

These general Terms of Service, Agreement Summary including any Exhibit A, Your Rights as a Consumer ("YRAC"), and Electricity Facts Label ("EFL"), together create a single binding agreement (the "Agreement") between the party identified in the Agreement Summary ("Customer") and Pulse Power, LLC d/b/a New Power Texas ("Company"). Company is a retail electricity provider ("REP") licensed by the PUCT as evidenced by PUCT Certificate #10259.

The Agreement obligates Company to provide Customer with all electricity supply requirements and arrange for the delivery of the electricity to the applicable ESI IDs in compliance with applicable law and any Value-Added Services (as specified on Exhibit A of the Agreement Summary) (the electricity and Value-Added Services collectively referred to as the "Services"). Customer agrees to use such Services exclusively for itself, to pay Company for such Services in accordance with this Agreement, and that to the extent any Value-Added Service selected by Customer is provided by a third party, Customer agrees to look only to such third party for fulfillment of the Value-Added Service(s) and releases Company from any claims under any legal theory that Customer may have against such third party for any breach or failure to perform. Any capitalized term not defined in this Agreement shall have the meaning proscribed to it by the ERCOT Nodal Protocols or, if not defined therein, under the Public Utility Commission of Texas ("PUCT") Customer Protection Rules in effect as of the date of this Agreement (available at: <http://www.puc.texas.gov/agency/rulesnlaws/subrules/electric/ch25complete.pdf>).

1. ENROLLMENT AND TERM OF SERVICES

- a. **ENROLLMENT:** This Agreement authorizes Company to enroll each of Customer's ESI ID(s). Company coordinates with ERCOT and the applicable transmission and distribution utility ("TDU") to provide and have electricity delivered to the Customer's ESI ID(s). Customer promises to provide Company with accurate, complete, and verifiable account information, which is necessary for the timely, accurate and efficient enrollment of the ESI ID(s). Company requests Customer provide a phone number and an email address to assist Company with the enrollment process. Unless specifically stated otherwise, Company may deliver copies of this Agreement and other account information, including enrollment confirmation and Agreement expiration notices via email. Company will use any phone number provided and/or the email address strictly in accordance with its privacy policy, which is available at www.newpowertx.com. By providing a phone number, Customer specifically authorizes Company to call and/or text such number for the purposes of verifying Customer's identity. Customer understands that text and or data rates may apply. If Company cannot contact Customer to confirm Customer's identity or Company has reason to believe that Customer or someone else is attempting to commit fraud or otherwise illegally obtain Services with the Company, Company has the right to cancel the enrollment and notify Customer of such cancellation. Services will start on a meter reading date determined by the applicable TDU or on the specific date selected by Customer. Customer understands that the TDU may charge an additional fee per the terms of its Tariff for a self-selected switch and that Company will pass-through and Customer will pay any such costs which will be passed through without mark-up.
- b. **TERM AND RENEWAL:** The Initial Term can be found on the Agreement Summary. To the extent required by law, Company will notify Customer in writing at least thirty (30) days, but not more than sixty (60) days, before the end of the Initial Term (the "Renewal Notice"). In the Renewal Notice, Company will explain the renewal options. The Renewal Notice may state that unless Customer affirmatively enters into a new Agreement with Company, Company will continue to provide Services using a Variable Rate Product that excludes Value-Added Services other than Choose a Specific Due Date, Automatic Payment and Paperless Communication, if Customer selected one or more of those Value-Added Services during the Initial Term, but Customer will have the right to cancel the Services following the Initial Term without penalty. Customer will remain responsible and pay for any Services provided up to and through the date on which the termination is effective.
- c. **RIGHT OF RESCISSION:** For any ESI ID which is residential or if the combination of all ESI IDs have a peak demand of less than 50 kW over the last 12 billing cycles, Customer has the right to rescind (cancel) this Agreement without charge or penalty within three (3) federal business days after receiving this Agreement as provided under PUCT Substantive Rules 25.474 (available at: <http://www.puc.texas.gov/agency/rulesnlaws/subrules/electric/25.474/25.474.pdf>) by contacting Company by telephone toll-free at 888-853-5747, fax at 713-583-1183, or email at customercare@newpowertx.com. For each ESI ID which Customer wants to cancel Services under this Agreement, Customer must provide their name, address, phone number, the applicable ESI ID(s) and a statement that Customer is rescinding the Agreement as to such ESI ID(s). This right of rescission does not apply to any ESI ID for which Customer is seeking new service and Customer shall be responsible for any charges associated with Service provided to an ESI ID at which Customer requests and authorizes new service.

