

Customer Initials: **WDW**☐ Single Retailer Billed ☒ Single Utility Billed ☐ Dual Billed REF ID:   
☒ Appointment ☐ Door to Door (TPV Required) ☐ Phone Contact (TPV Required)**NON-MASS MARKET ELECTRICITY AND/OR NATURAL GAS SALES AGREEMENT – NEW YORK**

New <input checked="" type="checkbox"/> Renewal <input type="checkbox"/>		<b>CUSTOMER INFORMATION</b>				Custom Price <input checked="" type="checkbox"/> Matrix Price <input type="checkbox"/>	
Customer Name: API Heat Transfer Inc							
Tax Exempt: <input type="checkbox"/> Yes <input type="checkbox"/> No		Tax Exempt #:		<input type="checkbox"/> US Mail bills (dual bill only). Unless this box is checked, all bills will be sent via email.			
Natural Gas Rate	Term Months	Start Date:	Gas Product:	Gas Price:	Gas UOM:		
Electric Rate	Term Months 24	Start Date: 02/01/2023	Electric Product: Fixed	Electric Price: 0.056500	Electric UOM: kWh	Electric Green %	

**CUSTOMER DISCLOSURE STATEMENT**

Price	Fixed, NYMEX+, Electric Index + or Variable
How Price is Determined	<p><b>Electric:</b> Fixed, Electric Index + or Variable Price per the UOM as indicated above <input type="checkbox"/> (Does not include Gross Receipts Tax if box is checked)</p> <p><b>Gas:</b> Fixed, NYMEX+ or Variable Price per the UOM as indicated above <input type="checkbox"/> (Does not include Line Losses if box is checked)</p> <p><b>Gas Variable Price</b> shall reflect each month the cost to Marathon to obtain natural gas on your behalf, including, but not limited to, commodity, fuel losses, term capacity, storage, balancing, and transportation to the Delivery Point, plus all fees, applicable taxes, charges, or other assessments, and Marathon's costs, expenses, and profit margins. Weather patterns may cause increases in the variable rate.</p> <p><b>Electric Variable Price</b> shall reflect each month the cost to Marathon to obtain electricity on your behalf, including, but not limited to, energy, UFE losses, capacity, balancing, settlement, ancillaries, and related transmission and distribution charges, and other market-related factors, plus all fees, applicable taxes, charges, or other assessments, and Marathon's costs, expenses, and margins.</p> <p><b>NYMEX+ Pricing:</b> shall reflect each month a floating price that may vary based on the monthly NYMEX Henry Hub Natural Gas settlement price on the last day of trading per Dth (adjusted for line losses, converted to the UOM as indicated above, adjusted for POR, each where applicable), prorated by the number of days applicable to each month for the billing cycle, plus the Fixed adder per the UOM as indicated above.</p> <p><b>Electric Index Price</b> shall reflect each month a floating price that may vary based on the weighted average Day Ahead Locational Based Marginal Pricing (LBMP) price per the UOM as indicated above of the ISO Zone for Customer's service location weighted by Customer's load profile as determined by Customer's LDC, plus losses, adjusted for POR where applicable, plus the fixed adder per the UOM as indicated above. Customer has been advised of all risks associated by signing this contract. Once account has been enrolled, and the LDC has identified a different service class, Marathon reserves the right to adjust the account according to LDC rate classification at current corresponding price plan.</p> <p><b>In the event of any changes in capacity, transmission related charges, changes to environmental attributes (including zero-emission credits or ZECs) and/or regulatory or other changes, Marathon reserves the right to increase or decrease pricing and/or terminate this Agreement. See sections 4 – Pricing and 17 – Applicable Laws</b></p>
Length of the agreement and end date ("Term")	For Variable Price Service, the Term continues until either party terminates this Agreement. For Non-Variable Price Service, the Term is for 12 months, unless otherwise specified above (the "Initial Term"). See section 5 – Term.
Process customer may use to rescind the agreement	Door-to-door Customers may rescind by calling the toll-free number at 888-378-9898 within three (3) business days of receipt of the sales agreement.
Early Termination Fees ("ETF") and method of calculation	No ETF for Variable Price service. If Non-Variable Price service, the projected amount of natural gas and/or electricity to be consumed by customer for the remainder of the current Term (see section 5 – Term) multiplied by the difference between the Non-Variable price in effect for the remainder of the current Term and the price at which Marathon can sell such gas and/or electricity following the termination; however, for all customers solicited through door-to-door marketing, the ETF will be no greater than \$100.00 if the remaining term is less than 12 months and \$200.00 if the remaining term is 12 months or more. See Section 6 – Termination of Non-Variable Agreements. Agreement is based on the energy consumption used in the prior year. A deviation of <u>100</u> % or more may result in additional fees for all commercial customers. See section 4 – Pricing.
Amount of Late Payment Fee and method of calculation	1.5% per month on overdue balances.
Provisions for renewal of the agreement	For Variable Price Service, the Term continues until either party terminates this Agreement. For Non-Variable Price Service, after the end of the Initial Term, this Agreement will automatically continue at a variable rate methodology unless and until this Agreement is terminated by customer. Not less than 15 days and no more than 60 days prior to the expiration of the Initial Term, Marathon will notify Customer in writing and/or by email of the switch to variable rate methodology at which Marathon will continue to serve Customer. Customer will have 15 days from Customer's receipt of such renewal notice to reject this offer and terminate the Agreement. If Marathon does not receive notice of Customer's termination of this Agreement, this Agreement will continue in full force and effect until canceled by customer. See Section 5 – Term.
Regulatory or Other Changes	If at some future date there is a change in law, rule, regulation, guideline, procedure, tariff, utility, ISO design, ICAP tag, formula or formula input, demand charge, regulatory structure, environmental attribute, emissions requirement, production requirement, component level, component price level or the interpretation or application of any of the foregoing that impacts any term, condition or provision of the agreement, including, but not limited to price, Marathon shall have the right to modify the Agreement. See sections 4 – Pricing and 17 – Applicable Laws. <b>For the avoidance of doubt, any item that is not within the direct control of Marathon and that does or is forecasted to impact Marathon's costs, may result in a modification.</b>
Guaranteed Savings	This Agreement does not offer guaranteed savings and your rate may be higher than the Utility rate.
Special Conditions	

