



Welcome to MP2 Energy Texas

PUCT License: #10174

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Email: customerservice@mp2energy.com

Hours of Operation: 7am – 6pm (Mon-Fri),
Central Time

Postal Mail: 24 Waterway Ave, Suite 625
The Woodlands, TX 77380

Telephone: 832-239-5225

Toll Free: 1-877-238-5343

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Terms of Service Agreement

All Residential Price Plans

This Terms of Service Agreement (“Agreement”), including the attachments entitled: “Electricity Facts Label” (“EFL”), and “Your Rights as a Customer” sets forth the terms and conditions under which a residential customer (“Customer”) will receive electric service from MP Energy Texas LLC, (“MP2 Energy Texas”) a certified Retail Electric Provider (REP) in the state of Texas, Public Utility Commission of Texas (“PUCT”) Certificate No. 10174. By executing this Agreement, Customer hereby: 1) appoints MP2 Energy Texas to arrange for purchase and delivery of electricity (including volume balancing, and billing) from any source on Customer’s behalf for the Initial Term as defined in this Agreement; and 2) Customer requests that all electric service associated with Customers name and/or address or electric service identifiers (“ESIIDs”) be transferred to MP2 Energy Texas under this Agreement. A copy of this Agreement is available to Customer upon request. Please retain this Agreement for your records.

Customer Information: By entering into this Agreement, Customer authorizes its local

Transmission Distribution Service Provider (“TDSP”) to release to MP2 Energy Texas certain information required to provide Customer with electric service, including, but not limited to: Customer’s address, account numbers, and historical usage information.

1. **Term:** The term of this Agreement shall commence on the first meter read date (“Effective Date”) following your enrollment date as determined from the Customer selection on the online signup form and continue through the term of your applicable plan.

2. **Pricing:** The applicable EFL listed in the table below outlines the prices for electric service covered by this Agreement. For terms other than 1 month, the energy rate as noted in the applicable EFL is fixed and will not change during the life of the contract. However MP2 Energy Texas reserves the right to change other portions of your bill based on changes in TDSP charges, sales taxes, reimbursed taxes, law or regulatory rules, which are all passed through at cost.

Plan Name	Term
MP2 Advantage One-Year	12 months
MP2 Advantage Two-Year	24 months
MP2 Advantage Monthly	1 month

MP2 Energy Texas will invoice Customer for each location under this Agreement on a monthly basis, or as mutually agreed upon by MP2 Energy Texas and Customer, which shall not be less frequent than monthly.

The invoice shall consist of the following components:

- a. Energy cost per kWh as specified in this Agreement multiplied by the energy consumption at the service location(s) as provided by the TDSP measured in kWh and billed in US dollars. This energy cost per kWh does not include items b through e of this Section which will be billed as separate line items;
- b. TDSP charges (or credits) attributable to your ESIID(s),
- c. Regulatory charges/assessments and taxes including Sales and Use Tax, Miscellaneous Gross Receipts Tax

(MGRT), and PUC Assessments (PUCA) attributable to or incurred as a result of your ESIID(s);

- d. Late fees, insufficient fund fees or any additional charges that are authorized in this Agreement.
- e. Non-Recurring Fees are charged by your TDSP and passed through to you at cost. These fees are imposed by your respective TDSP, and are uniform amongst all REP's. The following are Non-Recurring Fees: Move In, Install, Priority Move In, Reread, Off Cycle, Disconnection Fee, Reconnection Fee, Priority Reconnection Fee, Weekend Reconnection Fee, and Meter Test.

3. **Early Termination Fee:** If a early termination fee is noted in the applicable EFL, then you agree to pay such fee upon termination. The fee does not apply if you move to another address and if requested by MP2 Energy Texas, provide reasonable evidence that you no longer occupy the residence under contract. Upon termination, your obligation under this Terms of Service Agreement is satisfied when your account balance and termination fee is paid in full.

4. **Expiration:** A contract expiration notice will be sent at least 14 days before the end of you contract term. If you take no action to terminate your initial contract, we will continue to serve you electricity on a monthly basis under the then prevailing rates of our MP2 Advantage Monthly variable rate plan until you cancel and switch to another provider, enroll in another MP2 Energy Texas plan offering or we terminate or disconnect your service. Your obligation under this Terms of Service Agreement is satisfied when your account balance is paid in full.