2. SERVICES AND PRICE

- a. **SERVICE TYPES:** The Agreement Summary specifies the Price per kilowatt hour (kWh) for electricity and any Value-Added Services which together constitute the Price for the Services. The cost for Services during the Initial Term will be fixed, meaning the components of the Price will not change during the Initial Term unless there is a Change in Law. Variable Products mean that the Price can change for each billing cycle without advanced notice and is based on a method determined in Company's sole direction and have a term of less than thirty-one (31) days. Historical information about Variable Price Products can be found at: <https://www.newpowertx.com/variable-rate-history>
- b. **PRICE:** The Price Customer will pay for the Services during the Initial Term is provided in the Agreement Summary. The Price includes energy costs to the Customer's meter, Transmission and Distribution Losses, Ancillary Services; ERCOT uplift charges, costs associated with Reliability Unit Commitment, Unaccounted for Energy, any Value-Added Services, and pass-through charges associated with the delivery of electricity by the TDU (such as Customer Charge, Meter Charge, Transmission Service Charge, Advanced Metering System (AMS) Charge, Distribution Charge, System Benefit Fund, Transition Charge, Nuclear Decommissioning Charge, Transmission Cost Recovery Factor, Excess Mitigation Credit, Municipal Franchise Fee, service requests, equipment leases, construction, etc.), and any Value-Added Services selected by Customer but does not include the Pass-Through Items as defined in the Agreement Summary. The total average price per kilowatt-hour ("kWh") includes the costs of electricity, a monthly base fee included in the Price, and costs of delivery of electricity to each ESI ID (the "Premises") determined according to the local TDU's tariff in effect at the time this Agreement is executed. The attached EFL provides an estimate of Customer's cost per kWh exclusive of Value-Added Services, taxes and fees and this number may vary from the Price actually charged to Customer depending on Customer's Usage and whether the Price includes any Value-Added Services.
- c. **CHANGES IN PRICE:** The Price may change if: (a) there is a change in or implementation or interpretation of (1) law, rule, regulation, ordinance, statute, judicial decision, administrative order and the like; (2) material change in ERCOT or the Texas Reliability ("TRE") operating guidelines or protocols, load zone boundary or hub definitions; (3) modification of or changes to TDU tariffs, riders or standard terms and conditions; (4) changes in programs including, but not limited to congestion, resource adequacy, and the like; or (5) electricity market structure, and any such change listed in (1)-(5) above results in Company incurring additional costs or expenses associated with providing the services described herein ("Change in Law"); or (b) if Customer terminates any Value-Added Services. Customer is also responsible for paying any nonrecurring fees and charges from the TDU including, but not limited to, fees and charges related to establishing, disconnecting, reconnecting, or maintaining electric service or equipment. Charges for Fees will be listed as a separate line item on the Customer's bill.
- d. **TAXES:** If Customer is exempt from gross receipts tax due to living in an unincorporated area or any other tax, including sales tax, Customer must provide Company with written proof of such exemption. Company shall not be required to recognize any such exemption until and unless Customer provides Company with the required documentation. If Customer is tax exempt and Company erroneously collected such tax, Customer's sole remedy is to seek a refund from the Texas Comptroller or other entity to whom Company is required to remit such taxes. Nothing in this sentence precludes Company from issuing a refund for any improperly collected taxes in Company's sole and absolute discretion.

3. USAGE, BILLING AND PAYMENT

- a. **USAGE:** Customer authorizes Company to obtain historical and current consumption, billing, and payment information from the applicable TDU, including the Customer's smart meter data. This authorization will remain in effect from the date Customer executes this Agreement through the Initial Term and any Renewal Term. If Customer utilized an agent or broker in connection with this Agreement, Company is authorized to disclose information historical and current usage information and payment history to such agent or broker.
- b. **BILLING:** Customer's bill will be based on the amount of electricity and related services delivered to a Customer's ESI ID as reported and measured by the TDU to ERCOT ("Usage") which then reports such information to Company or, if Customer has selected to have their bill due on a specific date, may be based on data from the Smart Meter Texas (SMT) usage portal ("SMT Usage"). If the TDU fails to provide actual Usage for a billing cycle for any ESI ID listed on this Agreement, or if the data reported by the TDU differs from the SMT Usage, Company may reasonably

