# CLEANSKY ENERGY
# ELECTRIC LICENSE: CS-177
# RESIDENTIAL AND SMALL AND MEDIUM C&I
# TERMS OF SERVICE - FIXED AND VARIABLE PRODUCTS
# MASSACHUSETTS MARKETS

This is an agreement for electric supply service between Titan Gas, LLC dba CleanSky Energy ("CleanSky" or "CSE") and Customer ("you" or "Customer"), for the service address(es) set forth in Customer's Information Disclosure Label ("Disclosure Label") or Energy Service Agreement ("ESA"). Together, this Disclosure Label or ESA, including the terms of service set forth herein, collectively describe Customer's agreement to purchase electric supply service from CleanSky Energy ("Agreement"). This Terms of Service ("TOS") document details the procedures and terms of the Agreement and is generic with regards to specific pricing and contract terms. The Disclosure Label and/or ESA provides such product offer details and required contract disclosures.

CleanSky Energy is a licensed Competitive Supplier ("CS") by the Massachusetts Department of Public Utilities ("Mass DPU" or "DPU") in the Commonwealth of Massachusetts. Our DPU electric license number is CS-177.

**Contact Information**

For questions concerning Customer's rate, service initiation, or service cancellation, please contact CleanSky Energy using the contact information below:

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| CleanSky Energy<br>3355 W. Alabama, Suite 500<br>Houston, TX 77098 | Toll Free: 888-355-6205<br>CleanSkyEnergy.com | Hours of Operation: M-F, 9 a.m.– 7 p.m., EST<br>Saturday 10 a.m.– 2 p.m., EST<br>CustomerCare@CleanSkyEnergy.com |

**24-Hour Outage Report Numbers**

In the event of a power outage, please contact the Utility using the contact information below:

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| National Grid (Massachusetts Electric) | (800) 322-3223 |
| Eversource (NStar) | (800) 592-2000 |
| Text "OUT" to 23129 to report an outage. | |
| Text "STAT" to 23129 to receive a status update. | |
| Eversource (Western Massachusetts Electric) | (800) 286-2000 |
| Unitil (Fitchburg) | (888) 301-7700 |

**Rescission:** Residential customers may rescind this Agreement without fees or penalties any time before midnight of the third business day of receiving this Agreement. Customer may rescind in writing, orally, or electronically via email. Please provide name, address, phone number, and account number and a statement that Customer is rescinding under the three (3) days Right of Rescission. Any cancellation after the three (3) day period may be subject to the assessment of early termination fees as described below in this Agreement and specified in Customer's ESA or Disclosure Label. If Customer is enrolled online or electronically via one of CleanSky Energy's sales partners, Customer has consented to be enrolled within twenty-four 24 hours of his or her original authorization.

**Length of Agreement (Term):** This Agreement shall become effective as of the enrollment date and shall commence on the first utility transfer date ("Effective Date") of the service address(es) as specified at the time of enrollment, and continue for the duration of the specified term herein, unless terminated pursuant to the attached Agreement. This Agreement shall remain in effect until the latest date of the final meter read ("Termination Date") of said service address(s) specified herein unless otherwise agreed to by the Parties in writing.

**Contract Expiration Notices:** If Customer has a fixed term contract approaching the expiration date, or whenever we propose to change the Terms of Service for any type of contract, Customer will receive a separate written notification thirty (30) days prior to the contract's expiration date. This notification will explain Customer's options going forward. If Customer selects a new Price Plan after receiving the 'renewal notice' and prior to the expiration of Customer's agreement, Customer's Price Plan will begin the day after the Agreement's expiration.

Following the term of Customer's Agreement, service will continue for successive one (1) month periods on our Variable Price Plan if no alternate option is selected prior to the expiration of the original term. If Customer is currently a CleanSky Energy customer on a month-to-month Variable Price Plan and has selected a new Price Plan, the new plan will become effective within twenty-four (24) hours of Customer's renewed service request. If this new Price Plan becomes effective during the middle of Customer's billing cycle, the next bill may be prorated.

**Pricing.** Customer's specific rate and price plan are disclosed at the time of enrollment or renewal and confirmed in the Disclosure Label or Energy Service Agreement. CleanSky Energy's Price Plans are described below for residential and small commercial customers.

