

## CUSTOMER TERMS AND CONDITIONS

### New York – Rollover Variable Rate Plan

“Liberty Power”, “us”, “we” or “our” means Liberty Power Holdings LLC and refers to the retail electricity provider supplying electricity to you as provided in these Customer Terms and Conditions. “Customer”, “you”, or “your” means the customer identified in the Voice Authorization or Written Authorization, and as addressed in the Liberty Power Plan Description.

**Entire Agreement:** The voice recording confirming your decision to switch to Liberty Power (“Voice Authorization”), or the signed Energy Services Enrollment Agreement (“Written Authorization”), along with these Customer Terms and Conditions and the Liberty Power Plan Description are your full Agreement (“Agreement”) to buy electricity from Liberty Power. They take the place of any and all prior Agreements or oral or written information about your Liberty Power energy supply. Please keep this Agreement for your records. The Plan Description is included in your Liberty Power Welcome Kit and has important information about your Account.

**Rate:** This is a full requirements Agreement. The Rate for electricity sold under this Agreement is established each month based upon the electricity market pricing, including capacity, ancillary services, losses, generation and any other miscellaneous charges (including, but not limited to, ISO/RTO or PUC fees). The Rate will not include taxes, regulated charges from the Utility, including, but not limited to, Utility delivery and distribution charges, customer Account fees or other Utility transition charges.

**NEW YORK – NEW CAPACITY ZONE IMPLEMENTATION:** [New York Independent System Operator, Inc. 140 FERC ¶ 61,160 (2012) (August 30, 2012 Order), reh’g pending] In the event the proposed New Capacity Zone becomes active during the Transaction Term and results in an increase or decrease of costs related to the Transaction as originally contemplated, the Parties agree such charge or credit shall be passed through to Customer.

**Onsite Generation:** If you currently own onsite generation recognized under Governing Law or regulatory rule(s) applicable to this Agreement as an eligible renewable or other electrical generating facility (such as solar panels) to supply all or part of your electricity usage and such facility is or will be net metered by the Utility you must have indicated the existence of such generation in your Voice or Written Authorization. If you currently own such onsite generation, you further agree to inform Liberty Power if it is presently being net metered or is expected to be net metered during the term of this Agreement in order for Liberty Power to determine and/or confirm your net metering eligibility, and, if eligible, to properly enroll you, to continue to serve you or to continue to serve you at your current Rate. If you plan to install new onsite generation that will be net metered during the term of this Agreement, you agree to provide Liberty Power with sixty (60) days prior written notice or such other notice as is required by Governing Law, applicable regulatory rule(s) or Utility tariff of such plan in order for Liberty Power to determine and/or confirm your net metering eligibility, and if eligible, to continue to serve you or to serve you at your current Rate. Unless prohibited by Governing Law or regulatory rule(s) applicable to this Agreement, failure to furnish this material information prior or subsequent to receiving electricity service under this Agreement may result in, at Liberty Power’s sole discretion, discontinuation of the enrollment of your account(s), adjustment of your offered Rate under the Material Change provision of this Agreement, or termination of this Agreement as an Event of Default under the Termination of Services provision of this Agreement.

**Convertibility:** Customer is eligible to convert to a Liberty Power fixed rate plan at any time during the term of this Agreement. The fixed rate for this plan will be based on the available market

rate and term. There will be no termination fee associated with making this change.

**Billing:** Liberty Power will bill you monthly for electricity supply based on your electricity usage as reported to us by the Local Distribution Utility (“Utility”). You will be billed under one of these billing options: (1) a line item on a consolidated Utility bill; or (2) as a direct bill from Liberty Power for the electricity supply only, with the delivery charges invoiced separately by the Utility. You will be sent a monthly invoice which is payable by check, credit or debit card or Electronic Funds Transfer (“EFT”) by the due date on the invoice.

**Payment Instructions for Direct Billed Accounts:** Bills are due and payable by the stated due date on the invoice and will be subject to a finance charge for any late payment (at the lesser of 1.5% per month of the outstanding balance or the maximum rate permitted by applicable law) and collection fees, including reasonable attorneys’ fees and court costs. A fee of \$30 per transaction will be assessed due to insufficient funds for any method of payment. All direct payments should be sent to Liberty Power Holdings LLC, 25901 Network Place, Chicago, IL 60673-1259.

**Collection of Past Due Charges:** Liberty Power will pass through to you all charges related to the collection of past due invoices, including, but not limited to, collection agency fees, legal and court fees, and Account termination fees. We reserve the right to apply any deposit to balances owed at the time your Account is placed in a collections status.

