

## NORTH AMERICAN POWER AND GAS, LLC

### TERMS OF SERVICE

#### RESIDENTIAL CUSTOMERS

These Terms of Service ("TOS") apply to all residential (as described below) customers enrolling with North American Power and Gas, LLC ("NAP") as their retail electric provider ("REP") on or after the TOS issue date at locations within the service territory of the Electric Reliability Council of Texas ("ERCOT"). By accepting electric service from NAP, Customer authorizes NAP to act as Customer's REP and agrees to be bound by all the terms of this Agreement (as defined below), as it may be amended from time to time. As Customer's REP, NAP will arrange for Customer's local Transmission and Distribution Service Provider ("TDSP") to deliver electric power to Customer's service address. Together, these Terms of Service, Customer enrollment authorization information, the Electricity Facts Label ("EFL"), and the Your Rights as a Customer ("YRAC") disclosure document describe Customer's agreement ("Agreement") with respect to Customer's purchase of electric service from NAP and include, among other things a class action waiver and a waiver of trial by jury. You represent that you are at least 18 years old and fully authorized to enter into the Agreement. In this Agreement, the words "we," "us," and "our" refer to North American Power, and the words "you" and "your" refer to Customer.

#### SPANISH LANGUAGE (PARA ESPAÑOL)

Customer's Agreement is available in Spanish by contacting us at 1-800-396-6035 or visiting [www.napower.com](http://www.napower.com).

Para recibir estos documentos en Español, por favor llame 1-800-396-6035 o visitar nuestra página web [www.napower.com](http://www.napower.com)

#### CONTACT INFORMATION

REP Name: North American Power and Gas, LLC

Business Name: North American Power and Gas, LLC

Internet address: [www.napower.com](http://www.napower.com)

Email address: [txcustomer@napower.com](mailto:txcustomer@napower.com)

Customer Service telephone number: 800-396-6035

Fax: 1-678-831-0118

Customer service hours: Monday-Friday 8am-5pm CST

Mailing address: 1500 Rankin Road, Ste. 200, Houston, TX 77073

#### EMERGENCY CONTACT

24 Hour Emergency Outage Information: Please contact the local TDSP to report an electricity outage or emergency conditions at the numbers below:

CenterPoint Energy (Houston Area)	Oncor Electric Delivery (DFW Area)	AEP North and Central (TCC)	Texas New Mexico Power Company
800-332-7143	888-313-4747	866-223-8508	888-866-7456

#### RIGHT OF RESCISSION

Customers switching to NAP have a right to cancel this Agreement without penalty or fees of any kind within 3 federal business days after the date of Customers' authorization and receipt of these Terms of Service. To rescind this Agreement, please contact us by: (1) phone at 1-800-396-6035, 24 hours each day, 7 days per week, (2) fax at 1-678-831-0118, or (3) e-mail at [txcustomer@napower.com](mailto:txcustomer@napower.com). If rescinding this Agreement via fax or email, please include the following: (1) a statement indicating your request to rescind within the required rescission period, (2) your name, address and phone number(s), and (3) NAP's contract number or your ESI ID

**This right of rescission is not applicable to customers requesting a move-in.**

#### TERM

The time period that this Agreement will be in effect ("Term") is shown on the EFL. The Term begins on the meter read date set by your TDSP. You will be responsible for amounts due to NAP for consumption used by you up to the date that the termination of this Agreement becomes effective. Additionally, if you cancel the Agreement after the rescission period and before the end of the Fixed Price Period (as defined below), NAP will have the right to charge you an early termination fee as indicated herein and on the EFL. You must select another REP following termination to continue to receive electric service.

**Contract Expiration Notification.** NAP will inform you in writing, not less than 30 days nor more than 60 days before the end of the Fixed Price Period (as defined below) of this Agreement, of any renewal terms and your option to reject the renewal terms and/or switch to another supplier and cancel this Agreement ("Renewal Notice"). If you do not renew or cancel the Agreement before the last day of the Fixed Price Period and within the TDSP's time frame to effectuate a change in plan, your electric service with NAP will continue automatically on a month-to-month basis at NAP's then-current variable rate ("Variable Rate") as described in the Variable Rate Products section herein. The Variable Rate may include a monthly customer service fee, which will be set forth in the TOS, EFL and YRAC provided to you along with the contract Renewal Notice.

