy services company or other entity as authorized by the DPS, without Customer's consent. Assignment upon sale of Property, plant, equipment, or Material Change in Ownership. Customer may not assign its interests in or delegate its obligations under this Agreement without the express written consent of Polaris. If Customer's building, facility, or metered account of property, plant, or equipment is sold, or a material change in ownership of the business, in the ordinary course of business or otherwise, Customer must assign this Agreement to the new owner upon transfer of equitable or legal title, whichever occurs first. Customer must provide written notice to Polaris of transfer and provide documentation within 30 days of such assignment.
19. **Forward Contract:** Each Party acknowledges that: (a) this Agreement is a forward contract as defined in the United States Bankruptcy Code ("Code"); (b) this Agreement shall not be construed as creating an association, trust, partnership, or joint venture in any way between the Parties, nor as creating any relationship between the Parties other than that of independent contractors for the sale and purchase of Commodities; (c) Seller is not a "Utility" as defined in the Code; (d) Commodity supply will be provided by Seller under this Agreement, but delivery will be provided by the Utility; and (e) the Utility, and not Seller, is responsible for responding to service problems or emergencies should they occur.
20. **Merger Clause:** This Agreement, including any enrollment form and attachments, is the entire Agreement between Customer and Polaris with respect to the subject matter hereof and there are no promises, covenants, or undertakings other than those expressly set forth in this Agreement. This Agreement will inure to and be binding upon the successors and assignees of the parties. If any provision of the Agreement is held by a Court or regulatory agency of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force without being invalidated in any way. No waiver of any provision of this Agreement shall be construed as a continuing waiver or shall constitute a waiver of any other provision.
21. **Emergency Service Contacts:** Customer's LDC will continue to respond to leaks and emergencies. **Customer should immediately DIAL 911 in the event of a gas leak, electric service interruption, or other emergency.** Customer can contact their LDC at the numbers below:

Central Hudson	1-845-452-2700	National Grid	1-718-643-4050	NYSEG	1-800-572-1131 (electric) 1-800-572-1121(gas)
Con Edison	1-800-752-6633	National Grid Long Island	1-800-490-0045	O&R Electric	1-877-434-4100
National Fuel Gas	1-800-444-3130	National Grid Upstate	1-800-892-2345	Rochester G&E	1-800-743-1701 (electric) 1-800-743-1702 (gas)

For general service Customer may also contact Polaris at **1-866-362-9800** or [info@polarispwr.com](mailto:info@polarispwr.com).

22. **Dispute Resolution:** Commercial: In the event of a billing dispute or disagreement involving Polaris' service, Customer should contact Polaris' Customer Service Center as provided above. Customer must pay the bill in full, except for the specific disputed amount, during the pendency of the dispute. If the parties cannot resolve the dispute within 45 days, either party may avail itself of all remedies available under law or equity. The DPS will not resolve Non-Residential disputes associated with the services provided under this Sales Agreement. However, the DPS will monitor inquiries and contacts from Non-Residential customers regarding energy service companies and an excessive number of confirmed complaints may result in an energy service company no longer being eligible to supply natural gas or electricity in New York State.
23. **Electronic Signatures:** Any signature (including any electronic symbol or process attached to, or associated with, this Agreement and adopted by Customer or Polaris with the intent to sign, authenticate, or accept such Agreement) hereto, or to any other certificate or document related to this transaction, through electronic means shall have the same legal validity and enforceability as a manually executed signature to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act and the New York State Electronic Signatures and Records Act, and the parties hereby waive any objection to the contrary.
24. **ICAP and Load Factor Changes:** Polaris reserves the right to reprice or rescind Matrix-Priced contracts at any time, including, but not limited to, changes in the customer's ICAP and load factor values.