**Term:** The term of this Agreement is as stated in the Voice or Written Authorization. Effective with the Utility meter read applicable to your Requested Flow Start Month (the month in which you are requesting service with us to begin), Liberty Power will supply electricity to you (“Effective Start Date”). In the event the Utility meter read applicable to your Requested Flow Start Month occurs prior to the Requested Flow Start Month, your electricity supply service with Liberty Power may commence on the date of the Utility meter read (“Effective Start Date”). Liberty Power will not be responsible for any gap in service that may occur between the termination of Customer’s service with a prior supplier and the commencement of service from Liberty Power or any penalty assessed by a prior supplier where Customer begins service with Liberty Power in advance of the Requested Flow Start Month. You will receive a reminder Notice of your upcoming Term expiration approximately forty-five (45) days in advance of expiration. If you do not cancel service or renew on a new Liberty Power plan at the end of your Term, service will automatically continue with Liberty Power on a Default Variable rate which will renew monthly unless you or Liberty Power cancel, upon thirty (30) days written Notice, or as otherwise applicable in this Agreement. The Terms and Conditions applicable to the Liberty Power Rollover Variable Plan will be made available to you either via mail with the reminder Notice or by viewing them on our website ([www.libertypowercorp.com](http://www.libertypowercorp.com)). Cancellation must be in writing and mailed to Liberty Power Customer Care Team at 1901 W. Cypress Creek Rd., Suite 600, Ft. Lauderdale, FL 33309.

**Credit/Security Deposit:** In completing this Agreement, you authorize credit-reporting agencies to provide Liberty Power with any information it may have on you or your business. Liberty Power may require a security deposit to initiate service, depending on credit or payment history. Any deposit requirement will be sent to you in writing. Deposits held more than thirty (30) days will accrue interest, at the Wall Street Journal Prime Rate, from the date of receipt.

**Dispute Resolution:** Liberty Power’s Customer Care Team is available at 866-769-3799 to help with any questions or concerns regarding your Accounts. Our representatives are committed to

resourcefully finding resolution; however, if the dispute cannot be settled within 120 days of receipt of written notification, either party may present the dispute to a venue of competent jurisdiction for review such as small claims court, mediation, arbitration, etc. The Department of Public Service ("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. New York Public Service Commission ("NYPSC") can be reached at 888-697-7728. Customer may contact the DPS by writing the Department of Public Service at the Office of Consumer Services, Three Empire State Plaza, Albany, NY 12223-1350, or by consulting their website at <http://www.dps.state.ny.us>. If the Dispute cannot be settled in 120 days either party may present the dispute to a venue of competent jurisdiction for review such as small claims court, mediation, arbitration, etc.

**Termination of Service:** Liberty Power may terminate service for any Event of Default that you incur. You will then receive electricity supply from the Utility or will be given the opportunity to choose a different electricity provider, based on the rules of the local Utility. You will be responsible to pay for electricity consumed before service was terminated. You may terminate this Agreement by giving Liberty Power at least forty-five (45) days written Notice.

**Meter Equipment:** Liberty Power does not take ownership of your existing metering equipment. While you have an electricity Agreement with Liberty Power, we have the right to install new metering equipment. at Liberty Power's expense.

**Disconnection of Service:** Only the local Utility has the ability to disconnect your service. Failure to make full payment of the charges due will be grounds for disconnection based on New York law.

**Events of Default:** A Customer Event of Default means: (a) your failure to make, when due, any payment required by this Agreement; or (b) the failure to take electric supply when delivered under terms of this Agreement unless remedied within ten (10) business days following written Notice; or (c) the significant downgrading of your credit rating since the Effective Date of this Agreement; or (d) tampering or disconnecting of your electric meter which may cause or may reasonably be expected to cause an inaccurate reading or no reading of the usage data provided by the meter; or (e) a breach of any material provisions in this Agreement.

A Liberty Power Event of Default means the failure to fulfill the material obligations of this Agreement with regard to Rate, Term, and the supply of agreed usage volume if not remedied within ten (10) business days after giving Notice.

An Event of Default is applicable to either party who files a petition for bankruptcy, or other action under any bankruptcy or similar law for the protection of creditor, if the petition or other action is not withdrawn or dismissed within twenty (20) business days of its filing.

**Remedies for Customer Event of Default:** In the event of a Customer Event of Default, Liberty Power has the right to terminate this Agreement in accordance with the Termination of Service provision. In place of termination, we may require an additional deposit from you or request advance payment of an amount up to the average historical consumption for the last three (3) month period.

**Material Misrepresentation:** This Agreement may be terminated in accordance with the Termination of Service Provision in the event you make a Material Misrepresentation in order to induce us to enter into this Agreement. For purposes of this Agreement, a Material Misrepresentation is any fact provided by you, that we relied upon in agreeing to the Rate, Term or service in this Agreement, and the fact is later found to be false, and which if known to be false, that we would not have entered into this Agreement, or would have entered into this Agreement under different Rate, Term or other service conditions.