estimate the Customer's Usage or SMT Usage for that billing cycle and reconcile the estimated Usage or SMT Usage with the actual Usage once the TDU has provided the actual Usage to ERCOT and ERCOT has provided it to the Company. Adjustments may take 1-2 billing cycles from the date the TDU actually reads a meter. The total amount of Customer's bill will be equal to the Usage or SMT Usage times the Price plus any non-recurring costs invoiced to Company by a third party in providing Services to the ESI ID that are not part of the Price, including, but not limited to: (a) TDU charges for disconnection, reconnection, out of cycle meter reads, meter tests, and any other charges which a TDU is authorized to charge as part of its approved tariff as of the date of this Agreement; (b) a disconnection charge of \$25; (c) a \$30 charge for returned checks or insufficient funds; and (d) a priority Move-In fee of \$15.00 in addition to any costs charged to Company by the TDU for such service ((a)-(d) collectively defined as Fees), taxes or other charges that are assessed to the Customer and excluded from the Price as listed on the Agreement Summary.

- c. **PAYMENT:** Payments will be due on the due date shown on the bill, which shall be no less than sixteen days from the date the bill is issued. Payments can be made by setting up recurring payments ("Auto-Pay") via a bank account or credit card by visiting www.newpowertx.com. By selecting Auto-Pay, you consent to Company automatically debiting your bank account or credit card on the Due Date on your invoice for the total amount due, including any Value-Added Services. Company will continue to collect payment via Auto-Pay until or unless you notify Company of your desire to cancel Auto-Pay or you are no longer a Customer of Company. Other payment options are: one-time payments via www.newpowertx.com, calling Company at 888-853-5747, or mailing a payment to P.O Box 734377, Dallas, TX 75373-4377. Company will charge a 5% penalty on the outstanding balance if payment is not made by the Due Date. Any check or electronic transfer returned by a bank for insufficient or unavailable funds will be treated as if Company received no payment at all. If Company initiates collection activity as allowed by law for undisputed past due amounts, Customer will pay any costs incurred by Company in pursuing such remedy, including but not limited to attorney's fees, as well as an administrative charge of \$50.00. Once an account has an inactive status with a past due balance, the account will be sent to collections within two weeks. If Customer has two (2) or more returned payments in twelve (12) consecutive billing cycles, Customer may be required to pay in cash or money order for a period of twelve consecutive billing cycles. Company is not responsible for notifying Customer of bounced checks, returned electronic payments, or failure of Auto-Pay for any reason. If there is an overpayment for any reason, it will be applied to the next invoice unless customer contacts Company and requests a refund. Upon request, if the Customer's account indicates a credit balance, a refund will be sent within 10 business days from request.
- d. **PAYMENT ARRANGEMENT PLANS:** If Customer has difficulty paying an invoice by the due date, special payment arrangement plans may be available based on Customer's qualifications and eligibility. If Customer is determined to be eligible for a deferred payment plan, Customer will pay 50% of the amount due and defer the remainder of the amount due in equal installments over no more than five (5) billing cycles. To qualify for a deferred payment plan, a Customer must not have defaulted under a previous deferred payment plan with Company or have received more than two (2) disconnection notices in the last twelve (12) billing cycles. Customer needs at least three (3) billing cycles of payment history with Company prior to qualifying for a deferred payment plan. Deferred payment plans are available for customers whose invoice becomes due during an extreme weather emergency as defined by the applicable TDU, customers who live in an area covered under a state of disaster declared by the Texas Governor (when directed by the PUCT) or Customer was previously under-billed by \$50.00 or more. If Customer establishes a deferred payment plan, Company may put a switch-hold on such accounts until the deferred balance is paid and processed, at which time Company will remove it. If Customer is disconnected for nonpayment while a switch-hold is in place, a payment will be required to resume service and Customer may not obtain services from another REP until the total deferred balance due to Company is paid in full. All deferred payment plans are formalized in writing and provided to the Customer. Please contact Company for further information.
- e. **AVERAGE BILLING PLAN:** The Average Billing Plan is designed to even out the highs and lows in a Customer's electric invoice. For Customers that enroll, the invoice will be based on total billing cycle electricity charges for the most recent twelve (12) billing cycles divided by 12. This will be the amount Company bills Customer each billing cycle. If Customer does not have previous invoices in the Customer's name at the service location, Company will take the previous usage that is available for the service location and apply the then-current price to calculate the average billing cycle charge. A final true-up will be made if the account is terminated or this Agreement expires, but such true-up will occur at least every twelve (12) billing cycles and be invoiced or credited on the next billing cycle. Any remaining account balance will be due in full upon such termination or expiration.