5. **Early Terminations:** In the event that MP2 Energy Texas, or its activities hereunder, become subject to regulations of any kind whatsoever under any law to a greater or materially different extent than that existing on the Effective Date then such regulation renders this Agreement unenforceable or illegal.

6. **Right of Rescission:** If you are switching service to MP2 Energy Texas from another REP, you may cancel this agreement without penalty or fee within the first 3 federal business days after the date of your

authorization of this Agreement by contacting MP2 Energy Texas. You may cancel this agreement by:

- a. Calling us at the 832-239-5225 or 1-877-238-5343;
- b. Sending us a fax at 832-813-8643; or,
- c. Sending us an email at customerservice@mp2energy.com no later than midnight of the 3rd federal business day.

When contacting us to exercise your right of rescission, please have available or include in email your name and service address and your MP2 Energy Texas account number.

7. **Low Income Rate:** The discounted rates through the LITEUP program were discontinued August 31, 2005 then reinstated by the Texas Legislature effective July 1, 2007. Please contact a LITEUP Texas Representative toll free at 1-866-454-8387 (866-4LITEUP) to learn how to qualify for this program or with any questions you have.

8. **Material Changes by MP2 Energy Texas:** MP2 Energy Texas reserves the right to modify or terminate these terms of service, without penalty, in response to new or changed law, rule, tariff, regulation, procedure or protocol, or interpretation thereof. Should MP2 Energy Texas LLC make a material change or modification to these terms of service, you will be notified 15 days in advance of such change or modification. Upon receiving this notice, you have the right to choose another REP. If you do not choose another REP before the effective date of the change, MP2 Energy Texas will continue to serve you under the modified terms. MP2 Energy Texas may terminate your service without penalty in response to changing market conditions upon proper notice. Such notice may be provided either in Customer's invoice or in a separate mailing.

9. **Denial of Meter Access:** In the event the customer receives any "Denial of Meter Access" issues from the Local Utility, MP2 Energy Texas will provide the customer with a notice of such "Denial of Meter Access" issue(s). MP2 Energy Texas will provide the customer with the first notice free of any administration charge. If the client receives two or more consecutive "Denial of Meter

Access" issues from the Local Utility, MP2 Energy Texas will charge the customer an administrative fee in the amount of \$4.95 for the second and third consecutive notice.

10. Invoicing, Payment, Interest, and Credit Requirements: Customer will receive a monthly invoice from MP2 Energy Texas. All bills are due and payable 16 (sixteen) calendar days from the billing date on the invoice. Invoices shall be deemed past due and delinquent at the close of business on the day the invoice is due. Late payments, delinquent or past due balances will result in a penalty equal to 4% of the month's past due amount. Customer must provide to MP2 Energy Texas written notice setting forth in particular detail any disputed amount, including the calculations with respect to any errors or inaccuracies claimed. If it is subsequently determined that Customer owes MP2 Energy Texas portion of the disputed amount, Customer shall remit to MP2 Energy Texas within 5 (five) business days following such resolution the outstanding balance. Any amounts that may have been overpaid or underpaid shall be applied to the next monthly invoice. Customer is responsible for all applicable federal, state and local taxes and charges. If Customer is tax exempt, it is Customer's responsibility to provide MP2 Energy Texas with the necessary tax exemption certificate. MP2 Energy Texas reserves the right to include in any subsequent invoice, adjustments related to previous invoices, previous invoicing errors, meter read errors, miscalculation of taxes or other errors or omissions. MP2 Energy Texas reserves the right to automatically charge a customer's credit/debit card and/or checking account for any unpaid balances that are deemed past due and/or in collection status. If the account is referred to a collection company, MP2 Energy Texas reserves the right to bill a fee not to exceed 33% of the amount being collected. If the account is referred for legal actions, any and all attorney fees and court costs will be billed to the customer.

11. Invoice Payment Assistance: An energy assistance program is available to Customers who have severe financial hardships and temporarily may be unable to pay their bills. The program is funded in part

by contributions from MP2 Energy Texas customers. Please call 832-239-5225 or 877-238-5343 for additional information. If Customer has special needs that require Customer to be dependent on electrical equipment or power medical equipment it is Customer's responsibility to advise MP2 Energy Texas in writing upon application for service.