## NOTICES AND CONTACTS

	CUSTOMER BUSINESS / PRIMARY CONTACT	CUSTOMER BILLING CONTACT (Required for DUAL) <input type="checkbox"/> Check if same as Primary Contact info	MARATHON ENERGY CONTACT INFORMATION
ATTN NAME:	Bill Work		Customer Service
STREET ADDRESS:	2777 Walden Ave, Cheektowaga, NY-14225	2777 Walden Ave, Cheektowaga, NY-14225	100 Elwood Davis Road
CITY, STATE, ZIP:	Cheektowaga, NY, 14225	Cheektowaga, NY, 14225	Syracuse, New York 13212
PHONE NUMBER:	(716) 213-8193	(716) 213-8193	888-378-9898
FAX NUMBER:			888-818-9110
EMAIL:	bill.work@apiheattransfer.com		customerservice@mecny.com

**Customer Representations:**

1. The individual signing this Agreement is the customer of record or authorized to execute this Agreement.
2. The individual signing this Agreement is authorized to make the switch to Marathon.
3. The Customer voluntarily wishes to make the supplier change.
4. The individual signing this Agreement has reviewed and agrees to the accompanying Terms and Conditions.
5. Marathon Power LLC ("Marathon") does not offer Utility Price Matching or guarantee savings.
6. Customer has been advised of all risks associated with signing this contract.
7. Customer consents to receiving any notice or correspondence from Marathon by email.

**IN WITNESS WHEREOF** Customer and Marathon hereby accept all Terms of Service set forth on these pages and incorporated herein and have caused this agreement to be executed:

SIGNATURES	
Marathon Power LLC dba Marathon Energy	Customer: API Heat Transfer
Signature:	Signature: William Work
Print Name:	Print Name: Bill Work
Print Title:	Print Title: Vice President Global Procu
Date:	Date: 01/26/2023
Sales Rep/Broker:	

Marathon reserves the right to reject any agreement that proves to be unacceptable upon Marathon's Internal Review. Marathon will only notify customer if the agreement is not accepted. This page is part of the terms and conditions of your agreement.

Office Use Only Legacy ID:	Approved by:	Date:
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## General Terms and Conditions