**Fixed Rate Price Plans for Residential Customers:** CleanSky's fixed rate price plans have a term of three (3) or more months. Customer will be billed at the fixed rate for the number for billing cycles as specified by the term of Customer's Agreement. Residential customers will pay the fixed rate per kilowatt-hour as specified at the time of enrollment and confirmed in the Disclosure Label or ESA. Customer will be billed at the fixed rate for the number for billing cycles as specified by the term of in his or her Agreement. Customer may also pay a monthly administrative fee (base fee), the amount of which, if applicable, is disclosed at the time of enrollment in the Disclosure Label or ESA. CleanSky may adjust Customer's fixed price if Customer's meter was not designated as residential upon enrollment, or, if during the term, Customer's meter designation is changed to non-residential.

**Fixed Rate Price Plans for Small Commercial Customers:** A small commercial customer is a non-residential customer that has a peak electricity demand as specified in the utility's tariffs. Customer will be billed at the fixed rate for the number for billing cycles as specified by the term of Customer's Agreement. Small commercial customers will pay the fixed rate per kilowatt-hour as specified at the time of enrollment and confirmed in the Disclosure Label or ESA. Customer will be billed at the fixed rate for the number for billing cycles as specified in the Disclosure Label or ESA. Customer may also pay a monthly administrative fee (base fee), the amount of which, if applicable, is disclosed at the time of enrollment in the Disclosure Label or ESA. CleanSky may adjust Customer's fixed price if Customer's meter was not designated as small commercial upon enrollment, or, if during the term, Customer's meter designation is changed from small-residential.

**Variable Rate Price Plans for Residential and Small Commercial Customers:** The price for the first month of electric supply service under this Agreement is specified in the Disclosure Label or ESA provided either at the time of enrollment or included in the contract expiration notice provided towards the end of Customer's fixed Agreement. The variable, month-to-month, electricity supply price can increase or decrease each month and is set each month at CleanSky's discretion. Contributing data points to the electric variable rate include: the cost of electricity acquired by CleanSky from all sources (including energy, capacity, settlement fees, and ancillary costs) related transmission and distribution charges, renewable-energy compliance charges, and other market-related factors, plus all applicable taxes, fees, charges, and other assessments including CleanSky's costs, expenses, and profit margins. The underlying costs are a derivative of the PJM Energy Market, where no “price ceiling” exists. There is no limit on how much the price may change from one billing cycle to the next. The monthly variable price will be communicated in the monthly invoice from the utility and sent to Customer via email or mail 30 days prior to the Agreement's expiration date. Customer or CleanSky may cancel Variable Price Plan agreements any time without penalty or fee. To obtain CleanSky Energy's average billed pricing since inception, call toll-free at 1-888-355-6205 or go to CleanSkyEnergy.com/variable-rate-history. Historical pricing is not indicative of present or future pricing. A monthly service fee will be applied to all variable rate plans and will be disclosed on your contract summary.

Please note that these prices apply only to the price of electricity supply only, not to the other charges associated with the transmission and distribution of the electricity. Customer's price does not include applicable Massachusetts sales tax or any local tax. Non-recurring fees as charged by the Utility include, but are not limited to, out of cycle meter readings, meter test fees, disconnect and reconnection fees, etc. Customer is responsible to Utility for these other charges relating to the delivery of electricity to Customer's residence or small commercial premise.

**Cancellation and Early Termination Fees:** If this Agreement is terminated prior to the end of the Term, both residential and small commercial customers may pay an early termination fee. The cancellation fee, if applicable, will be specified in Customer's Disclosure Label or Energy Service Agreement.

Customer may cancel this Agreement without penalty any time before midnight of the third business day after the date of enrollment. After such rescission period, Customer may cancel this Agreement at any time by calling CleanSky Energy at 1-888-355-6205, or by sending an email to CleanSky Energy at CustomerCare@CleanSkyEnergy.com, however Customer may be required to pay the early termination fee as specified above. Customer may also cancel this Agreement without penalty if he or she or the small business moves to another location and provides a forwarding address and, if required, reasonable evidence that Customer no longer occupies the service address. If Customer requests to cancel this Agreement, the cancellation may not take effect until the next actual meter read date following the date CleanSky Energy notifies Customer's Utility. Customer will be responsible for all payments due hereunder until the cancellation of electric supply service is completed.