4. DEPOSITS

- a. **INITIAL SECURITY DEPOSIT:** Customers unable to demonstrate satisfactory credit may be required to post a deposit or other collateral to receive Services. Estimated billings for an initial deposit from an applicant may be based upon reasonable estimate of average usage for the applicant's customer class or may be based on the Customer's estimation of anticipated usage or the actual historical usage associated with the Customer's ESI ID. The amount of deposit will not exceed the greater of either the sum of Customer's estimated billings for the next two (2) billing cycles or one-fifth (1/5th) of Customer's estimated annual billing. Company will not require an initial or additional deposit from an existing Customer unless that Customer, during the previous twelve (12) billing cycles of service, has received a disconnection notice, or has had service terminated for nonpayment or if estimated bills are more than twice the average of the bills over the last 12 months. If an initial or additional deposit is required, Company will send notice and require the Customer to pay the deposit within ten (10) days after the issuance of written notice, and a disconnection notice may be combined with or issued concurrently with the request for deposit.
- b. **INTEREST ON DEPOSITS:** Interest will accrue on any deposit, if held more than 30 days, at an annual rate established by the PUCT. Any deposit will be refunded or credited upon request from Customer in the event that:
 - (i) Customer has made twelve (12) consecutive payments without having more than two (2) late payments or
 - (ii) Customer terminates service with Company or closes the locations associated with the ESI IDs. In the case of (ii) above, Customer's deposit amount plus any accrued interest, minus any outstanding balance owed for electric service, will be refunded to Customer. Additionally, if the customer's or applicant's service is not connected, the deposit will be returned. Any return of a deposit plus accrued interest will be made as soon as commercially reasonable, but at least ten (10) business days after the date the Customer terminated the Agreement or applicant's service was not connected.
- c. **NO DEPOSIT REQUIRED:** Applicants 65 years of age and older who are not currently delinquent in paying their electric service account, applicants who have been declared a victim of domestic violence, former or current active-duty military upon providing reasonable proof of service, and applicants who have provided a letter of credit will qualify to have the deposit waived. Please call us for more information on all available deposit waivers.

5. TERMINATION AND DISCONNECTION

- a. **CUSTOMER'S RIGHT TO TERMINATE:**
 - i. Right To Terminate: At any time, Customer may cancel or terminate the Agreement with Company by contacting Company at 888-853-5747 or email at customercare@newpowertx.com. If Customer takes action that cancels or terminates this Agreement prior to the end of the Initial Term, unless permitted elsewhere in this Agreement, Company may charge, and Customer agrees to pay the Early Termination Fee stated in the Agreement Summary unless: (i) there are less than 14 days remaining in the term or (ii) Customer moves from the service address of the ESI ID during the Initial Term and provides a forwarding address and reasonable evidence that Customer no longer occupies the location specified in the Agreement. Customer and Company agree that damages for Customer's early termination of this Agreement are impossible or difficult to determine and that the Early Termination Fee is a reasonable estimate of the damages that would result from Customer' terminating the Agreement before the end of the Initial Term. Please contact Company at least seven (7) business days before moving. Customer remains responsible for all charges incurred through the date the TDU processes the termination.
 - ii. Obligations After Termination: If Customer cancels or terminates service with Company, Company's obligations will conclude after the meter read date when Company is no longer designated as Customer's REP or the TDU disconnects the meter. If Customer's requested termination date requires an off-cycle meter read or incurs any other charge from the TDU, Customer will be responsible for payment of those charges. Customer's obligations under the Agreement only end when all outstanding balances are paid in full. Cancellation or termination of the Agreement does not relieve Customer of the obligation to pay outstanding balances or any early termination fee that may apply.