#### PRODUCT OFFERINGS

NAP provides fixed and variable rate products. Your EFL will specify the product type and the Term that applies to your Agreement with NAP. Please note that only those parts of this section that describe your specific product type will apply to your Agreement.

- **Fixed Rate Products.** Fixed Rate Products have a fixed price term ("Fixed Price Period") of at least 3 months. The price of a Fixed Rate Product ("Fixed Price") may only change during Fixed Price Period to reflect actual changes in TDSP charges, changes to the ERCOT or Texas Regional Entity administrative fees charged to loads, or changes resulting from federal, state or local laws that impose new or modified fees or costs on us that are beyond our control. Price changes resulting from these limited circumstances do not require us to provide you with advanced notice.
- **Variable Rate Products.** Variable Rate Products have a term of 31 days or less and a price that varies monthly. The month-to-month Variable Rate will be determined by NAP each month at its sole discretion based on business and market conditions including, but not limited to, the costs incurred by NAP to procure energy to serve your account, transportation costs, balancing fees, capacity charges, line losses, ancillary service fees, alternative and renewable energy requirements, storage charges, administrative costs, costs to acquire, marketing costs, profit, applicable taxes, and other business and market considerations

#### PRICING AND FEES

The price for the electric service provided under this Agreement is set at NAP's sole discretion and is shown on the EFL. The price includes the price of energy supply based on service area, contract term, price, and NAP's charges for arranging transmission and distribution services. The price determinants include, but are not limited to, estimated charges for transmission and distribution services provided by the TDSP. NAP will pass-through without markup any charges imposed by the TDSP, the Public Utility Commission of Texas (PUCT) assessment tax, and any other charges imposed by ERCOT, the PUCT, or other third parties on a non-recurring basis for services or additional equipment, or as provided by applicable law, rule or regulation. NAP may adjust the Fixed Price if your meter was not designated as residential upon your enrollment or, during the Term, the meter's designation is changed to non-residential. The price may vary from the amount shown on the EFL to

reflect:

- i. changes in TDSP charges, changes to the ERCOT or Texas Regional Entity administrative fees charged to loads, or
- ii. changes resulting from federal, state or local laws that impose new or modified fees or costs on NAP. The price will not change if NAP incurs intra-zonal congestion and Reliability Unit Commitment charges associated with the ERCOT Nodal Market. NAP shall 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 Term of 12 months or less.

### SUMMARY OF CHARGES AND FEES

Price per kWh	As indicated on the EFL
Monthly Service Charge	As indicated on the EFL
Taxes	You are responsible for all applicable federal, state and local taxes charged by a TDSP or any governmental entity. This applies to current and future taxes. Please contact NAP at its contact information listed in the Contact Information section of this Agreement for information regarding sales tax exemptions.
Early Termination Fee	\$150.00, except for your change in location, renewal, or within 14 days of expiration.
Non-Sufficient Fund	\$30.00 or maximum allowed by law per transaction.
Disconnection Request Fee	\$50.00
Disconnect	\$10.00
Notice Fee	5% of undisputed delinquent balance or maximum allowed by law plus any collection, legal, attorney or other fees associated with the collection of any past due amounts.
Late Payment Fee	A nominal fee of \$4.95 may be charged for telephonic payment processing.
Payment Processing Fee	NAP reserves the right to pass on any current and future non-recurring fees charged by the TDSP.
Other Non-Recurring Fees	NAP reserves the right to pass on any current and future non-recurring fees charged by the TDSP.