**Electric Emergencies and Power Quality:** The Utility will continue to operate the electric transmission lines and be responsible for

power outages and quality. You will hold Liberty Power harmless in the event of a loss of power caused by any entity other than Liberty Power. If you have an electrical emergency, power outage, or reduction in power quality, contact the Utility at its emergency number on your invoice.

**Material Change:** Except as provided in the Change in Law provision below, Liberty Power will provide you with forty-five (45) calendar days advance written Notice of any Material Change in the Customer Terms and Conditions, either in your invoice or in a separate mailing. The changes will become effective on the date stated in the Notice unless you cancel your Agreement. You may cancel the Agreement no later than ten (10) calendar days before the effective date of the Material Change.

**Governing law:** This Agreement and the rights and duties of both parties are governed by the laws of the state of New York.

**Change in Law or Regulation:** In the event that there is a change (including changes in interpretation) in law, regulation, rule, ordinance, order, directive, filed tariff, decision, writ, judgment, or decree by a governmental authority, regulatory body or the regional Independent System Operator ("ISO"), or in the event any of the foregoing which is existing as of the date of this Agreement is implemented or differently administered, including, without limitation, changes in tariffs (including, but not limited to transmission or capacity costs), protocols market rules, load profiles, and such change results in Liberty Power incurring additional costs and expenses in providing the services contemplated herein, these additional costs and expenses may, at our option, be assessed to you in your monthly bills for service as additional pass-through charges, to the extent permitted by applicable law or regulatory rules.

**Notices:** All Notices and correspondence will be in writing and delivered to you and Liberty Power, as applicable, by regular mail, courier, electronic mail, or facsimile. Notice will be effective upon receipt by the person to whom it is addressed.

**Assignment:** Assignment of this Agreement, without the prior written consent of the other party, is limited to the following: (a) Liberty Power may assign Accounts, revenues and proceeds, or grant a lien against them, to credit providers. These credit providers may directly enforce Liberty Power's rights under this Agreement and may, upon foreclosure, assign Liberty Power's rights under this Agreement; and (b) Liberty Power may also assign its rights and obligations under this Agreement to service providers for services such as invoicing and power scheduling; and (c) you will have the right to assign this Agreement to an entity controlled by, controlling, or under common control with, Customer.

**Force Majeure:** Force Majeure means an event or circumstance not reasonably within the control of, or due to the negligence of, Liberty Power, including without limitation acts of God, accidents, strikes, labor disputes, required maintenance work, inability to access the Utility system, nonperformance of the Utility, cuts to service lines, or Changes in Laws, rules, regulations, practices or procedures of any governmental authority or any other cause beyond the reasonable control of Liberty Power. Liberty Power will endeavor in a commercially reasonable manner to provide service, but cannot guarantee a continuous supply of electrical energy. Force Majeure events may result in interruptions in service. Please be aware that Liberty Power does not produce, transmit or distribute electricity and will not be liable for any damages for interruptions in service.

**Indemnity:** Each party to this Agreement shall indemnify, defend and hold harmless the other from and against any claims arising from or out of any event, circumstance, act or incident that the indemnifying party caused due to its negligence, willful misconduct, strict liability, or any action or inaction which gives rise to any liability.

**Representations and Warranties:** The electricity supplied by Liberty Power under this Agreement will be purchased from a variety of sources. Liberty Power makes no representations or warranties other than those expressly stated in this Agreement. Liberty Power expressly disclaims all other warranties, express or

implied, including warranties of merchantability, conformity to models or samples, and fitness for a particular purpose.

**Limitations of Liability:** Liability for damages not related to Force Majeure will be limited to direct actual damages. Neither party will be liable to the other for consequential, incidental, punitive, exemplary or indirect damages, including lost profits or penalties of any nature, which are hereby waived, whether or not there was actual knowledge of such possible damages, or if such damages could have been reasonably foreseen. These limitations apply without regard to the cause or responsibility of any liability or damage.

Customer agrees to promptly notify Liberty Power of any account(s) which is/are not timely enrolled and in no event shall such notice to Liberty Power be later than 60 days from the expected Effective Start Date. In the event of a delayed or failed enrollment directly attributable to Liberty Power's actions or omissions, Liberty Power's liability is limited to the positive difference, if any, between what you paid for energy during that period, not to exceed sixty (60) days from the expected Effective Start Date, and the price pursuant to this Agreement, multiplied by your actual energy usage for that period.

**Service Interruption:** Liberty Power is not liable for any damages due to an interruption in service caused by acts of any governmental authority, or any ISO, or Changes in Laws, rules, regulations, practices or procedures of any such entity.