- b. **COMPANY'S RIGHT TO TERMINATE:** Company, upon notice as required herein or by law, may terminate this Agreement without penalty if: (i) Customer fails to pay all undisputed amounts when due; (ii) any representation or warranty made by Customer is untrue or becomes untrue; (iii) a Change in Law or other legislative, regulatory or legal action makes Company's performance of this Agreement commercially impracticable or impossible; (iv) if the applicable TDU cannot read Customer's meter or provide Usage for greater than 90 days. If Company terminates this Agreement due to Customer's failure to pay, in addition to any amounts owed up and through the date of termination, Company may charge, and Customer will pay the early termination fee stated in the Agreement Summary. If Customer only fails to pay for Value-Added Services, Company will terminate the Agreement only as to such Value-Added Services and Customer will be responsible for an early termination fee, if any, as to such Value-Added Services and will continue to receive the per kWh price for electricity services for the remainder of the Initial Term.
- c. **DISCONNECTION OF SERVICE FOR NONPAYMENT:** If Company does not receive payment by the Due Date, Company may disconnect the Customer's electricity service. Prior to taking such action, Company will send Customer a Disconnection Notice giving customer no less than ten (10) days from the date of the notice before disconnecting Service for non-payment. In the event of non-payment, Customer remains responsible for paying all outstanding amounts.
- d. **DISCONNECTION WITHOUT NOTICE:** Company or the TDU may disconnect service without notice if a known dangerous condition exists for as long as the condition exists; where service is connected without authority by a person who has not made application for service; where service is reconnected without authority after disconnection for nonpayment; where there has been tampering with the meter or other service provider equipment of the TDU, municipally owned utility, or electric cooperative; or where there is evidence of theft of service.
- e. **CRITICAL CARE AND CHRONIC CONDITION CUSTOMERS:** If Customer has a person permanently residing at a location served by an ESI ID who has been diagnosed by a physician as being dependent upon an electric-powered medical device to sustain life ("Critical Care Customer") or has a serious medical condition that requires an electric powered device or electric heating or cooling to prevent the impairment of a major life function through a significant deterioration or exacerbation of the condition ("Chronic Condition Customer"), Customer may apply for designation as a Critical Care Residential Customer or Chronic Condition Customer. To be considered for such a designation, Customer must submit the PUCT approved form by facsimile or other electronic means to the applicable TDU and to Company. The TDU will notify Customer and Company of the final determination of whether Customer has been designated as Critical Care Customer or a Chronic Condition Customer and whether Customer will receive a renewal notice of Customer's status as either a Critical Care Customer or Chronic Care Customer. The applicable PUCT Rule is available at: <http://www.puc.texas.gov/agency/ruleslaws/subrules/electric/25.497/25.497.pdf>. Designation as a Critical Care Customer or a Chronic Condition Customer does not relieve Customer of the obligation to pay for Services provided under this Agreement.
6. **OUTAGE REPORTING AND SERVICE REQUESTS:** Customer understands that the TDU, and not the Company, is responsible for the delivery of electricity to the Customer's ESI IDs and owns the meter which measures the amount of electricity consumed by Customer. In the event of a service outage or other interruption in power other than for a disconnection as provided for in this Agreement, or any other service requests related to the delivery of electricity to Customer, Customer should contact the appropriate TDU at the contact numbers provided below.

TDU Name	24 Hour Outage Number	Service Requests
AEP Texas North	866-223-8508	877-373-4858
AEP Texas Central	866-223-8508	877-373-4858
CenterPoint Energy	800-332-7143; 713-207-2222	800-332-7143; 713-207-2222
Nueces Electric Cooperative	800-632-9288	800-632-9288
Oncor Electric Delivery	888-313-4747	888-313-6862
Texas-New Mexico Power	888-866-7456	888-866-7456