**Early Termination Fee. You may terminate this Agreement without penalty if you move to another location and provide a forwarding address and evidence that you no longer occupy the service address. If you cancel or terminate this Agreement prior to the end of the Fixed Price Period, unless you move to another location as described above, you will pay the early termination fee listed above, except if such early termination fee is waived or otherwise modified in writing by NAP. You will be responsible for amounts due, up to the switch date, of all outstanding charges incurred prior to cancellation by you. Any early termination fee may automatically be applied to your credit card or bank account depending on**

### the payment arrangements made during enrollment.

**Non- Recurring and Other Charges and Fees.** All applicable charges and non-recurring fees will be reflected separately as itemized charges on your invoice. Non-recurring charges billed by your TDSP for establishing, switching, disconnecting, reconnecting, or maintaining service will be passed through to you. Non-recurring charges billed by a TDSP include, but are not limited to, service connection fees, out-of-cycle meter readings, meter test fees, and disconnection and reconnection fees. NAP does not pay or arrange for the payment of any outstanding debts owed by you to the TDSP or previous REP. If you default in the prompt payment of amounts due under this Agreement, NAP may assess any and all fees or charges, including reasonable attorneys' fees and court costs, incurred in connection with the collection of delinquent balances. NAP may use the services of debt collection agencies, consumer reporting agencies, and other remedies as allowed by law to collect any unpaid balances on your account.

**Taxes.** You are liable for and will pay all taxes applicable to the electric service provided by NAP to your account. If you are a tax-exempt entity, you must provide NAP with the necessary certificates and other documentation to qualify for such status. You will also be liable for all gross receipts taxes on the electric service provided by NAP to you and all other assessments and other charges imposed by any governmental authority, including but not limited to, the PUCT.

### CREDIT REQUIREMENTS AND DEPOSITS

NAP may check your credit history prior to providing service. NAP may refuse electric service at any time to anyone who fails to comply with the credit and deposit requirements set forth in PUCT Substantive Rule 25.478, which is available at:

<http://www.puc.texas.gov/agency/ruleslaws/subrules/electric/25.478/25.478.pdf>. NAP may also refuse to provide service to a you for one or more of the reasons specified in PUCT Substantive Rule 25.477, which is available at: <http://www.puc.texas.gov/agency/ruleslaws/subrules/electric/25.477/25.477.pdf>.

**Deposits.** If you cannot demonstrate satisfactory credit as defined in PUCT Substantive Rule 25.478, you will be required to pay a deposit prior to receiving electric service from NAP. While receiving electric service from NAP, you may be required to post a deposit, even if not required as a condition to enrollment, if you are late paying a bill more than once or have your electric service terminated or disconnected for nonpayment during the previous 12 months of service. Such deposit shall not exceed an amount equal to the greater of one-fifth of your estimated annual billing or the sum of your estimated billings for the next 2 months. Interest will be paid on deposits at the rate approved by the PUCT consistent with PUCT Substantive Rule 25.478. NAP will remit to you interest earned on your deposit at the time the deposit is returned or credited to your account or, if requested by you, annually.

The rate of interest will be at least equal to that established by the PUCT each year. If a deposit is refunded within 30 days of the date of deposit, no interest will accrue. If NAP maintains the deposit for more than 30 days, payment of interest will be made retroactive to the date the deposit was received by NAP. The deposit will cease to draw interest on the date it is returned or credited to the your account. NAP will credit any accrued interest on your deposit to your account on your January bill each year or on your final bill. This PUCT rule can be viewed at:

<http://www.puc.texas.gov/agency/ruleslaws/subrules/electric/25.478/25.478.pdf>.

Your deposits held by NAP will be returned to you as a credit to an invoice for electric service provided to you if no late payments have been applied to your account after 12 consecutive months, for residential customers, and after 24 months, for non-residential customers. 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 30 calendar days.

**Deposit Considerations for Residential Customers.** You may be deemed as having established satisfactory credit if you (1) are an existing customer and have not been late in paying a bill more than once or had service terminated or disconnected for payment in the last 12 months of service, (2) have a satisfactory credit rating, (3) are 65 years of age or older and are not currently delinquent in payment of any electric service account, (4) have submitted a certification letter developed by the Texas Council of Family Violence with a prescribed determination that you are a victim of family violence, or (5) submit proof that you are medically indigent. Please call NAP if you believe you may qualify for a waiver of the deposit. If a Customer or applicant qualifies for the rate reduction program under PUCT Substantive Rule §25.454, you will be eligible to pay a deposit of over \$50 in two equal installments. This PUCT rule can be viewed at: <http://www.puc.texas.gov/agency/rulesnlaws/subrules/electric/25.454/25.454.pdf>. In lieu of a deposit, you may provide a standard form letter of guaranty in the amount of the deposit from another NAP customer with a satisfactory payment history who agrees to be responsible for your deposit.