12. Application of Payments: If either principal or late fee is due, any payment thereafter received shall be applied in the following order of priority:

- a. to the late fee due,
- b. the previously outstanding principal due, and
- c. to the most current principal due. In the event of a returned payment because of insufficient funds as a result of the Customer attempting to remit payment, Customer shall pay a \$40.00 (forty dollar) returned payment fee per incident. Non payment of Customer's MP2 Energy Texas invoice may result in the above listed late payments as well as termination of Customer's MP2 Energy Texas service. MP2 Energy Texas will notify Customer 10 (ten) calendar days prior to termination of this Agreement for non payment.

13. Disconnection of Service: The PUC has provided that, under certain dangerous circumstances (such as unsafe electric line situations), any REP may authorize your TDSP to disconnect your electric service without prior notice to you. Additionally, MP2 Energy Texas may seek to have your electric service disconnected for any of the reasons listed below: (1) failure to pay a bill owed to MP2 Energy Texas, or to make a deferred payment arrangement by the date of disconnection; (2) failure to comply with the terms of a deferred payment agreement made with MP2 Energy Texas; (3) using service in a manner that interferes with the service of others or the operations of nonstandard equipment; (4) failure to pay a deposit required by MP2 Energy Texas; or (5) failure of the guarantor to pay the amount guaranteed when MP2 Energy Texas has a written agreement, signed by the guarantor, which allows for disconnection of the guarantor's service. Prior

to disconnecting your service, MP2 Energy Texas must provide you a Disconnection Notice. This notice must be mailed to you separately no earlier than the first day after the date your bill is due. The disconnection date must be 10 days from the date the notice is issued and may not fall on a holiday or weekend or the day preceding unless personnel are available to take payments and service can be reconnected. Additionally, MP2 Energy Texas may not disconnect your electric service: if it receives notification by the disconnection date that an energy assistance provider will be forwarding sufficient payment on your account; for nonpayment during an extreme weather emergency and must offer you a deferred payment plan for bills due during the emergency; or for nonpayment if you inform MP2 Energy Texas, prior to the disconnection date stated on the notice, that you or another resident on the premises has a critical need for electric service. However, to obtain this exemption, you must enter into a deferred payment plan with MP2 Energy Texas and have the ill person's attending physician contact MP2 Energy Texas and submit a written statement attesting to the necessity of electric service to support life. This exemption from disconnection due to illness or disability shall be in effect for 63 days and may be applied for again after the 63 days has expired and the deferred payment plan has been fulfilled. MP2 Energy Texas shall charge Customer a fee of \$25.00 (Twenty Five dollars) for each disconnection request sent to the TDSP.

14. Payment Terms for Restoration of Service: If your service has been disconnected by MP2 Energy Texas for non-payment, full payment for the disconnect amount plus any applicable reconnect fees are due payable prior to issuance of any and all reconnect orders. Payments may be made by phone to MP2 Energy Texas during normal business hours (Monday – Friday 7:00 am to 6:00 pm) or online at www.mp2energy.com. SERVICE MAY BE DISCONNECTED AGAIN WITHOUT NOTICE FOR ANY RETURNED PAYMENTS. A security deposit or additional deposits may be required on accounts that have been disconnected. Please allow 24 to 48 hours for completion of reconnect orders.

15. Restoration of Service: If your

service has been disconnected by MP2 Energy Texas for nonpayment, MP2 Energy Texas will, upon satisfactory correction of the reasons for the disconnection, notify your TDSP to reconnect your service. MP2 Energy Texas will continue to serve you under the Terms of Service in effect prior to issuance of the Disconnection Notice. If your service was disconnected due to a dangerous situation, your service will be reconnected once you notify your REP that you have corrected and satisfactorily resolved the dangerous situation. MP2 Energy Texas shall charge Customer a fee of \$25.00 (Twenty Five dollars) for each request to reconnect your service.

16. Customer Acknowledgements: Customer acknowledges that MP2 Energy Texas' ability to invoice Customer depends on the TDSP's ability to furnish MP2 Energy Texas with all necessary information including meter readings or recorded data, as applicable. In the absence of such information from the TDSP, MP2 Energy Texas may invoice Customer based on estimated meter reading according to the Customers historical usage. As soon as practical, and after receipt of actual Customer's energy consumption from the TDSP, MP2 Energy Texas will reconcile on the next invoice any difference(s) between estimated and actual consumption charges.