7. WARRANTIES AND REPRESENTATIONS

- a. **GENERAL WARRANTY BY CUSTOMER:** Customer represents and warrants to Company that the aggregate peak demand of all of Customer's ESI IDs is under 50 kW at all times in the most recent 12 months or that the ESI ID(s) to be served by this Agreement are classified as residential meters by the TDU and that Customer does not currently generate or consume electricity generated behind the Customer's meter. In the event that the peak demand of all non-residential meters has exceeded 50 kW at any time in the past 12 months, Company may either: (i) provide Customer with a new Agreement and Price, which Customer can either accept or reject within 14 days of the date Company notifies Customer of such proposed new Agreement and Price; or (ii) terminate this Agreement upon 14 days written notice to Customer and move Customer to a Variable product. If Company sends a new Agreement and Price to Customer and Customer rejects such proposed new Agreement and Price, Company may terminate this Agreement upon 14 days written notice to Customer and move Customer to a Variable Product. Nothing herein shall relieve Customer of its obligation to pay Company for any Services provided to Customer.
- b. **WARRANTY OF CONSENT TO MARKETING:** If, during Customer's application for Service with Company, Customer specifically authorized Company and its affiliates to occasionally contact Customer with information about products or services that Company thinks may be of interest to Customer, Customer represents and warrants that Customer could and expressly did give such consent for the phone number(s) provided, such consent including the receipt of auto dialed and pre-recorded sales calls, SMS text messages and emails from or on behalf of Company, its affiliates and agents at the phone number(s) and email address provided. Standard messaging and data rates may apply from Customer's mobile phone provider. Customer's information will not be provided to third parties other than Company's agents operating under a confidentiality agreement. Customer understands that this consent was not a condition of purchase and may be revoked by Customer.
- c. **WARRANTY BY COMPANY:** Company 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. Company cannot 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 twelve (12) months or less.
- d. **DISCLAIMER OF WARRANTIES: COMPANY AND CUSTOMER AGREE THAT NEITHER HAS MADE ANY ADDITIONAL PROMISES TO EACH OTHER IN THIS AGREEMENT ABOUT THE SERVICES OTHER THAN WHAT ARE STATED EXPRESSLY HEREIN. COMPANY SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE.**

8. MISCELLANEOUS

- a. **RISK OF LOSS AND INDEMNITY:** 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 Customer's meter. Customer shall indemnify, defend, and hold harmless Company from all claims for any loss, damage, or injury to persons or property, including without limitation, all consequential, exemplary, or punitive damages arising from or related to any act or incident occurring after title to the electricity has passed to Customer.
- b. **LIMITATIONS OF LIABILITY:** If either party becomes liable to the other for damages, then that liability is limited to direct, actual damages only. Neither Company or Customer will be responsible to the other for consequential, special, incidental, punitive, exemplary, or indirect damages. Customer agrees to waive all other remedies at law or in equity. These limitations apply without regard to the cause of any liability or damage, including if the damages result from negligence, whether sole, joint, concurrent, or active or passive. Liability is transferred from Company to the Customer at the point at where Customer's TDU receives the electricity and is transferred to Customer at Customer's meter. Customer will indemnify Company for any third-party liability arising at and from Customer's meter.
- c. **FORCE MAJEURE:** Company will endeavor in a commercially reasonable manner to provide Service but does not guaranty a continuous supply of electrical energy. Events that are out of our control ("Force Majeure Events") may result in interruptions in service. Company will not be liable for any such interruptions. Company does not generate,

TERMS OF SERVICE



transmit or distribute electricity to Customer. Therefore, Customer agrees that Company is not liable for damages

caused by Force Majeure Events, including, but not limited to, acts of God, acts of any governmental authority, including the PUCT or ERCOT, accidents, strikes, labor trouble, required maintenance work, inability to access the TDU or ERCOT system, nonperformance of the TDU or ERCOT, delay or impact of Change in Laws, or any cause beyond Company's reasonable control. If a Force Majeure Event occurs which renders Company unable to perform in whole or in part under this Agreement, Company's performance under this Agreement shall be excused for the duration of such event and if such event lasts more than thirty calendar days, Company has the right to cancel this Agreement in its sole discretion by providing Customer 14 days' notice of such cancellation.

