

05-M-0858  
Corresp.

OUR AGREEMENT O&R\_GC\_PWRSW\_0606

I want MxEnergy Inc. ("MXenergy") to supply my business with all the natural gas I need subject to the eligibility requirements of my local utility, Orange and Rockland ("O&R"), and acceptance by MXenergy. MXenergy is authorized by the State of New York Public Service Commission ("NYPSC") to act as an Energy Service Company ("ESCO") and has entered into a service agreement with O&R. The NYPSC does not regulate the price of gas or other charges found in this Agreement. I am at least 18 years old and fully authorized to enter into this Agreement.

1. **MXenergy Services.** MXenergy will supply natural gas for my business. MXenergy is a retail energy marketer and not my local distribution utility.
2. **Local Utility Services.** O&R will continue to deliver the gas I buy from MXenergy to my business, read my meter, send my bill and make repairs. O&R will also respond to emergencies and provide other traditional utility services. I may continue to have O&R supply my natural gas.
3. **Point of Delivery.** All natural gas sold shall be delivered to a location considered the point of delivery, which for gas shall be a location outside the State of New York, and shall constitute the point of delivery at which the sale occurs and title passes from MXenergy to me.
4. **Term.** MXenergy will begin supplying gas when O&R switches my account to MXenergy and will continue on a month-to-month basis.
5. **Price.** My monthly bill is calculated by multiplying my rate by the total amount of gas I use in the billing cycle plus applicable taxes, fees, and charges levied by O&R for distribution.
  - a. **Introductory Rate** – Under the terms of the PowerSwitch Program, I will receive the rate as indicated on my Enrollment Form or Welcome Letter for the period specified ("Introductory Period")
  - b. **Variable Rate** – After the Introductory Period, my rate will be established each month, based on such factors as the market price of gas, transportation and transmission costs, utility charges and other related charges ("Variable Rate").
6. **Notification of Changes;** MXenergy will send me written notice at least 30 days prior to making any material changes to the Agreement other than price. These changes will only become effective with my affirmative consent via an executed agreement, a recorded telephone call, or an electronic signature.
7. **Termination.** I may cancel at anytime without penalty or cancellation fee by calling MXenergy at 1-800-785-4373, sending an email to [feedback@mxenergy.com](mailto:feedback@mxenergy.com) or submitting a cancellation form.
  - a. **Timing of Cancellation.** It will take time for O&R to cancel my account. During this time I agree to pay for all the gas I consume that is supplied by MXenergy
8. **Billing and Payment**
  - a. **Budget Billing.** If I have chosen Budget Billing, my monthly payment will be determined as follows: MXenergy will use my previous bills and projected future energy costs to estimate my annual gas costs, given my pricing plan. Approximately every 3 months, MXenergy 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 gas I have been using. At least once a year MXenergy will calculate the difference between what I have paid and what my actual gas costs have been during the year. If I have paid more than is required, MXenergy will adjust the amount of future Budget Billing, or credit the excess payment to the MXenergy portion of my gas bill. If I have paid less, MXenergy will adjust the amount of my future Budget Billing or bill me for the difference.
  - b. **Bill Payment.** I may receive a single bill for both my natural gas and the delivery of such gas from either MXenergy or O&R, or each may invoice separately. As a commercial customer, O&R is permitted to disconnect the utility distribution service if I do not pay the charges of MXenergy and I will also pay a collection fee to MXenergy equal to the amount charged by O&R. All returned checks will be subject to the maximum fee allowed by law.
  - c. **Consumer Protection.** The services provided by MXenergy are governed by the terms and conditions in this Agreement. Services provided by O&R are governed by the Non-Residential Regulations enforced by the NYPSC. MXenergy will provide at least 15 calendar days' written notice prior to any termination of my service. Any payments I make on a consolidated bill will be allocated in accordance with procedures adopted by the NYPSC and O&R. The NYPSC 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. The alternative supplier telephone number for inquiries and complaints is 1-888-697-7728.
  - d. **Dispute Resolution.** The parties will attempt in good faith to resolve any dispute arising out of this Agreement. If they cannot resolve the dispute, any lawsuit must take place in a state or federal court located in New York, NY or White Plains, NY and the parties submit themselves to the exclusive jurisdiction of those courts. As a non-residential customer, I consent to the jurisdiction and venue of these courts and waive trial by jury. MXenergy may, in its discretion, submit the dispute to final, binding arbitration in New York, NY or Stamford, CT by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. The New York Public Service Commission will not resolve disputes associated with the services provided under this sales agreement. However, the NYPSC 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's no longer being eligible to supply electricity or natural gas in New York State. The New York State Department of Public Service, Office of Consumer Services can be reached by telephone toll free at 1-888-697-7728; by writing at New York State Public Service Commission, Office of Consumer Services, Three Empire State Plaza, Albany, New York 12223; or by visiting [www.dps.state.ny.us](http://www.dps.state.ny.us). **Service Complaints.** If I experience service related problems I should contact O&R by phone at 1-877-434-4100.

9. **Emergency.** IN AN EMERGENCY, OR IF I SMELL GAS, I SHOULD IMMEDIATELY CALL O&R AT 1-800-533-5325 AND LOCAL EMERGENCY PERSONNEL AT 911.
10. **Limitation of Liability and Warranty.** MXENERGY WILL NOT BE RESPONSIBLE FOR ANY TYPE OF SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGE WHATSOEVER. MXENERGY DOES NOT GIVE ANY TYPE OF WARRANTY, EXPRESS OF IMPLIED, AND TO THE FULL EXTENT OF THE LAW DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OF FITNESS FOR A PARTICULAR PURPOSE.
11. **Force Majeure.** MXenergy will not be responsible for supplying gas to me in the event of circumstances beyond its control such as events of Force Majeure, as defined by O&R, or any transmitting or transportation entity, acts of terrorism, sabotage, or acts of God. If there is a change of any law, rule, or pricing structure which results in MXenergy being prevented, prohibited or frustrated from carrying out the terms of this Agreement, MXenergy may cancel it.
12. **Information Release Authorization.** I authorize MXenergy to obtain my usage and/or payment history and credit information. I may rescind this authorization at any time by contacting MXenergy. MXenergy may refuse to accept me as a customer if my credit score does not meet or exceed its enrollment criteria. If I am accepted as a customer, MXenergy may report my payment experience. MXenergy may also ask commercial customers for credit enhancements or adequate assurance of their ability to perform their obligations under this Agreement, which must be provided within 30 days of such request. Neither my customer account number nor any other confidential information will be released by MXenergy without my written consent. Execution of this Agreement shall constitute authorization for the release of this information to MXenergy.
13. **Miscellaneous.** I will notify MXenergy promptly if there are any drastic changes in my energy consumption. For purposes of accounting both parties accept the quantity, quality, and measurements determined by O&R. Except as provided by law I will pay all taxes due and payable with respect to customer obligations under this Agreement. This form and the Enrollment Form or Welcome Letter reflect my entire agreement with MXenergy and supersede any oral or written statement made in connection with this Agreement or my natural gas supply. Any changes to our Agreement must be made in writing. This Agreement is subject to any future legislation, orders, rules, regulations, or O&R tariff or policy changes. There will be delays before O&R switches my gas supply to MXenergy; MXenergy is not responsible for such delays. I may not assign my interest and obligations under this Agreement without the express written consent of MXenergy. Upon 30 days notice, MXenergy may sell, transfer, pledge, or assign the accounts, revenues, or proceeds hereof in connection with any financial agreement 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.