## INVOICES AND PAYMENT

**Invoices.** For residential customers, NAP will deliver your invoices monthly via US mail at your designated mailing address, or if you enroll in an electronic billing option, your invoices shall be delivered in electronic format via email at the email address specified by you at the time of enrollment, or at such other email address as directed by you in writing. NAP may prepare an invoice based on your estimated usage in the absence of meter readings from the TDSP; however, once your meter readings are received, NAP will adjust your invoice to remove any difference between your estimated and actual usage.

**Except as otherwise provided for in this Agreement, the provisions of the Uniform Commercial Code (“UCC”) of Texas shall govern this Agreement and Energy shall be deemed a “good” for purposes of the UCC.** <http://www.statutes.legis.state.tx.us/Docs/BC/htm/BC.1.htm#1.101>.

**Payments.** All invoices are due when rendered. Payments are past due if not received by the close of business on the 16th day after the date of invoice or the postmarked date on the envelope, whichever is later (“Due Date”). If the 16th day falls on a weekend or holiday, then the Due Date will be the next business day after the 16th day. If you fail to pay the full amount of any invoice by its Due Date, a late payment penalty as described herein will be charged to you. A late payment penalty will not be applied to any balance to which it has already been applied. If you have multiple service locations, you are responsible for the terms and aggregate liability of all charges under such your contracts. A non-sufficient funds fee as described herein will be assessed against any transaction not processed due to non-sufficient funds or credit availability for any method of payment including checks, bank drafts, or credit/debit card transactions. Additionally, if you are under a deferred payment plan with NAP, your account(s) may be placed on a “switch-hold,” which will prevent you from being able to switch to another REP until you have paid the full outstanding balance due.

**Payment Options.** NAP offers the following options for payment:

- **Mail** – Check or money order can be mailed to the address on your bill. Your payment may take up to 7 days to process after receipt by NAP.
- **Pay by Phone** – Please call NAP at 1-800-396-6035. A nominal fee of \$4.95 will be charged to process your payment via check or credit/debit card.
- **Online Payment** – Please visit [www.napower.com](http://www.napower.com) to pay via check or

credit/debit card. You may enroll in an electronic payment option whereby NAP will arrange automatic payment from the your designated financial services account. Payment will automatically be deducted from your account on the due date of the invoice. To enroll, please call or visit [www.napower.com](http://www.napower.com). A nominal fee of \$4.95 may be charged to process your payment via check or credit/debit card.

- **Payment Locations** – Please contact us at 1-800-396-6035 to receive information on how to pay in person and locate the nearest authorized payment center. Cash payments are accepted at any MoneyGram payment centers. A nominal fee will be charged to process your payment.

If you make a payment on an outstanding balance on your account at either an authorized payment center or by using a debit/credit card, you should call NAP’s Customer Service Representative at the number in “Our Contact Information” to verify payment. This could help you avoid having your electricity disconnected.

**Billing Disputes.** If you, in good faith, dispute any charges, you must pay such amount as is determined to be correct and provide a written description of the amount disputed, together with supporting documentation for any claim, to NAP before the Due Date. If such amounts are ultimately found to be correct and payable, you will be charged a late payment penalty equal to 5% of such amount.

**Alternative Payment Programs and Payment Assistance.** You should contact NAP immediately if you are unable to pay your bill on time. If you are unable to pay an invoice on time, the payment options listed below may be available.

**Alternative Payment Arrangements.** If you have been under-billed by \$50.00 or more or the bill comes due during an extreme weather emergency, NAP may offer a payment plan or alternative payment arrangement. A disconnection order will be suspended as agreed in a payment plan if NAP had issued a disconnection notice before entering into a payment arrangement with you. If payment is not received by the due date of the payment arrangement, your electric service will be disconnected without further notice.

**Bill Payment Assistance Program.** An energy assistance bill pay program may be available to residential customers who cannot pay their bills and require financial assistance. This program is funded by contributions from NAP customers.