- d. **CHANGES TO THE TERMS OF SERVICE:** Except as indicated in the "Pricing" section of this Agreement, Company will first send a written notice at least fourteen (14) days in advance before making any changes to the Agreement. Written notice will be provided either through a separate document or with the invoice. Notice is not required for a change that benefits Customer. This written notice will be clearly labeled "Important Notice Regarding Changes to Your Agreement" and will identify the change and the specific provisions that address the change. If Customer does not object to the changes, no action is required. If Customer finds these changes unacceptable, Customer may choose another REP within 14 days from the date that the notice was sent, without charge or penalty. Please be aware that if Customer acts after the 14 days has expired, a termination penalty shall apply. A TOS, YRAC or EFL shall be provided whenever a change is made to the specific document and upon Customer's request, at any time free of charge. The cancellation of the Agreement under this section does not excuse Customer from paying all outstanding balances on the account.
- e. **DISPUTE RESOLUTION:** Customer should contact Company at 888-853-5747 toll free on Monday through Friday between 8 a.m. and 7 p.m. US Central Time or via email at customercare@newpowertx.com with specific comments, questions, complaints, bill questions, or if Customer feels there has been a billing error. If Customer is not satisfied with Company's attempt to resolve the problem, Customer may file a complaint with Company and request a supervisory review. If Company fails to resolve the dispute, Customer has the right to file a complaint with the PUC. The PUC contact information is as follows: Public Utility Commission of Texas, Customer Protection Division P.O. Box 13326, Austin, Texas, 78711-3326; telephone (512) 936 7120 or (888) 782 8477; fax (512) 936 7003; Email: customer@puc.state.tx.us; website: www.puc.state.tx.us; TTY (512) 936 7136. Furthermore, Customer agrees not to pursue or participate in any proceeding as a representative of a class, collective action, or in any other capacity than on behalf of Customer itself. Please see your YRAC document for more information. Customer and Company agree that Customer will only pursue claims against Company on an individual basis and will not pursue action on a class-wide, representative, or consolidated basis.
- f. **SEVERABILITY:** Should any provision contained herein be held unenforceable by a court of competent jurisdiction such provision shall be reformed to create a valid and enforceable provision to the maximum extent provided by law. However, if such provision cannot be reformed, it shall be deleted without affecting any other provision of this Agreement. Any failure by Company to enforce any term or condition of this Agreement, or to exercise any right under this Agreement, shall not be considered a waiver of Company's right thereafter to enforce each and every such term and condition or to exercise any right under this Agreement in the future, whether of a like kind or of a different nature. The provisions of this Agreement concerning payment, limitation of liability, and waivers will survive the termination or expiration of this Agreement.
- g. **GOVERNING LAW:** This Agreement shall be governed by, interpreted and construed under, and enforced in accordance with the laws of the State of Texas without regard to principles of conflicts of law. The provisions of the Texas Uniform Commercial Code ("UCC") shall apply to this Agreement, and electricity shall be a "good" for purposes of the UCC. Customer and Company hereby acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the U.S. Bankruptcy Code and further acknowledge and agree that Company is a "forward contract merchant" for such purposes. Certain "Substantive Rules" of the PUCT apply to the sale of retail electricity by Company. Such PUCT rules may be found at <http://www.puc.texas.gov/agency/rulesnlaws/subrules/electric/Electric.aspx>, starting at 25.471 et seq.
- h. **NOTICES:** To the extent permitted by applicable law, notices and correspondence from Company will be delivered to the email address Customer provided; if Customer does not provide an email address, all notices and correspondence will be mailed to the billing address on the account (or to the service address if there are issues with the billing address).

- i. **ASSIGNMENT:** Customer may not assign its interest in and obligations under this Agreement without the express written consent of Company, which may be withheld in Company's sole discretion. Company may sell, transfer, pledge, or assign the accounts, revenues, or proceeds hereof, in connection with any financial agreement and may assign this Agreement to any energy supplier, energy services company or other entity.
- j. **NET METERING CUSTOMERS:** To be considered eligible to participate in a TDU net metering program, Customer must generate a portion or all of Customer's retail electricity requirements using energy generation equipment located at an ESI ID. Additionally, Customer must have a bi-directional meter that has been tested and calibrated by the TDU to assure accuracy prior to commencing services and have completed all necessary application forms with the TDU. Currently, net metering customers are not eligible for Company plans that bundle energy and TDU charges or that are based on time of use rates (e.g. discounted nights, weekends, etc.). If a net metering Customer enrolls on a bundled plan or a time of use plan, Company reserves the right to convert the Customer to an energy-only plan upon notice to Customer. Please contact Company for more information.
- k. **RENEWABLE POWER:** For renewable price plans, Company will purchase and retire Renewable Energy Certificates ("RECs") to offset the specified percentage of Customer's anticipated electricity consumption equal to the percentage specified in the Price.