If for any reason CleanSky Energy is no longer able to economically continue this Agreement, CleanSky Energy may terminate this Agreement at any time after complying with applicable regulations. This Agreement may be cancelled at the sole discretion of CleanSky Energy if Customer fails to meet any of the terms and conditions of this Agreement or if any of the information Customer has provided to CleanSky Energy is or becomes untrue. CleanSky Energy will provide you a 30 (thirty) day notice of termination. If this Agreement is canceled, expires, or otherwise terminated, Customer will receive uninterrupted service from the Utility until another provider of electric supply service is designated or service is shut off by the Utility. Only the Utility may shut off Customer's electric power.

**Renewable Energy Price Plans Electricity:** CleanSky purchases and retires Renewable Energy Certificates ("RECs") to offset 100% of Customer's electricity usage. CleanSky's renewable Price Plan rates include a charge for the purchasing of RECs. CleanSky will (directly or indirectly) retire, on Customer's behalf, non-certified RECs resulting from electricity generated from renewable energy sources, which may include solar, wind, hydro, or any other zero-emission source. CleanSky guarantees our Customer's electricity usage is offset with a direct investment in 100% RECs in an amount sufficient to match Customer's annual consumption from the Electric Distribution Company ("EDC"). Each REC represents proof that 1 megawatt-hour (MWh) of electricity was generated from an eligible renewable energy resource to the grid. Customer will not have electricity from a specific generation facility or renewable energy source delivered directly to Customer's meter. CleanSky may take up to three (3) months after the end of the calendar year to retire RECs needed to fulfill the obligations of this product. CleanSky will not be liable to Customer or other parties for advertising assertions associated with CleanSky's renewable offers. CleanSky does not own, and we are neither a subsidiary nor affiliate to any coal, oil, gas, or nuclear generation facility.

**Billing and Payment:** Customer will receive one bill ("Utility Consolidated Billing")) from the applicable EDC which includes CleanSky Energy's generation supply charges as well as the EDC's delivery charges. Depending on the selected Price Plan, Customer may receive two (2) separate bills ("Supplier Billing" or "Dual Billing"), one bill from CleanSky Energy for Customer'ssupply charges, and one bill from the Utility forthe delivery charges. In both cases, CleanSky's fees will be reflected separately as itemized charges on Customer's invoice. CleanSky Energy's fees will be reflected separately as itemized charges on Customer's invoice. Customer bill is subject to adjustment for any missed billing or computation errors, such as meter misreads. Customer's payment will be due to the EDC by the date specified on the invoice. Except as otherwise provided in this Agreement or by law, Customer shall pay all taxes of any kind, nature and description, due and payable with respect to Customer's performance of its obligations under this Agreement. CleanSky may terminate the contract and transfer Customer back to the Utility on at least fourteen calendar days written notice if Customer fails to pay the bill or fails to meet any agreed-upon payment arrangements. CleanSky reserves the right to assume the billing function for its services. If Customer's Supply service with CleanSky is terminated for non-payment, Customer must pay balance owed, plus any collection fees including all legal fees and costs. 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. If applicable, CleanSky Energy will deliver monthly invoices to residential and small commercial customers in electronic format via email, to the email address specified at the time of enrollment or in the Energy Service Agreement, or to such other email address as you direct in writing. Upon written request, Customer may receive an invoice in paper format via US Mail at Customer's designated billing address.

