

Clearview Electric, Inc.
New York Residential
Sales Agreement and Terms of Service for ESCO Referral Programs

The following is your Terms of Service Agreement ("Agreement") with Clearview Electric, Inc. ("Clearview Electric" or "Clearview") for the purchase of electricity. Please retain this Agreement for your records.

Agreement to Purchase Energy. Customer hereby appoints Clearview Electric as its limited agent for the purpose of acquiring the supplies necessary to meet its electricity needs, arranging, contracting for and administering transmission and related services over interstate facilities and those of the Local Distribution Utility ("LDU") needed to deliver electricity to the Customer's premises. Clearview agrees to sell and deliver and Customer agrees to purchase and accept the quantity of electricity necessary to meet Customer's requirements based upon consumption data obtained by Clearview or the delivery schedule of the LDU.

Term. The term shall commence as of the date the change of provider to Clearview is deemed effective by the LDU and shall continue for one (1) month thereafter ("Initial Term"). This Agreement shall automatically renew for successive one (1) month periods ("Renewal Term") unless either party notifies the other party in writing of its desire not to renew, at least thirty (30) days prior to the annual anticipated renewal date.

Price. Unless otherwise agreed to in writing or other form as authorized under the Uniform Business Practices ("UBP") of the New York State Department of Public Service ("DPS"), the price for all energy sold under this Agreement through the Customer's first two billing cycles shall be based upon a 7% discount as compared to Consolidated Edison's published rate during those same two billing cycles. After this initial two month discount period, subsequent months will be billed at a variable rate set by Clearview based on market conditions, plus all applicable taxes. Payment will be due and payable as specified in the LDU bill. Budget, level, or other payment plans may be available from Customer's LDU, as provided in the Home Energy Fair Practices Act ("HEFPA"). Customer payments remitted in response to the LDU's consolidated bill shall be pro-rated in accordance with procedures adopted by the Public Service Commission ("PSC").

1. Consumer Protections. The services provided by Clearview are protected by the terms and conditions of this Agreement and the Home Energy Fair Practices Act ("HEFPA.") Clearview will provide at least fifteen (15) calendar days notice prior to any cancellation of service to Customer. In the event of non-payment of any charges owed to Clearview, Customer may be subject to termination of commodity service and the suspension of distribution service under procedures approved by the DPS. Customer may obtain additional information by contacting the DPS at 1-800-342-3377, or by writing to the DPS at: New York State Department of Public Service, Office of Consumer Services, Three Empire State Plaza, Albany, New York 12223, or through its website at: <http://www.dps.state.ny.us>. The DPS will monitor complaints against all energy companies, and an excessive number of complaints may result in an energy company no longer being eligible to supply electricity or natural gas in New York State.

2. Emergency Service. In the event of an electric or gas emergency or service interruption, you should immediately call your local utility: 1-800-867-5222 or and emergency personnel (911). You may also call Clearview at 1-800-527-3233 to obtain the proper toll free number for emergencies.

3. Information Release Authorization. Customer hereby authorizes Clearview to obtain and review information regarding the Customer's consumption history from the LDU. This information may be used by Clearview and any of its affiliates, agents or representatives to determine whether it will commence and/or continue to provide energy supply service to Customer and shall 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 Clearview. This authorization will remain in effect during the Initial Term and any Renewal Term of this Agreement. Customer may rescind this authorization at any time by providing written notice thereof to Clearview or calling Clearview at 1-800-527-3233. Clearview reserves the right to cancel this Agreement in the event Customer rescinds the authorization upon fifteen (15) calendar days' prior written notice.

4. Dispute Resolution. In the event of a billing dispute or a disagreement involving any essential element of this Agreement, the parties will use their best efforts to resolve the dispute. Customer should contact Clearview in writing at P.O. Box 7310, Dallas, TX 75209, or by telephone at 1-800-527-3233. The dispute or complaint relating to a residential customer may be submitted by either party at any time to the DPS pursuant to its Complaint Handling Procedures ("Procedures"). Payment obligation for disputed amounts will be withheld until such dispute is resolved through mutual agreement or as warranted by DPS decision.

5. Switching Procedures. Customer or Clearview may cancel a standard variable rate Agreement, for reasons other than non-payment, at any time, by providing written notice to the other party at least thirty (30) days prior to the intended date of termination. If Customer fails to notify Clearview as set forth above, Customer shall remain liable to pay Clearview for energy acquisitions made by Clearview to serve Customer under this Agreement at the price set forth above. It may take up to sixty (60) days for Customer's account(s) to be returned to the LDU depending on LDU cancellation procedures, and Customer is responsible for all Clearview supply charges until Customer returns to the LDU or goes to another supplier. A final bill will be rendered within twenty (20) days after the final scheduled meter reading or if access is unavailable, an estimate of consumption will be used in the final bill, which will be trued up subsequent to the final meter reading. Pursuant to HEFPA, Customer's distribution service may be suspended if Customer fails to pay Clearview's outstanding balance.

6. Measurement. The parties accept for purposes of accounting for electricity supplied under this Agreement, the quantity, quality, and measurement determined by the LDU.

7. Agency. Customer appoints Clearview as its agent to acquire the supplies necessary to meet its electricity, contract for and administer transportation, transmission and related services over interstate facilities and those of the LDU needed to deliver electricity to the Customer's premises.