1. **Agreement to Sell and Purchase Energy.** This is an agreement between Marathon Power, LLC D/B/A Marathon Energy ("Marathon"), an independent energy services company, and you ("Customer") under which Customer authorizes Marathon to initiate natural gas and/or electricity supply service and begin Customer's enrollment with Marathon ("Agreement"). Subject to the terms and conditions of this Agreement, Marathon agrees to sell, and Customer agrees to purchase and accept all the natural gas and/or electricity required to serve Customer's account(s) listed on Schedule A of this Agreement ("Base Load"). Marathon does not guarantee savings under this Agreement. Customer's utility ("LDC") will continue to deliver the natural gas and/or electricity supplied by Marathon. Marathon is not affiliated with and does not represent Customer's LDC.
2. **Information Release Authorization.** Customer authorizes Marathon to obtain and review information regarding Customer's credit history from credit reporting agencies and information from Customer's LDC, which shall include but not be limited to the following: consumption history, billing determinants, account numbers, credit information; data applicable to cold weather periods under section 32(3) of the NY Public Service Law; information pertaining to section 33 of the NY Public Service Law; tax status; and eligibility for economic development or other incentives (collectively, "Customer Information"). This information may be used by Marathon to determine whether it will commence and/or continue to provide energy supply service to Customer and will 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 Marathon. Marathon reserves the right to refuse to provide service to Customer under this Agreement if it is unable to obtain the necessary Customer Information or it obtains Customer Information that it considers unsatisfactory. This authorization will remain in effect during any initial or renewal term of this Agreement; provided, however, that Customer may rescind this authorization at any time by providing written notice to Marathon or by calling Marathon at 1-888-378-9898. Marathon reserves the right to cancel this Agreement in the event Customer rescinds such authorization. The data obtained pursuant to this authorization may be retained by Marathon for a period of six years post-termination of this Agreement consistent with the statute of limitations for contractual disputes and may be used by Marathon in connection with any ongoing business or legal purpose with respect to its obligations under the Agreement, or to offer additional products or services to Customer during the Term, or any Renewal Terms, or at any time in the six year period after the Agreement terminates, or as contained in any derivative work created by Marathon in association with its business as a retail energy provider.
3. **Guaranty.** In consideration of the extensions and maintenance of credit from time to time by Marathon, the undersigned Applicant (1) warrants that the representation made herein are true and accurate and agrees to promptly notify Marathon in writing of any change in financial condition that would adversely affect his/her responsibility and (2) for good and valuable consideration, hereby personally, individually, jointly and severally, guarantees payment to Marathon, its successors and its assigns, of all existing and future indebtedness of the Applicant, including service charges together with accrued interest thereon, collections costs and attorneys' fees. This guaranty shall be effective without first requiring Marathon to proceed against any other party, and the undersigned hereby waive(s) notice of acceptance of this guaranty, default and non-payment and consent(s) to waiver, extension or modification of credit terms. This shall be an open and continuing guaranty that may only be revoked upon written notice to Marathon by certified mail, return receipt requested, which revocation shall be effective 10 days after Marathon's receipt of such notice and shall only release the undersigned from liability for indebtedness incurred after the effective date of such revocation.
4. **Pricing.** Customer's pricing under this Agreement shall be as follows:
  - a. **Electricity/Natural Gas Variable Pricing:** If Customer is receiving electricity or natural gas supply service at a variable price, Customer shall be billed at a variable price that may vary each billing cycle based on the costs including but not limited to commodity, losses, capacity, storage and balancing, ancillary services, related transmission and distribution charges, all supply and agency functions that Marathon performs for the Customer, transportation to the Delivery Point, plus all applicable taxes, fees, charges or other assessments plus Marathon's costs, expenses, and profit margins. There is no guaranteed savings compared to the Utility rate; your rate may be higher than the Utility rate, and there is no limit on how much the price of supply service may change from one billing cycle to the next.
  - b. **Electric and/or Natural Gas Fixed Pricing:** If Customer is receiving natural gas or electric supply service at a Fixed price, Customer will be billed at the Fixed price indicated on page 1 of this Agreement for the Initial Fixed Term, subject, among other things, to Section 4(f) of this Agreement.
  - c. **Natural Gas NYMEX+ Pricing:** If Customer is receiving natural gas supply service at a NYMEX + price for the Initial Term Customer shall be billed at a floating price that may vary based on the monthly NYMEX Henry Hub Natural Gas settlement price on the last day of trading per Dth (adjusted for line losses, converted to the UOM as indicated on page 1, adjusted for POR, each where applicable), prorated by the number of days applicable to each month for the billing cycle, plus the Fixed adder per the UOM as indicated on page 1 (converted to dth/ccf/mcf where applicable) set forth on page 1 of this Agreement, subject, among other things, to Section 4(f) of this Agreement.
  - d. **Electric Index Pricing:** If Customer is receiving electric supply service at an Electric Index+ price for the Initial Term, Customer shall be billed at a floating price that may vary based on the weighted average Day Ahead Locational Based Marginal Pricing (LBMP) price per the UOM as indicated on page 1 of the ISO Zone for Customer's service location weighted by Customer's load profile as determined by Customer's LDC, plus losses, adjusted for POR where applicable, plus the fixed adder per the UOM as indicated on page 1 set forth on page 1 of this Agreement, subject to, among other things, Section 4(f) of this Agreement.
  - e. **All Pricing:** Under all pricing options, Customer is also responsible for paying and reimbursing Marathon for all applicable taxes and other government fees, assessments, and charges, however designated, relating to the service provided under this Agreement. This may not include, but shall not be limited to, utility taxes, gross receipts taxes, and sales and use taxes imposed on Marathon and/or Customer by federal, state, and/or local authorities that Marathon passes through to Customer. If Customer is tax exempt or eligible for economic development incentives, Customer must furnish Marathon with an exemption certificate or other evidence of same satisfactory to Marathon before service commence.
  - f. **Price Adjustments:** Notwithstanding anything else set forth herein, the following potential adjustments may affect Customer's price under this Agreement (see also #17):
    - i. **Service Class:** If during the enrollment process the LDC determines that Customer's service classification is different from the service classification indicated on Schedule A, Marathon reserves the right to adjust Customer's price under this Agreement to reflect that of the service classification identified by the LDC.