**Deferred Payment Plans.** You are eligible for a deferred payment plan if you are designated as a Critical Care Residential Customer or Chronic Condition Residential Customer under PUCT Substantive Rule 25.480, which is available at: <http://www.puc.texas.gov/agency/rulesnlaws/subrules/electric/25.480/25.480.pdf>. Additionally, you may be eligible for a deferred payment plan if you cannot pay your bill on time, unless you: (i) have been disconnected during the preceding 12 months, (ii) have submitted more than two payments during the preceding 12 months that were found to have non-sufficient funds available, or (iii) have received electric service from NAP for less than 3 months, and you lack either: (a) sufficient credit; or (b) a satisfactory history of payment for electric service from a previous REP or utility. A 5% penalty for late payment will apply if payments are not received by the due date stated in the plan. Your electric service may still be terminated and disconnected if you do not meet the requirements of the deferred payment plan. If you have received a disconnection notice, the delinquent amounts paid under a deferred payment plan will include an initial payment of 50% of the outstanding balance, and the remaining balance to be paid in equal installments over at least the next five billing cycles.

**Level Billing.** The Level Billing Program allows you to pay approximately

the same monthly amount for electric service, subject to at least one annual adjustment based on actual consumption. The program is offered to (i) Customers who are not currently delinquent in payment to NAP and (ii) delinquent Customers qualifying for the PUCT rate reduction program, which may require a deposit of no more than 50% of the delinquent amount, and full payment of any remaining balance of the delinquent amount in equal installments of up to five billing cycles. Any requirement for installment payments will be provided by NAP in writing to you.

Upon enrollment, NAP will review your historical usage history over the prior 3 months, or if usage is not available, enrollment in the program will start 3 months later. NAP will apply your price to the average usage over the last year. The price on your invoice will be applied to the average usage to establish your monthly level billed amount. Your bill will show both actual usage and actual bill amounts; however, you will pay only the level amount. The cumulative difference between your balanced bill and payments and your actual cost will be shown each month. Your account will be reviewed every 3 months to determine if the level billed amount is appropriate. If, upon NAP's review, it is determined that your actual usage billed were more than 10% over or under your average, NAP will adjust your level billed amount to better reflect usage. NAP may bill or credit any overbilling or underbilling, as appropriate, at least once every 12 months.

NAP may collect under-recovered costs and/or refund any over-recovered amounts from you annually or upon termination of service to you. You are obligated to pay for all actual usage under this Agreement. You will be terminated from level billing if: (1) you do not make a payment by the due date on the invoice, (2) you are issued a disconnect notice, (3) you are late in paying a bill more than once in the last 12 consecutive months, (4) your service is disconnected for non-payment, or (5) your financial institution returns 2 or more payments.

If your account is removed from level billing and returned to regular billing, any variance in actual charges and level billed amounts will be immediately due with your next regular bill. If your participation in level billing is canceled or terminated for any reason, or your electric service is disconnected, you might not be eligible to re-enroll.

**Level Billing Switch-Holds:** If you enroll in level billing options with a delinquent balance, NAP may place a switch-hold on your account. The switch-hold will be removed when your delinquent balance is paid in full, or after 12 consecutive payments of the level billed amount due with no more than one late payment. If your electricity service is disconnected for non-payment while a switch hold is in place, you will be required to make payment to resume service, and you will not be able to obtain electric service from another electric provider until the total delinquent balance is paid in full.

## TERMINATION AND DISCONNECTION

**Termination of Agreement. If you desire to terminate this Agreement, you may contact NAP by phone, fax, or e-mail using the contact information provided herein and request termination. If terminating this Agreement via fax or email, please include the following: (1) a statement indicating your request to terminate, (2) your name, address and phone number(s), and (3) NAP's contract number or your ESI ID. The Term of the Agreement is provided in the EFL. If you cancel the Agreement before the end of the Term, or if service is terminated by NAP due to your breach of this Agreement, you may be assessed an early termination fee**

**as specified in your EFL. If termination requires an early meter read by the TDSP, you will be responsible for the fee established by the TDSP. You may terminate electric service without penalty if you move to another premise and provide NAP with evidence that you have moved along with your forwarding address.**

**Disconnection of Service.** NAP, as a REP, may request disconnection of your service for non-payment as provided in this Agreement. Non-payment of your NAP bill may result in a one-time 5% late payment penalty, and also the disconnection of your electric service. NAP may also authorize disconnection for any other grounds permitted by PUCT Substantive Rule 25.483, which is available at:

<http://www.puc.texas.gov/agency/ruleslaws/subrules/electric/25.483/25.483.pdf>. Electric service may be disconnected without notice if a known dangerous condition exists, in which event notice will be provided by phone or posted on the door of the residential unit as soon as practicable after service is disconnected.