17. Credit Requirements: MP2 Energy Texas may investigate the Customer's credit profile and history. MP2 Energy Texas may refuse service to anyone who does not meet the Company's risk standards or if Customer cannot demonstrate satisfactory credit. MP2 Energy Texas may refuse to provide service to a Customer for one or more of the reasons specified in Section 25.477 of the PUCT rules and regulations

(<http://www.puc.state.tx.us/rules/subrules/electric/index.cfm>). MP2 Energy Texas will not use a credit score, a credit history, or utility payment data as the basis for determining the price for electric service for a product with a contract term of 12 months or less.

18. Deposits: For new residential Customers under the age of 65 (sixty-five) years, MP2 Energy Texas may require a deposit, which sum shall not exceed an amount equal to the greater of one fifth of the estimated annual billing or; the sum of the estimated billings for the next 2 (two) months.

Applicants 65 (sixty-five) years of age or older who are not currently delinquent in payment of any electric service account are deemed as having established satisfactory credit. A residential customer or applicant may be deemed as having established satisfactory credit if the customer or applicant has been determined to be a victim of family violence as defined in the Texas Family Code §71.004 (<http://www.statutes.legis.state.tx.us/Docs/FA/htm/FA.71.htm>), by a family violence center or by treating medical personnel. This determination shall be evidenced by submission of a certification letter developed by the Texas Council of Family Violence. A residential customer or applicant seeking to establish service may be deemed to have established satisfactory credit if the Customer is medically indigent. In order for a Customer or applicant to be considered medically indigent, the Customer or applicant must make a demonstration that the following criteria are met. Such demonstration must be made annually: (i) the Customer's or applicant's household income must be at or below 150% of the poverty guidelines as certified by a governmental entity or government funded energy assistance program provider; and (ii) the Customer or applicant or the spouse of the Customer or applicant must have been certified by that person's physician as being unable to perform three or more activities of daily living as defined in 22 TAC §224.4 ([http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac_view=4&ti=22&pt=11&ch=224&rl=Y](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=4&ti=22&pt=11&ch=224&rl=Y)), or the Customer's or applicant's monthly out of pocket medical expenses exceeds 20% of the household's gross income. If a Customer or applicant qualifies for the rate reduction program under §25.454 (<http://www.puc.state.tx.us/rules/subrules/electric/index.cfm>) of the PUCT guidelines, then such Customer or applicant shall be eligible to pay any deposit that exceeds \$50.00 (fifty dollar) in two equal installments. The first installment shall be due no sooner than ten (10) days, and the second installment no sooner than forty (40) days, after the issuance of written notification to the applicant of the deposit requirement. Deposits may be waived or refunded with a valid letter of credit for electric services received at the address and

account name supplied on this application. Deposits held more than thirty (30) days will accrue interest from the date of receipt at the annual rate established by the PUCT. Accrued interest will be applied annually to Customer's account. Upon termination of service or after twelve (12) months of service with no late payments, MP2 Energy Texas will apply the deposit plus accrued interest, if any, against Customer's account or outstanding balance on Customer's final bill. Any credit balance remaining on an inactive account after the final bill will be refunded in the form of a company check and will be mailed within thirty (30) calendar days.

19. **Event of Default:** An Event of Default occurs upon:

- a. Failure of Customer to pay amounts due under this Agreement;
- b. Failure of either Party to perform a material term of this Agreement;
- c. Determination that any material representation upon which this Agreement is based is false; or
- d. Immediately after filing of bankruptcy by either Party.

20. **Remedies upon an Event of Default:**

If Customer defaults, for reasons other than non-payment, and fails to cure within five (5) days of written notice or it terminates early, MP2 Energy Texas may terminate this Agreement and in good faith calculate the amounts due under this Agreement and the customer will pay those amounts within five (5) days from the date of invoice.

21. **Representations and Warranties:** As a material inducement to entering into this Agreement, each Party, with respect to itself, hereby represents and warrants to the other Party as follows:

- a. This Agreement constitutes a legal, valid, and binding obligation of such Party enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization, and other laws affecting creditor's rights generally, and with regard to equitable remedies, subject to the discretion of the court before which proceedings to obtain same may be pending;

- b. It has knowledge and experience in business matters that enable it to evaluate the merits and risks of entering into this Agreement;
- c. The electricity sold under this contract will be supplied by a variety of sources of generating sources including nuclear, coal, gas, wind and solar. If you elect to purchase a plan that includes Renewable Energy we will commit that the appropriate amount of Renewable Energy Credits (RECs) are retired. Precise Renewable Generating sources are not included in our Renewable Energy products, but you are supporting Renewable Energy Generation sources through the retirement of RECs.