- ii. **Transportation Adjustment Clause Charge ("TAC Charge"):** If Customer is receiving natural gas supply service under a Fixed or NYMEX + price and Customer's gas utility shifts any TAC Charge from Customer's gas transportation charges to Customer's gas supply portion, Marathon may adjust Customer's gas supply price to include such additional TAC Charge. Marathon will provide Customer 15 days' written notice of any such adjustment in charges.
- iii. **Quantity Variances:** Unless otherwise indicated on page 1 of this Agreement, for all Fixed, LBMP Index + and NYMEX + agreements, if usage in any period exceeds the level of usage in the same period indicated in the "Usage Base Load" on Schedule A by more than the tolerance band indicated, Marathon reserves the right to charge a customer the current variable price for all usage in excess of the Usage Base Load. If a customer's usage in any period falls by the tolerance band indicated or more below the level of usage in the same period indicated in the Usage Base Load, Marathon reserves the right to charge such Customer an additional amount equal to the Fixed price indicated on page 1 of this agreement multiplied by the difference between the Usage Base Load and Customer's actual usage. Marathon also reserves the right to charge a customer for all hedging, cash-out, settlement, and/or balancing costs related to the positive difference between the Usage Base Load and actual usage. The previous 12 months of the Customer's historical usage obtained from the LDC shall be used where no Usage Base Load addendum is attached hereto.
- iv. **Changes in Capacity, Transmission or Transmission Related Charges, Environmental Attributes, Non-Market Based Rates or POR Rates:** Any increase in obligations (net quantity or net price) from the Fixed Capacity, Transmission Values, Purchase of Receivables ("POR"), Environmental Attributes (e.g. RECs, ZECs, ORECs, carbon, or any other future environmental related surcharge that may be imposed), Non-Market Based Rates (e.g. NTAC, SSC&D, Black Start) at the time of this Agreement, specified in Schedule A, or in effect at the time of contract consummation, may result in the additional cost being passed through at the prevailing market rate. As such, Marathon reserves the right to pass through to Customer any and all fees, costs, expenses and charges associated with and/or arising out of any change to Customer's capacity obligation, transmission obligation, pipeline allocation, or gas capacity rates, POR rates, any change in the price or cost of environmental attributes (including zero-emission credits or ZECs), or any changes outside of Marathon's control since the time of contracting. This may result in a change in price. Schedule A shall be provided to Customer upon acceptance of this Agreement.
- v. **On-site and off-site Generation.** The Customer agrees to provide Marathon sixty (60) days' prior written notice of (1) installation of solar or other on-site generation or energy storage equipment and/or (2) Customer's participation in or utilization of baseload generation, community solar subscriptions, net metering, onsite renewable energy including wind, solar and/or biomass, and power purchase agreements. If Customer utilizes any of the foregoing, Marathon reserves the right to modify the rate or terminate this Agreement and recover costs, if any.

## 5. Term.

- a. **Variable Price Supply Service:** If Customer is receiving variable pricing, this Agreement shall commence as of the date set by Customer's LDC and shall continue until either party cancels or terminates this Agreement by providing at least 30 days' advance written notice of such termination to the other. There will be no charge to Customer for cancelling variable price natural gas and/or electric supply service from Marathon if Customer does so in accordance with the terms of this Agreement.
- b. **Non-Variable Price Service:** If Customer is receiving non-Variable price service (Fixed price, NYMEX + or Electric Index +), this Agreement shall commence as of the date set by Customer's LDC and shall continue in full force and effect until the service end date set forth on page 1 of this Agreement (the "Initial Fixed Term"). If the service start date established by the Customer's LDC is delayed for any reason due to no fault of Marathon (e.g., blocked account, customer delay, etc.), then the original intended service end date for this Agreement, determined by the term length set forth on page 1 of this Agreement and the original projected service start date, will remain as the service end date or adjusted, at Marathon's discretion unless otherwise agreed to by Customer and Marathon, if Customer is receiving supply service under a Non-Variable price service, after the end of the Initial Fixed Term, this Agreement will automatically continue at a variable rate methodology unless and until this Agreement is terminated by customer. Not less than 15 days and no more than 60 days prior to the expiration of the Initial Fixed Term, Marathon will notify Customer in writing and/or by email of the switch to variable rate methodology at which Marathon will continue to serve Customer. Customer will have 15 days from Customer's receipt of such renewal notice to reject this offer and terminate the Agreement. If Marathon does not receive notice of Customer's termination of this Agreement, this Agreement will continue in full force and effect until canceled by Customer.