**Notice of Disconnection.** NAP will provide you with at least 10 days' prior written notice of its intent to disconnect your service. The disconnection notice will be a separate mailing from your regular invoice with a stated date of disconnection and the words "disconnection notice" displayed. Any due date in the disconnection notice will not be a holiday, weekend day, or any other day that NAP will not be available to take payments. Electric service will be disconnected without notice if it is determined that you did not have authority to receive electric service at the service address, if service has been reconnected without authority after disconnection for nonpayment, or if there has been tampering with the equipment of the TDSP or evidence of theft of service. PUCT Substantive Rule 25.482 is available at:

<http://www.puc.texas.gov/agency/ruleslaws/subrules/electric/25.483/25.483.pdf>.

Your enrollment with another REP upon disconnection will not relieve you of your obligation to pay NAP all amounts due for electric service provided to you by NAP. If your service is disconnected, your final bill will be reconciled. Disconnection does not release you from responsibility to pay your bill in full.

**Chronic Condition or Critical Care.** If interruption or suspension of your electric service will create a serious or life-threatening condition, you may qualify for designation as a Chronic Condition or Critical Care customer. The TDSP determines whether you qualify. To request this designation, you must complete and submit the PUCT's standard application and return it to your TDSP. Designation as a Chronic Condition or Critical Care customer does not relieve you of your obligation to pay for the electric service that you receive.

## Termination by NAP Due to Change in Law/Regulatory Changes:

This Agreement is subject to present and future legislation, orders, rules, regulations, tariffs or decisions of a duly constituted governmental authority having jurisdiction over this Agreement or the services to be provided hereunder, including but not limited to the TDSP, the PUCT, ERCOT, or any of their successors (collectively, "Laws") (any change, or change in interpretation of a Law, a "Change in Law"). If at any time during the term of this Agreement there is a Change in Law that results in North American Power being prevented, prohibited, or frustrated from carrying out the terms of this Agreement, or results in an increase in NAP's costs of providing electricity supply service to you under this Agreement, NAP may terminate this Agreement in accordance with the termination provisions in this Agreement upon 30 days' written notice to you.

## DISPUTES OR COMPLAINTS

Please contact us if you have any questions about your bill or our service. Our customer service representatives will assist with the resolution of your issue or, if they cannot do so immediately, will investigate the matter and report their findings to you. If you have a billing or other dispute that you are not able to resolve with NAP, you may contact the Public Utilities Commission of Texas. The PUCT contact information is as follows: Public Utility Commission of Texas, Consumer Protection Division PO Box 13326, Austin, TX 78711-3326, telephone (512) 936-7120 or toll free (888) 782-8477, fax (512) 936-7003; Email: [customer@puc.texas.gov](mailto:customer@puc.texas.gov); website: [www.puc.texas.gov](http://www.puc.texas.gov). Hearing and speech impaired individuals with text telephones (TTY) may contact the PUCT by calling (512) 936-7136. Please see Customer YRAC for more information.

**Statement of Non-Discrimination.** NAP may not 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, disability, familial status, location of a customer in an economically distressed geographic area, or qualification for low income or energy-efficiency services. NAP cannot use a credit score, a credit history, or utility payment data as the basis for determining the price for electric service for products with a Term of 12 months or less.

#### **CUSTOMER ACKNOWLEDGEMENT AND AUTHORIZATION**

You acknowledge that the TDSP is solely responsible for reading your meter or recorded data, as applicable, and that NAP cannot and does not read a your meter or recorded data, but is bound by the readings and data provided by the TDSP. You further acknowledge that NAP's ability to invoice you depends on the TDSP's ability to furnish NAP with all necessary information including meter readings or recorded data, as applicable, and in the absence of such information from the TDSP, NAP may invoice you based on estimated meter reading according to the your historical usage. By enrolling with NAP, you are designating NAP as an appropriate and authorized user of your information to enroll you, and such enrollment shall constitute authorization for NAP to obtain and review information including, but not limited to the your credit history from credit reporting agencies, and TDSP's information including, but not limited to, consumption history, billing determinants, credit information, payment information, public assistance status, existence of medical emergencies, status as to whether you have a medical emergency, are elderly, blind or disabled, and data applicable to cold weather periods, tax status and/or are eligibility for economic development or other incentives. This information may be used by NAP to determine whether it will commence and/or continue to provide energy supply service to you.