22. **Forward Contract:** MP2 Energy Texas and Customer acknowledge and agree that the transactions contemplated by this Agreement constitute "forward contracts" within the meaning of the United States Bankruptcy Code.

23. **Assignment:** Customer shall not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of MP2 Energy Texas, which consent may not be unreasonably withheld. Notwithstanding the foregoing, MP2 Energy Texas may, without the consent of Customer:

- a. Transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements;
- b. Transfer or assign this Agreement to its affiliate; or
- c. Transfer or assign this Agreement to any person or entity succeeding to all or substantially all of its assets.

24. **Binding Effect:** This Agreement shall inure to the benefit of, and be binding upon, MP2 Energy Texas and Customer and their respective successors and permitted assigns.

25. **Force Majeure:** If MP2 Energy Texas is unable to perform, in whole or in part, by a Force Majeure event such as but not limited to, an act of God, act of the public enemy, war, terrorism, insurrection, riot, fire,

explosion, labor disturbance or strike, wildlife, unavoidable accident, equipment or material shortage, breakdown or accident to machinery or equipment, or good faith compliance with a then valid curtailment, order, regulation or restriction imposed by governmental, military, or lawfully established civilian authorities, failure of a TDSP and/or ERCOT, including any order or directive of ERCOT, then its performance under this Agreement will be excused for the term of such event.

26. LIMITATION OF REMEDIES, LIABILITY AND DAMAGES: MP2 ENERGY TEXAS AND CUSTOMER CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF, FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF MP2 ENERGY TEXAS AND THE CUSTOMER THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, MP2

ENERGY TEXAS AND CUSTOMER ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE. OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

27. **Dispute Resolution:** MP2 Energy Texas and Customer agree in good faith to attempt to resolve any contractual disputes within 30 (thirty) days of written notice of the dispute from either party.

28. **UCC:** Except as otherwise provided for in this Agreement, the provisions of the Uniform Commercial Code ("UCC") of Texas (<http://www.sos.state.tx.us/ucc/index.shtml>), whose laws shall govern this Agreement, shall be deemed to apply to this Agreement and Energy shall be deemed a "good" for purposes of the UCC.

29. **Warranty Disclaimer:** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT MP2 ENERGY TEXAS EXPRESSLY NEGATES ANY OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATION OR WARRANTY WITH RESPECT TO CONFORMITY TO MODELS OR SAMPLES, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE.

30. **Notices:** Notices shall be furnished electronically via e-mail and/or fax. If to MP2 Energy Texas, send e-mail to customerservice@mp2energy.com or fax to 832-813-8643. If to Customer, the e-mail address and/or fax number provided during the electronic signup and agreement acceptance process will be used. Customer agrees to maintain the e-mail address/fax number provided during signup, or notify

CostPlus Energy of an alternative e-mail/fax.

31. **Governing Law:** THIS AGREEMENT AND THE RIGHTS AND DUTIES OF MP2 ENERGY TEXAS AND CUSTOMER HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAWS. VENUE SHALL BE IN MONTGOMERY COUNTY, TEXAS.

32. **NonWaiver:** No waiver by any Party hereto of any one or more defaults, by the other Party in the performance of any of the provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature.

33. **Severability:** Except as otherwise stated herein, any provision or article declared or rendered unlawful by a court of law or regulatory agency with jurisdiction over MP2 Energy Texas or Customer, or deemed unlawful because of a statutory change, will not otherwise affect the lawful obligations that arise under this Agreement.

34. **No Third Party Beneficiaries:** Subject to the provisions above under "Assignment," nothing in this Agreement shall provide any benefit to any third party nor shall it provide any third party any claim, cause of action, remedy or right of any kind.

35. **Discrimination:** MP2 Energy Texas does not discriminate, deny service, or require a prepayment or deposit for service based on a Customer's race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, level of income, disability, familial status, location in an economically distressed geographic area, or qualification for low income or energy efficiency services.

36. **Offer and Acceptance:** MP2 Energy Texas extended the offer for provision of electric service under the terms of this Agreement to Customer electronically through one or more of its websites. The actual Agreement was e-mailed to Customer using the e-mail address provided during the electronic signup process.