**Material Change:** This may occur if: a) If the customer uses 20% more ("Material Change") than weather normalized historical usage for a month, the kilowatt hours that fall outside the normal usage component is potentially charged at the RT weighted average price. The weighted average is found using the RT LMP price for the zone of the account and the load profile. If a full year of historical usage is not available, the usage may be determined by CleanSky based on a reasonable estimate. b) If Customer anticipates any change in operations at any Customer Account that may result in a Material Change then Customer must notify CleanSky promptly but no later than 60 days before the anticipated change in operations. At any time after receiving customer's notice of an anticipated Material Change, CleanSky may notify Customer in writing (the "Notification Letter") of adjusted Energy Charge (other than Index Energy Charge) and EMS Fee. Customer may accept the adjusted quantity and price by signing the Notification Letter and returning it to CleanSky within five Business Days of the Notification Letter date. Once accepted, the adjusted Energy Charge, and EMS Fee will be effective on the first Meter Read Date after the expiration of that five Business Day notice period. If Customer does not timely sign and return the Notification Letter, then the Energy Charge, and EMS Fee will not be adjusted and CleanSky may terminate this Agreement as of a specified termination date upon at least five business days' notice to Customer. If CleanSky terminates this Agreement, then Customer will pay CleanSky an ETF and pay CleanSky timely for all charges for electricity sold until each customer account is switched. Any election by CleanSky not to exercise its rights hereunder will not preclude CleanSky's exercise of those rights at a later date.

**Complaints and Dispute Resolution:** Customers may submit a complaint via email to CustomerConcerns@CleanSkyEnergy.com, or verbally by calling 1-888-355-6205 Monday-Friday, 9 a.m.– 7 p.m., EST Saturday 10 a.m.– 2 p.m., EST. Customers with questions or disputes with their bill should contact CleanSky's customer service to assist. If Customer cannot resolve the problem with CleanSky, Customer can file a complaint with the DPU. If Customer's service has been shut off, or is about to be shut off, Customer should call the DPU directly at (617) 737-2836 or toll free at (877) 886-5066.

**Energy Assistance Programs:** Your EDC may offer budget, levelized, or other payment plans. Your EDC may also offer low-income discount rates to eligible customers. Contact your EDC for eligibility requirements and an application. LIHEAP helps low-income individuals and families with the cost of heating their homes during the winter season. For more information, Customer should call the state hotline for social service programs by dialing 211 or (800) 632-8175 or visit the LIHEAP website https://www.mass.gov/service-details/learn-about-low-income-home-energy-assistance-program-liheap.

**Budget Billing:** CleanSky's budget billing allows Customers to pay approximately the same monthly amount for electric service, subject to a semiannual adjustment based on actual consumption. Budget billing may be available to Customers who are not delinquent at the time of enrollment onto the billing option. CleanSky may charge or credit any cumulative balance, as appropriate, at least once every 12 months. CleanSky may collect under-recovered costs and/or refund any over-recovered amounts from Customer annually or upon termination of service to the Customer.

**Credit and Deposits:** If CleanSky Energy is ever required to bill Customer directly, CleanSky reserves the right to determine if Customer's credit standing is satisfactory for originating or continuing electricity supply service under this Agreement. If CleanSky determines, in its sole reasonable discretion, that Customer's creditworthiness has become unsatisfactory, CleanSky may require Customer to provide collateral in the form of cash or other security in form and amount acceptable to CleanSky. Consistent with applicable law, CleanSky Energy uses uniform income, deposit and credit requirements in determining whether to offer service to its Customers. CleanSky Energy will not require a deposit which exceeds the greater of (i) the sum of the estimated billings for the next three months, or (ii) one-fourth of Customer's estimated annual billing. Deposits will be held in separate interest-bearing accounts. CleanSky will remit to Customer interest earned on his or her deposit when it is returned to Customer or credited to Customer's account. If a deposit is refunded within 30 days of the date of deposit, no interest payment will be paid. If CleanSky keeps the deposit for more than 30 days, payment of interest will be made retroactive to the date the deposit was received by CleanSky. The deposit will cease to draw interest on the date it is returned or credited to Customer's account. Customer deposits held by CleanSky Energy will be refunded to Customer as an invoice credit if no late payments have been applied to Customer's account after twelve (12) consecutive months.

**Customer Protections:** Massachusetts Department of Public Utilities. Department of Public Utilities Regulations are found in Title 220 of the Code of Massachusetts Regulations(220 CMR). Competitive Suppliers also are subject to the Massachusetts Attorney General's Retail marketing and sale of electricity regulations (940 CMR 19.00 etseq), the Office of Consumer Affairs and Business Regulation's Massachusetts Do Not Call registry, and Clean energy standard (310 CMR 7.75 et seq), a regulation from the Department of Environmental Protection Regulations.