- 6. **Termination of Non-Variable Price Agreements:** If there is a material adverse change in the business or financial condition of Customer on a Non-Variable Price Agreement, or a material adverse change in the cost to Marathon to continue supplying and/or servicing this Customer, as determined by Marathon at its sole discretion, or if Marathon terminates its service offerings in Customer's LDC service territory or across New York State, or if such Customer fails to meet any of its obligations under this Agreement, then in addition to any other remedies Marathon may have, Marathon may terminate this Agreement upon 15 days' written notice to Customer. In addition, if Customer terminates this Agreement prior to the end of the Initial Fixed Term, Customer shall pay Marathon all outstanding gas and/or electric supply charges and other amounts owing to Marathon as well all reasonable attorneys' fees and expenses incurred by Marathon in connection with Marathon's attempt to collect and recover same. If Customer terminates this Agreement by returning to Customer's LDC or switching to another ESCO, the effective date of any such switch from Marathon will be determined by Customer's LDC. As an ETF, if Customer terminates this Agreement prior to the end of the Initial Fixed Term, or if Marathon terminates this Agreement due to Customer's breach of this Agreement, Customer shall pay Marathon, in addition to any other applicable charges, the projected amount of natural gas and/or electricity to be consumed by customer for the remainder of the current Term (see section 5 – Term) multiplied by the difference between the Non-Variable price in effect for the remainder of the current Term and the price at which Marathon can sell such gas and/or electricity following the termination. If a Customer that Marathon, in its discretion, determines to be Single Utility Billed, fails to qualify for the LDC's POR program, Marathon may terminate the Agreement and Customer shall be liable to Marathon for any loss it incurs (using the calculation methodology described above). However, for all customers solicited through door-to-door marketing, the ETF will be no greater than \$100.00 if the remaining term is less than 12 months and \$200.00 if the remaining term is 12 months or more. In addition, for all customers solicited through door-to-door marketing, in the event of a renewal of a Non-Variable Price agreement, Customer shall not be charged an ETF if Customer objects to such renewal within 3 business days of receipt of the first billing statement under the renewed agreement. In addition, if there

is a gap in service due to the customer's termination and subsequent request for re-enrollment, during the non-Variable contract period, the customer may be liable to Marathon for any loss it incurs (using the calculation methodology described above).

The services provided by Marathon to Customer are governed by the Terms & Conditions of this Agreement. Marathon shall have the right to terminate this Agreement in the event of a breach of the term(s) of the Agreement by Customer, including, but not limited to, failure to remit payment as required under this Agreement. Marathon may cancel this Agreement at any time and for any reason. Marathon will provide at least 30 days' written notice prior to the termination of service and provide Customer with the opportunity to remedy the termination condition. A final bill will be rendered within thirty (30) 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. Switching to a competitive Third-Party Supplier ("TPS") is not mandatory and Customer has the option of remaining with the LDC for basic gas supply service or basic electric generation service.

7. **Billing:** Customer's LDC or Marathon may send Customer a single bill for both supply and delivery charges ("Consolidated Billing"), or Customer's LDC may send a separate bill for Customer's delivery charges and Marathon may send Customer a separate bill for Customer supply and charges ("Dual Billing"). Customer will pay Marathon for natural gas supply service and/or electric supply service based on meter readings and consumption information measured by and/or received from Customer's LDC ("Billing Quantity"). Marathon will have the option to adjust the Billing Quantity for fuel and distribution/line loss retained by the LDC and interstate transporters from the Purchase Quantity. Payment for gas and/or electric supply service is due on Customer's receipt of the bill(s). Customer shall pay a late payment charge on all unpaid amounts (including arrears and late payment charges) owing and not received by Marathon within twenty (20) days of the date of the bill at a rate of 1.5% per month or the maximum attorneys' fees and expenses incurred by it in collecting any payment from you. Marathon may delay enforcing its rights and/or accept late payments, partial payments, or partial payments marked to the effect of "payment in full" without losing any of its rights under this Agreement or applicable law. Customer payments remitted for Consolidated Billing that are not in dispute shall be allocated in the following order of priority of payment: (1) to amounts owed to avoid