8. Billing and Payment. Unless otherwise agreed to in writing, Consolidated Edison will invoice monthly for electricity supplied under this Agreement. The Customer will pay each invoice in full within twenty (20) days of the invoice date or be subject to a late payment charge of 1.5% per month. A \$30.00 fee will be applied for returned checks. Customer will receive a single bill for both commodity and delivery costs from the LDU. Customer payments remitted in response to a consolidated bill shall be pro-rated in accordance with procedures adopted by the DPS. In the event of failure to remit payment when due, Clearview will have the right to terminate commodity service and to seek suspension of distribution service in conformance with HEFPA.

9. Default Liability. FOR BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY IS PROVIDED, SUCH EXPRESS REMEDY SHALL BE THE SOLE AND EXCLUSIVE REMEDY. THE BREACHING PARTY'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER DAMAGES AT LAW OR IN EQUITY SHALL NOT APPLY. IF NO EXPRESS REMEDY IS PROVIDED, CLEARVIEW'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY (WHICH WILL NOT EXCEED THE AMOUNT OF CUSTOMER'S SINGLE LARGEST MONTHLY INVOICE DURING THE PRECEDING TWELVE MONTHS). SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES AT LAW OR IN EQUITY ARE HEREBY WAIVED. IN NO EVENT SHALL CUSTOMER OR CLEARVIEW BE LIABLE FOR ANY PUNITIVE, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, INDIRECT, THIRD-PARTY CLAIMS OR OTHER DAMAGES WHETHER BASED ON CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, OR FOR LOST PROFITS ARISING FROM A BREACH OF THIS AGREEMENT.

10. Contact Information. Customer may contact Clearview's Customer Service Team at 1-800-527-3233, Monday through Friday 9:00 AM – 7:00 PM Eastern Time and Saturday 11:00 AM – 6:00 PM Eastern Time (hours of operation are subject to change), or write to Clearview Energy at: P.O. Box 7310, Dallas, TX 75209.

11. Governing Law. Venue for any lawsuit brought to enforce any term or condition of this agreement or to construe the terms hereof shall be exclusively in the State of New York. This Agreement shall be construed under and shall be governed by the laws of the State of New York. If at some future date there is a change in any law, rule, regulation or pricing structure, or there is a regulatory or judicial ruling or decision which shall have a detrimental economic impact upon Clearview's performance under this Agreement, or in the event that compliance with such change, ruling or decision shall result in a material change in the way prices are calculated under this Agreement, or a material change in the level of components of pricing under this Agreement, or Clearview is otherwise prevented, prohibited or frustrated from carrying out this Agreement, Clearview shall have the right to terminate this Agreement upon fifteen (15) days' notice.

12. Assignment. Customer may not assign this Agreement, in whole or in part, or any of its rights or obligations hereunder without the prior written consent of Clearview. Clearview may, without Customer's consent: (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial agreement; (b) transfer or assign this Agreement to an ESCO affiliate of Clearview; (c) transfer or assign this Agreement to any ESCO succeeding to all or substantially all of the assets of Clearview; and/or (d) transfer or assign this Agreement to another approved ESCO or other entity authorized by the DPS provided that Customer receives notice a minimum of 30 days in advance of the effective date of the assignment. Upon any such assignment, Customer agrees that Clearview shall have no further obligations hereunder.

13. Severability. If any provision of this 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.

14. No Warranties. Unless otherwise expressly set forth in this Agreement, Clearview provides and Customer receives no warranties, express or implied, statutory, or otherwise and Clearview specifically disclaims any warranty of merchantability or fitness for a particular purpose.

15. Delay or Failure to Exercise Rights. No partial performance, delay or failure on the part of Clearview in exercising any rights under this Agreement and no partial or single exercise thereof shall constitute a waiver of such rights or of any other rights hereunder.

16. Force Majeure. The term "Force Majeure" shall mean any cause not reasonably within the control of the Party claiming suspension and which by the exercise of due diligence, such Party is unable to prevent or overcome, including but not limited to, any act or cause which is deemed a Force Majeure by the LDU or any transportation or transmitting entity. If either party is unable, wholly or in part, by Force Majeure to perform or comply with any obligations or conditions of this Agreement, such party shall give immediate written notice, to the maximum extent practicable, to the other party. Such obligations or conditions, so far as they are affected by such Force Majeure, shall be suspended during the continuance of any inability so caused, and such party shall be relieved of liability and shall suffer no prejudice for failure to perform the same during the period. The party claiming suspension of obligations must in good faith attempt to mitigate and/or terminate the Force Majeure.

17. Taxes and Laws. Except as otherwise provided in this Agreement or by law, all taxes of whatsoever kind, nature and description, due and payable with respect to Customer's performance of its obligations under this Agreement, shall be paid by Customer. The parties' obligations under this Agreement are subject to present and future legislation, orders, rules, or regulations of a duly constituted governmental authority having jurisdiction over this Agreement or the services to be provided herein.

18. Entire Agreement. This Agreement sets forth the entire agreement between the parties with respect to the terms and conditions of this transaction; any and all other agreements, understandings and representations by and between the parties with respect to the matters addressed herein are superseded by this Agreement.

19. Acceptance and Amendments. This Agreement shall not become effective until accepted by Clearview. Clearview reserves the right to reject Customer or to cancel this Agreement following notice of no less than 15 days upon failure of Customer to maintain satisfactory credit standing as determined by Clearview, or to meet minimum or maximum threshold consumption levels as determined by Clearview. Clearview may amend the terms of this Agreement at any time, consistent with any applicable law, rule or regulation, by providing notice to Customer of such amendment at least thirty (30) days prior to the effective date thereof.

20. Emergency Service. In the event of an electric outage, service interruption or other emergency, Customer should immediately call Niagara Mohawk at 1-800-892-2345.

21. Parties Bound. This Agreement is binding upon the parties hereto and their respective successors and legal assigns.