**Massachusetts Department of Public Utilities**
One South Station, 5th floor,
Boston, MA 02110
617-305-3500

**Customer Information and Authorization:** In accordance with 220 CMR 11.05(4)(c), Customer authorizes CleanSky Energy to obtain information from the utility, including account information, historical and future electric consumption, rate classification, meter readings, characteristics of electric service, and billing and payment information. This authorization will remain in effect during the Term and any renewal term of this Agreement. Acceptance of this Agreement is an authorization for the release of the information. By providing telephone numbers, including wireless and work numbers to CleanSky, Customer expressly consents to being contacted at those numbers by CleanSky or a party calling on behalf of CleanSky for any purpose related to Customer's account, or future possible goods or services, including debt-collection, by a live person, pre-recorded voice, and/or automated dialing. If Customer has utilized an agent or broker to contract energy purchases from CleanSky Energy, Customer authorizes CleanSky to disclose to the agent or broker information pertaining to Customer's electric purchases as applicable. Customer (and Customer's signatory, if signatory is noted as Customer's spouse/civil union partner) agree to CleanSky obtaining a credit report and investigating Customer's (and, if applicable, signatory's) credit rating, credit history and Utility bill payment status and history. CleanSky is not obligated to accept, or continue performing, this Agreement if Customer does not meet CleanSky's credit requirements.

**Written Notice and Electronic Disclosure Authorization:** Written notice includes, but is not limited to, notice by electronic mail to a valid email address provided by Customer. If Customer is enrolling or renewing electronically, Customer is consenting to electronic receipt of all the required disclosures provided during the enrollment process, like the Disclosure Label, ESA, and Terms of Service, and monthly billed invoices as applicable. Customer must have a valid email address and is obligated to keep CleanSky Energy informed of any changes to the email address provided during enrollment or renewal, or any changes or withdrawal of consent for the electronic transmission of customer disclosures.

**Changes to Terms of Service.** These Terms of Service may be amended by CleanSky at any time, except that CleanSky may only change the price and Term as specified previously herein. CleanSky will provide written notice to Customer at least thirty (30) days in advance of the date that the change to this Agreement will be applied to the Customer's bill or take effect unless the change benefits Customer. CleanSky is not required to provide notice automatically for material changes that benefit the Customer but will, upon request, provide each document to Customer at any time free of charge. Upon receipt of written notice of a material change, Customer may terminate this Agreement without being assessed an early termination or cancellation fee within thirty (30) calendar days after the date of the notice, unless such change favors Customer.

**Rewards and/or Incentives Programs:** For purposes of receiving any rewards, bonuses and/or incentives, active accounts are defined as those (i) that are billing more than $0 and (ii) for which CleanSky has not received a request to discontinue (drop) service or change programs and (iii) are in good standing (no past-due balance owed) during the minimum required number of days stated in the offer. Rewards and/or incentives are also subject to any terms and conditions stated in the offer and as may be located on CleanSky's website(s). More information on the terms and conditions of any reward and/or incentive programs are available by calling 1-888-355-6205. CleanSky reserves the right to disqualify any account holder from participation in rewards and/or incentives programs.

**Force Majeure:** If CleanSky is rendered unable to perform, in whole or in part, by a Force Majeure event, its performance under this Agreement will be excused for the duration of such event. CleanSky will take all reasonable steps to remedy the effect of the Force Majeure event. “Force Majeure” means any act or event that is beyond the reasonable control of CleanSky that adversely affects, interrupts, or precludes its performance. In addition, acts of other parties, including the utilities in Massachusetts, New England ISO, aggregators, other suppliers, scheduling entities and agents, and the respective employees and agents of such parties, will also be deemed to be events of Force Majeure.

**Governing Law:** This Agreement shall be governed by and construed, enforced and performed in accordance with the laws of the State of Texas and venue shall be in Harris County, Texas. The provisions of the Uniform Commercial Code (UCC) shall apply to this Agreement, and electricity shall be a "good" for purposes of the UCC.