termination, suspension, or disconnection of commodity or delivery service; (2) to amounts owed under a deferred payment agreement; (3) to arrears; and (4) to current charges not associated with a deferred payment agreement. Payments will be pro-rated to the charges within each of the above categories in proportion to Marathon's and the LDC's charges in that category. Marathon may assign and sell Customer accounts receivable to the LDC. Failure by a non-residential customer to remit full payment of Marathon charges due on any Consolidated Bill prepared by the LDC or Marathon will be grounds for disconnection of utility services in accordance with NYPSC rules and regulations on the termination of service to non-residential customers, 16 NYCRR Part 13. A \$30.00 fee will be charge for all returned payments.
8. **Consumer Protections.** Marathon will provide at least 15 days' notice prior to the cancellation of service to Customer. In the event of non-payment of any charges owed to Marathon, Customer may be subject to termination of commodity service and the suspension of distribution service under procedures approved by the Department of Public Service ("DPS"). Customer may obtain additional information by contacting Marathon at 1-888-378-9898 or 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: [www.dps.ny.gov](http://www.dps.ny.gov). Customer may also contact the DPS's ESCO hotline for inquiries regarding the competitive retail energy market at 1-888-697-7728.
9. **Rescission.** A door-to-door Customer may rescind this Agreement within three (3) business days after Customer's signing or receipt of this Agreement, whichever comes first, by contacting Marathon at 1-888-378-9898 or in writing at 62-01 34<sup>th</sup> Avenue, Woodside, NY 11377. If Customer rescinds this Agreement, Marathon will provide Customer a cancellation number.
10. **Agency. Gas:** Customer hereby designates Marathon as agent to (a) arrange and administer contracts and service arrangements between Customer and Customer's LDC and between Customer and the interstate transporters of Customer's natural gas (including capacity release, re-release and recall arrangements); (b) nominate and schedule with interstate pipeline(s) the transportation of Customer's natural gas supplies from the Sales Point(s) to the Delivery Point(s), and with the LDC for the transportation of the Customer's natural gas supplies from the Delivery Point(s) to the Customer's end- use premises; and (c) aggregate, if necessary, Customer's natural gas supplies with such supplies of other customers served by Marathon to qualify for LDC transportation service, and to address and resolve imbalances (if any) that may arise during the term of this Agreement. As Agent of Customer, Marathon will schedule the delivery of supplies of natural gas at the Sales Point(s) necessary to meet the Customer's city gate requirements based on the consumption and other information that Marathon receives from the LDC. The Sales Point(s) for the natural gas will be a point or points located outside of New York State selected from time to time by Marathon to assure service reliability. The Delivery Point(s) for the natural gas transported by the interstate pipeline(s) will be the city gate stations of the LDC. As Customer's agent, Marathon agrees to arrange for the transportation of the natural gas supplied under this Agreement from the Sales Point(s) to the Delivery Point(s) and from the Delivery Point(s) to the Customer's end-use premises. These services are provided on an arm's-length basis. **Electric:** Customer hereby designates Marathon as Customer's agent for the purpose of arranging, contracting for, and administering transmission services (including those provided by Customer's LDC) for the delivery of electricity. The Sales Point(s) for electricity will be one or more points on the NYISO-administered transmission system (located outside of the jurisdictional limits of the municipality of Customer's service address location), selected from time to time by Marathon to assure service reliability. The Delivery Point(s) for electricity will be one or more points at which Marathon, as Customer's agent, has arranged for the delivery of electricity to Customer or to a third party (such as Customer's LDC) for Customer's account. These services are provided on an arm's-length basis.
11. **Title, Risk of Loss.** Title to, control of, and risk of loss of the Purchase Quantities supplied under this Agreement will transfer from Marathon to Customer at the Sales Point(s). Marathon and Customer agree that transactions under this Agreement are originated and consummated outside the jurisdictional limits of the municipality, county or other taxing authority where Customer's service address(es) is located. If a taxing authority determines that a gross receipts tax or other tax is applicable to the sale of natural gas or electric supply under this Agreement, Customer agrees to pay such tax.
12. **No Warranties. MARATHON MAKES NO REPRESENTATIONS, WARRANTIES, AFFIRMATIONS OF FACT, OR PROMISES, EXPRESS OR IMPLIED, OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT AND MARATHON EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE.**