Your execution of this Agreement, or actual or attempted online enrollment, shall constitute authorization for the release of this information to NAP, and to third parties who need to use or be aware of such information in connection with your electric generation services, as well as to NAP's affiliates, agents, contractors and subcontractors for any billing, collection and/or marketing purposes. If accepted as a customer, you authorize NAP to report your payment experience to credit reporting agencies. This authorization will remain in effect during the entirety of this Agreement. You may rescind this authorization at any time by providing written notice thereof to NAP at its contact information listed on the Contact Information section of this Agreement. NAP reserves the right to cancel this Agreement in the event you rescind the authorization.

#### **CHANGES TO CONTRACT PROVISIONS**

**Changes to Price and Term.** NAP may only change or modify the price shown in the EFL to reflect changes in the TDSP charges, changes to ERCOT or the Texas Regional Entity administrative fees charged to loads, or changes resulting from federal, state or local laws that impose new or modified fees or costs on a REP that are beyond the REP's control. Changes in Term of this Agreement require you to enter into a new agreement.

**Changes to Other Terms.** These TOS may be amended by NAP at any time, except that NAP may only change the price and Term as specified above.

NAP will provide written notice to you at least 14 days in advance of the date that the change to this Agreement will be applied to your bill or take effect unless the change benefits you. NAP is not required to provide notice automatically for material changes that benefit you but will, upon request, provide each document to you at any time free of charge. Upon receipt of written notice of a material change, you may terminate this Agreement without penalty within 14 days after the date of the notice, unless such change favors you. Establishing service with another REP may take up to 7 business days.

#### **SERVICE CONNECTION AND METERING**

Service will be provided in accordance with your existing connection requirements unless you request a change by the TDSP and pays for the cost of that change. You may not resell or use any electric power provided under this Agreement as an auxiliary or supplement to any other source of power. The supply of electric power under this Agreement will be measured at the delivery point by the TDSP providing the delivery service in accordance with the terms of the applicable tariff for retail delivery service. NAP and you will be bound by the measurement from the meters owned, installed, maintained and read by the TDSP.

#### **WARRANTIES**

**NAP MAKES NO REPRESENTATION OR WARRANTIES, EITHER EXPRESSED OR IMPLIED, WITH REGARD TO THE PROVISION OF ELECTRIC SERVICE AND DISCLAIMS ANY AND ALL WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BY NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

#### **FORWARD CONTRACT**

**NAP and you acknowledge and agree that the transactions contemplated by this Agreement constitute "forward contracts" within the meaning of the United States Bankruptcy Code, and further acknowledge and agree that NAP is a "forward contract merchant" as defined by the US bankruptcy code, which can be found at <http://uscode.house.gov/download/download.shtml> then go to Title 11-Bankruptcy. You are able to choose document hyperlink based on your available software.**

#### **LIMITATION OF LIABILITY**

You will be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of the electric power after receipt at the delivery point or points. **NAP WILL NOT BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES (INCLUDING LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES), WHETHER BY STATUTE, IN CONTRACT OR TORT, EVEN IF THE RESULT OF NEGLIGENCE (WHETHER SOLE, JOINT, CONCURRENT, ACTIVE OR PASSIVE). ALL OTHER LIABILITY WILL BE LIMITED TO DIRECT ACTUAL DAMAGES, AND SUCH DIRECT ACTUAL DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY. YOU HEREBY WAIVE ALL OTHER REMEDIES AT LAW OR IN EQUITY.**

#### **LIQUIDATED DAMAGES**

To the extent any damages required to be paid hereunder are liquidated, the parties acknowledge that the damages are not intended and shall not be construed as a penalty, such damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient or impossible, and that the liquidated damages constitute a reasonable approximation of the harm or loss.