**Assignment:** This Agreement shall be binding upon and inure to the benefit of, and may be performed by the successors and permitted assigns of the Parties except that no assignment, pledge or other transfer of this Agreement by either Party shall operate to release the assignor, pledgor, or transferor of any of its obligations under this Agreement. Notwithstanding any other provision of this Agreement, Customer agrees that CleanSky Energy shall have the right to pledge this Agreement to its bank or other lending institution(s) and to assign this Agreement, together with all rights and obligations hereunder, to Company's electricity supplier, or such supplier's designee. CleanSky will inform customer 30 days prior to any assignment of the account. Nothing in this provision shall deny CleanSky or Customer of any benefits obtained, or relieve them of any obligations, duties, and responsibilities incurred, prior to any assignment under this provision.

**No Waiver:** Any failure by CleanSky to enforce any term or condition of Customer's electric service or otherwise exercise any right it may have under this Agreement will not be deemed a waiver of any rights to thereafter enforce any or all of the terms or conditions of Customer's service or to exercise rights under this Agreement.

**Mandatory Arbitration:** Any claim, dispute or controversy, regarding any contract, tort, statute, or otherwise ("Claim"), arising out of or relating to this Agreement or the relationships among the parties hereto shall be resolved by one arbitrator through binding arbitration administered by the American Arbitration Association ("AAA") under the AAA Commercial or Consumer rules, as applicable, in effect at the time the Claim is filed ("AAA Rules"). Copies of the AAA Rules and forms can be located at www.adr.org, or by calling 1-800-778-7879. The arbitrator's decision shall be final, binding, and non-appealable. Judgment upon the award may be entered and enforced in any court having jurisdiction. This clause is made pursuant to a transaction involving interstate commerce and shall be governed by the Federal Arbitration Act. Neither party shall sue the other party other than as provided herein for enforcement of this clause or of the arbitrator's award; any such suit may be brought only in Federal District Court for the district in which Customer is located, or if any such court lacks jurisdiction, in any state court that has jurisdiction. The arbitrator, and not any federal, state or local court, shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, unconscionability, arbitrability, enforceability or formation of this Agreement including any claim that all or any part of the Agreement is void or voidable. However, the preceding sentence shall not apply to actions contemplated in section entitled "Class Action Waiver" below.

**Class Action Waiver:** Any Claim permissible herein must be brought in the party's individual capacity, and not as a plaintiff or class member in any purported class, collective, representative, multiple plaintiff, or similar proceeding ("Class Action"). Each of the parties expressly waives any ability to maintain any Class Action in any forum. The arbitrator shall not have authority to combine or aggregate similar claims or conduct any Class Action nor make an award to any entity or person not a party to the arbitration. Any claim that all or part of this Class Action Waiver is unenforceable, unconscionable, void, or voidable may be determined only by a court of competent jurisdiction and not by an arbitrator. THE PARTIES UNDERSTAND THAT THEY WOULD HAVE HAD A RIGHT TO LITIGATE THROUGH A COURT, TO HAVE A JUDGE OR JURY DECIDE THEIR CASE INDIVDUALLY OR TO BE PARTY TO A CLASS OR REPRESENTATIVE ACTION, HOWEVER, THEY UNDERSTAND AND CHOOSE TO HAVE ANY CLAIMS DECIDED INDIVIDUALLY THROUGH ARBITRATION.

**Warranties:** CLEANSKY ENERGY MAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESSED OR IMPLIED, WITH REGARD TO THE PROVISION OF ELECTRIC SERVICE AND DISCLAIMS ANY AND ALL WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE.

**Limitation of Liability:** Customer will be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of the electric power after receipt at the delivery point or points. CLEANSKY ENERGY WILL NOT BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES (INCLUDING LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES), WHETHER BY STATUTE, IN CONTRACT OR TORT, EVEN IF THE RESULT OF NEGLIGENCE (WHETHER SOLE, JOINT, CONCURRENT, ACTIVE OR PASSIVE). ALL OTHER LIABILITY WILL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, AND SUCH DIRECT ACTUAL DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY. CUSTOMER HEREBY WAIVES ALL OTHER REMEDIES AT LAW OR IN EQUITY. THERE ARE NO THIRD-PARTY BENEFICIARIES TO THIS AGREEMENT. To the extent any damages required to be paid hereunder are liquidated, the parties acknowledge that the damages are not intended and shall not be construed as a penalty, such damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient or impossible, and that the liquidated damages constitute a reasonable approximation of the harm or loss.