13. **Force Majeure.** Marathon will make commercially reasonable efforts to provide natural gas and/or electricity supply service hereunder, but Marathon does not guarantee a continuous supply of natural gas and/or electricity to Customer. Certain causes and events out of the control of Marathon ("Force Majeure Events") may result in interruptions in service. Marathon will not be liable for any such interruptions caused by a Force Majeure Event. A Force Majeure Event means a material or unavoidable occurrence beyond Marathon's control and shall include but not be limited to acts of God or public enemy, fire, flood, storm, hurricane, explosion, terrorism, war, civil disturbance, pandemics or other medical outbreaks and emergencies, acts of any governmental authority, accidents, strikes, labor disputes or problems, required maintenance work, inability to access the local distribution utility system, non-performance by the LDC (including, but not limited to, a facility outage on its gas distribution lines or electric facilities), or any other cause beyond Marathon's control.
14. **Limitation of Liability.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE NEW YORK LAW, NEITHER YOU NOR MARATHON WILL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, EXEMPLARY, PUNITIVE, INCIDENTAL, OR INDIRECT DAMAGES ARISING FROM ANY CLAIM OR LEGAL PROCEEDING BETWEEN YOU AND MARATHON, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR LOST REVENUES. THE REMEDY FOR ANY CLAIM OR SUIT AGAINST MARATHON WILL BE LIMITED TO DIRECT ACTUAL DAMAGES, WHICH SHALL NOT EXCEED THE AMOUNT OF CUSTOMER'S SINGLE LARGEST MONTHLY INVOICE DURING THE PRECEDING 12 MONTHS. CUSTOMER SHALL NOT PURSUE OR RECOVER ANY ADDITIONAL DAMAGES OR AMOUNTS FROM MARATHON, AND HEREBY WAIVES ALL OTHER REMEDIES IN LAW OR EQUITY. THESE LIMITATIONS APPLY WITHOUT REGARD TO THE CAUSE OF ANY LIABILITY OR DAMAGES. CUSTOMER AND MARATHON ACKNOWLEDGE THAT THERE ARE NO THIRD-PARTY BENEFICIARIES TO THIS AGREEMENT.
15. **Marathon Contact Information.** Customer may contact Marathon's Customer Service Center at 1-888-378-9898, Monday through Friday 9:00AM - 4:00PM EST (contact hours' subject to change). Customer may also contact Marathon Energy by mail at: 100 Elwood Davis Rd, Syracuse, NY 13212, or email at [customerservice@mecny.com](mailto:customerservice@mecny.com).
16. **Arbitration of Disputes, Waiver of Jury Trial, and Participation in Class Actions.** MARATHON AND CUSTOMER SHALL NOT BE PERMITTED TO JOIN OR CONSOLIDATE COMPLAINTS, CLAIMS, OR DISPUTES INVOLVING OTHERS, NOR SHALL ANY COMPLAINTS, CLAIMS, OR DISPUTES BE BROUGHT OR MAINTAINED AS A CLASS ACTION OR IN ANY REPRESENTATIVE CAPACITY. MARATHON AND CUSTOMER UNDERSTAND AND AGREE THAT THEY ARE KNOWINGLY, VOLUNTARILY, AND WILLINGLY WAIVING THE RIGHT TO A TRIAL BY JURY. MARATHON AND CUSTOMER UNDERSTAND AND AGREE THAT THEY ARE KNOWINGLY, VOLUNTARILY, AND WILLINGLY WAIVING THE RIGHT TO PARTICIPATE IN OR BE REPRESENTED IN ANY CLASS ACTION OR CLASS ARBITRATION. Any questions or complaints should be directed to Marathon's Customer Service Center. The parties are required to use their best efforts to resolve any disputes that may arise. Any unresolved disputes may be presented to a court of competent jurisdiction in New York County, New York. During the pendency of any dispute, Customer must pay all bills in full, except for the specific disputed amount, if any. Alternatively, a dispute or complaint may be submitted by either party at any time to the DPS Office of Consumer Services, New York State Public Service Commission, Office of Consumer Services, Three Empire State Plaza, Albany, New York 12223; by phone at 1-888-697-7728 or by visiting [www.dps.state.ny.us](http://www.dps.state.ny.us).
17. **Applicable Laws.**
- Applicable Laws.** This Agreement is subject to all applicable federal, state, and local laws, and the orders, rules, and regulations of the governmental agencies having jurisdiction over the subject matter of this Agreement, including the DPS. This Agreement shall be construed under and shall be governed by the laws of the State of New York without regard to the application of its conflicts of law principles. Venue for any lawsuit brought to enforce any term or condition of this Agreement or to construe the terms hereof shall lie exclusively in the State of New York.
  - Regulatory or Other Changes.** Marathon and Customer recognize that a change in any law, rule, regulation, guideline, procedure, tariff, utility, ISO design, ICAP tag, gas capacity release, formula or formula input, demand charge, transmission value, Environmental Attribute (e.g. RECs, ZECs, carbon), Non-Market Based Rates (e.g. NTAC, SSC&D, Black Start), regulatory structure, or the interpretation or application of any of the foregoing applicable to Marathon or this Agreement by any entity, including but not limited to the LDC, Department of Public Service, New York State Public Service Commission, New York State Energy Research and Development Authority, Federal Energy Regulatory Commission or the New York Independent System Operator (each, a "Regulatory or Other Change") could materially impact a term, condition, or provision of this Agreement including, but not limited to price. Marathon and Customer further recognize that Marathon's ability to perform under this Agreement or the financial impact of a Regulatory Change that occurred prior to the date the parties executed this Agreement (the "Execution Date") may not be known until a future date. Accordingly, Marathon retains the right, at its sole discretion to (i) terminate this Agreement and return the Customer to the LDC at the next available meter read date; (ii) modify this Agreement to reflect a Regulatory Change that occurs after the Execution Date, including modifying Customer's price; and/or (iii) pass through to Customer any capital, operating, commodity, or other costs it incurs as a result of a Regulatory or Other Change ("New Costs") that occurred prior to the Execution Date where such: (a) New Costs were unknown or (b) New Costs did not become effective until after the Execution Date. In all cases, Marathon shall provide 15 days' prior written notice to Customer of any termination or modification to this Agreement resulting from a Regulatory or Other Change and/or application of any New Costs.
  - Material Adverse Changes.** If there is a material adverse change in the business operation or financial condition and/or creditworthiness of Customer (as determined by Marathon at its discretion) or if Customer fails to meet its obligations under this Agreement or pay or post any required security deposit, or if Marathon terminates its service offerings in Customer's LDC service territory or across New York State, then, in addition to any other remedies that it may have, Marathon may terminate this Agreement upon 15 days' written notice to Customer. If Customer's Usage indicates that Customer belongs to a different Customer Class than determined by Marathon at the time of contracting, Marathon shall have the option to drop Customer's supply back to the LDC and charge Customer an ETF as set forth in Section 6 of this Agreement.
  - Non-Mass Market Customer.** Customer represents, warrants, and covenants that (i) it is not a mass market customer, as defined by the New York State Public Service Commission. Customer agrees that if it is or becomes a mass market customer then the breach of the foregoing covenant is a default under this Agreement by Customer, and notwithstanding anything to the contrary herein, this Agreement may be