## **FORCE MAJEURE**

Notwithstanding any other provision of the Agreement, if we are unable to carry out any obligation under the Agreement due to a Force Majeure the Agreement will remain in effect but such obligation will be suspended for the duration of the Force Majeure, so long as we use commercially reasonable efforts to remedy our inability to perform. "Force Majeure" means an event not within our reasonable control that we are unable to prevent or overcome in a commercially reasonable manner by the exercise of due diligence. Force Majeure includes, but is not limited to, acts of God; fire; war; terrorism; flood; earthquake; civil disturbance; sabotage; facility failure; strike; curtailment, disruption or interruption of distribution, transmission, or supply; declaration of emergency by ERCOT; regulatory, administrative, or legislative action, or action or restraint by court order or governmental authority; or any act or omission of a third party not under our control

## **MISCELLANEOUS**

**Governing Law.** This Agreement will be governed by, interpreted, construed and enforced in accordance with the laws of the State of Texas, without regard to principles of conflicts of laws.

**Venue.** Exclusive venue for any controversy arising from or relating to this Agreement will be located in the state or federal courts of Texas (and each party waives any right to object to venue in this regard); provided, however, that any case over which the PUCT has jurisdiction may be brought to the PUCT.

**WAIVER OF JURY TRIAL; CLASS ACTION WAIVER: EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY OR TO INITIATE OR BECOME A PARTY TO ANY CLASS ACTION CLAIMS IN RESPECT OF ANY ACTION, SUIT OR PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.** If either Party pursues court action to enforce its rights under this Agreement, the non-prevailing Party shall promptly reimburse the prevailing Party for all its attorney fees, expenses and costs. Further, NAP shall be entitled to recover from Customer all costs, including attorneys' fees, incurred in connection with its efforts, whether in court or otherwise, to collect amounts due and payable to NAP.

**Entire Agreement.** These Terms of Service, along with the enrollment materials, the Electricity Facts Label and the Your Rights as a Customer disclosure documents, constitute the entire agreement between you and NAP relating to the subject matter hereof and supersede any other agreements, written or oral, between you and NAP concerning the subject matter of the Agreement. This Agreement shall not be modified or waived orally, but only by an instrument in writing signed by the Party against which enforcement of the modification or waiver is sought.

**Assignment.** You may not assign this Agreement or your obligations under this Agreement without NAP's prior written consent. NAP may assign this Agreement, together with all rights and obligations hereunder, to (i) NAP's electricity supplier, or such supplier's designee, (ii) an affiliate of NAP or to any other person succeeding to all or substantially all of NAP's assets or its business to which this Agreement relates, or (iii) in connection with any financing or other financial arrangement.

**Notices.** All Notices to and from you shall be furnished in writing and shall be delivered by electronic mail, United States Postal Service standard mail, certified mail, overnight carrier, or hand delivery. Notice to and from you by hand delivery shall be deemed to be received by the close of the business day on which it was hand delivered (unless hand delivered after the close of business in which case it shall be deemed received at the close of the

next business day). Notice to and from you by overnight mail or courier shall be deemed to have been received 2 business days after it was sent. FOR PURPOSES OF PROVIDING NOTICE OF BANKRUPTCY TO NAP, SUCH NOTICE SHALL ONLY BE EFFECTIVE IF DELIVERED TO NAP at 1500 Rankin Road, Ste. 200, Houston, TX 77073.

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

**Severability.** Should any provision of this Agreement for any reason be declared invalid or unenforceable by final and applicable order by a court or any regulatory body having jurisdiction, such decisions shall not affect the validity of the remaining portions, and the remaining portions shall remain in effect as if this Agreement had been agreed to without the invalid portion. If any provision of this Agreement is declared invalid, the remainder of this Agreement will be construed so as to give effect to its original intent and effect as near as possible.

**Survival.** The provisions of this Agreement concerning payment, limitation of liability, and waivers will survive the termination or expiration of this Agreement.

**Own Judgment.** It is understood and agreed that the parties hereto have carefully reviewed this this Agreement, that they fully understand its terms, that they sought and obtained, or had the opportunity to obtain, independent legal advice with respect to the entering of this Agreement.