terminated by Marathon without further notice and Customer shall be liable to Marathon for any loss it incurs (using the calculation methodology described in Section 6).

18. **Emergency Service.** Customer's LDC will continue to respond to leaks and emergencies. In the event of a gas leak, electric service interruption, or other emergency, Customer should immediately DIAL 911. Then call LDC emergency personnel. Customer may also call Marathon at 1-888-378-9898.

Central Hudson	1-800-527-2714	National Grid Metro	1-718-643-4050	NYSEG	1-800-572-1121
Con Edison	1-800-75-CONED	National Grid LI	1-800-490-0045	O&R Electric	1-877-434-4100
National Fuel Gas	1-800-444-3130	National Grid Upstate	1-800-892-2345	Rochester G&E	1-800-743-1701

19. **Assignment.** Customer may not assign its interests in or delegate its obligations under this Agreement without the express written consent of Marathon. Marathon may sell, transfer, pledge, or assign the accounts, revenues, or proceeds hereof, in connection with any financing agreement or receivables purchase program, and may, upon 30 days' prior written notice to you, assign this Agreement to another energy supplier, energy services company or other entity as authorized by the DPS, without Customer's consent.
20. **Miscellaneous.** This Agreement, including any enrollment form and applicable attachments, is the entire Agreement between Customer and Marathon with respect to the subject matter hereof and there are no promises, covenants, or undertakings other than those expressly set forth in this Agreement. This Agreement will inure to and be binding upon the successors and assignees of the parties. If any provision of the 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. No waiver of any provision of this Agreement shall be construed as a continuing waiver or shall constitute a waiver of any other provision.
21. **Electronic Signature.** Any signature (including any electronic symbol or process attached to, or associated with, this Agreement and adopted by Customer or Marathon with the intent to sign, authenticate, or accept such Agreement) hereto, or to any other certificate or document related to this transaction, through electronic means shall have the same legal validity and enforceability as a manually executed signature to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act and the New York State Electronic Signatures and Records Act, and the parties hereby waive any objection to the contrary.
22. **Electronic Communications.** By signing this Agreement, Customer consents to receiving any notice or correspondence (and for dual billed customers, bills) from Marathon by email. Customer may send any notice or correspondence to Marathon by email at [customerservice@mecny.com](mailto:customerservice@mecny.com). Customer agrees to provide Marathon with a current email address and to notify Marathon of any change of Customer's email address. Notwithstanding anything contained in this Agreement, if you are a customer enrolled as a result of door-to-door marketing, any renewal notice will be sent to you by U.S. Mail.
23. **Renewably Sourced Energy.** Marathon Energy will match the Customer's selected electric percentage with renewable energy credits (RECs) from nationally sourced resources. RECs represent the environmental attributes associated with the applicable amount of renewable energy generation from various renewable sources including, but not limited to, solar thermal, photovoltaics, on land and offshore wind, hydroelectric, geothermal electric, geothermal ground source heat, tidal energy, wave energy, ocean thermal, and fuel cells, or other qualifying renewable resources. RECs will be purchased and retired to satisfy the percentage of renewable generation guaranteed by this Agreement.

**IN WITNESS WHEREOF** Customer hereby accepts all Terms & Conditions set forth above and incorporated herein, and have caused this Agreement to be executed:

For Customer:

William Work

01/26/2023

Customer Signature

Signature Date

Bill Work

Vice President Global Procurement

Print Name

Print Title



Contract Addendum

LDC	Account Name	LDC Number	Rate Class	Service Address	City	State	Zip Code	Start Date	Product	Term (months)	Rate	Unit
NME	API HEAT TRANSFER INC	0852518104	2SC3	2777 WALDEN AVE, CHEEKTOWAGA-14225	CHEEKTOWAGA	NY	14225	February 2023	Fixed	24	0.056500	kWh





Contract Addendum

For Marathon Energy:

For Customer:

Marathon Representative Name

Bill Work Vice President Global Procu

Customer's Printed Name & Title

Marathon Representative Signature

Date

William Work

Customer's Signature

01/26/2023

Date

Toll Free 888.378.9898  
100 Elwood Davis Road, Syracuse, NY 13212 / www.mecny.com  
Rev 3.2 20201026

SCHEDULE A - Account Listing, Features and Base Load Usage

Cap (kW) - Installed Capacity Value (ICAP) in kW demand as defined by the Utility

Trans (kW) - Network Integration Transmission Service (NITS) in kW demand as defined by the Utility

Trans Charge (\$/kW Year) - Charge for NITS measured in \$/kW-Year as defined by the Utility

Account Information						
Account Number	LDC	Commodity	Rate Class	Current ICAP (kW)	Current Trans (kW)	Current Trans Charge (\$/kW Year)
0852518104	National Grid (Upstate)	Electric	2SC3	102.040000	0.000000	0.000000

Baseload Usage: Monthly Usage (kWh) @100% Swing														
Account Number	Commodity	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual Usage
0852518104	Electric	217465	200463	229369	218212	217740	225102	235000	235908	208527	223166	216316	213225	2640493
	Totals	217465	200463	229369	218212	217740	225102	235000	235908	208527	223166	216316	213225	2640493