

RESIDENTIAL TERMS OF SERVICE

BRILLIANT ENERGY, LLC

PUCT REP License #10140

800 Wilcrest Dr., Ste. 109

Houston, Texas 77042

Ph. 713-789-8800 – Toll Free (Outside Houston) 1-877-789-8801 – Fax 713-789-8806 Hrs. 8-5 Central Time

I. WELCOME!

II. SERVICE

II.A. PROVIDER SERVICES. As authorized by Customer’s signature to the Residential Electric Service Agreement, REP shall (1) provide all of the services required of a Retail Electric Provider, and REP shall (2) act as Customer’s Retail Electric Provider for all purposes; however, REP shall have no responsibility for payment of outstanding debts owed by Customer to previous supplier of electricity or to the Transportation and Distribution Service Provider (“TDSP”).

II.B. NON-DISCRIMINATION. REP shall not deny service or require a prepayment or deposit for service based on Customer’s race, creed, color, national origin, ancestry, gender, marital status, lawful source of income, level of income, disability, familial status, location of a Customer in an economically distressed geographic area, or qualification for low income or energy efficiency service.

II.C. CHARACTERISTICS OF SERVICE. Unless Customer requests a change by the TDSP, and pays for the cost of that change, service shall be provided in accordance with Customer’s existing connection requirements. The electric power and energy furnished hereunder shall not be used by Customer as an auxiliary and supplement to any other source of power, and Customer shall not resell any capacity or energy purchased hereunder. Prices paid by Customer to REP for electricity purchased hereunder shall be equal to the sum of (1) the fixed or variable price of energy supply based on service area, contract term, and contract price, and (2) a base monthly charge for each service location per meter included in the Commercial Electric Service Agreement, if applicable. The REP has the right to pass through to Customer, AT COST, TDSP charges, the Public Utility Commission of Texas (PUCT) assessment tax and any other charges imposed by the TDSP, PUCT or other third parties on a non-recurring basis for services or additional equipment or as provided by law, rule or regulation.

III. TERMINATION

III.A. TERMINATION BY REP.

III.A.1. If the Utility Transfer Date is delayed for a period of time which, at REP’s sole discretion, is perceived as unreasonable, REP may terminate the Service Agreement without penalty.

III.A.2. Upon no less than thirteen (13) days written notice, REP shall have the right to terminate the Service Agreement without penalty if Customer fails to pay on a timely basis or otherwise defaults its obligations under the Service Agreement.

III.B. TERMINATION BY CUSTOMER.

III.B.1. CUSTOMER HAS THE RIGHT TO REVIEW, AND IN THE CASE OF A SWITCH REQUEST, TO RESCIND THE TERMS OF SERVICE WITHIN FEDERAL BUSINESS DAYS AFTER RECEIVING THE TERMS OF SERVICE, WITHOUT PENALTY. Once Service Agreement is executed, if Customer terminates the Agreement without cause, then Customer shall pay REP all reasonable costs of termination in accordance with Article X.B of these Terms of Service.

III.B.2. If Customer terminates the Service Agreement for cause, including, but not limited to, default by REP or REP’s failure to maintain its REP certification in good standing, there shall be no penalty to customer, provided Customer provides thirty (30) days written notice of its intent to terminate.

IV. RENEWAL. Customer will be sent a contract expiration notice at 14 days prior to the end of the initial contract term. Unless Customer takes affirmative action, Customer will automatically be converted to an adjustable monthly rate based on ERCOT market indexes at the end of the fixed rate contract term if applicable. At the conclusion of contract obligations, Customer may also request negotiation of a fixed rate extension based on then current market rates.

V. TAXES. Customer is liable for and shall pay or reimburse TDSP, if it is required to pay, all taxes applicable to the sale of capacity and energy incurred by REP for Customer’s account unless

otherwise specified herein. Customer shall provide REP with necessary certificates and/or documents to qualify for such status if Customer is a tax-exempt entity (appropriate forms may be downloaded from website of Texas State Comptroller).

- VI. **METERS.** Customer and REP shall be bound by the measurement from the meters owned, installed, maintained and read by the TDSP. The supply of energy and capacity under the Service Agreement shall be measured at the point of delivery by the TDSP which provides the delivery service in accordance with the terms of the applicable tariff for retail delivery service.
- VII. **INVOICES AND PAYMENTS.** Customer shall be charged based on actual usage, if actual meter readings are available, plus charges incurred, including all applicable taxes as set forth in Article V above. In the absence of actual meter readings from the TDSP, REP may calculate an invoice based on estimated meter readings. When actual meter readings are received, REP will make adjustments on a subsequent invoice.
- VII.A. **INVOICES** shall be rendered monthly either in paper or electronic format as requested by Customer. Invoices shall be rendered to Customer at the Billing Address specified on the first page of the Residential Electric Service Agreement, or at such other address as may be directed by Customer in writing.
- VII.A.1. **Late Fee.** All invoices are due as of the date of the invoice and are past due if not paid within sixteen (16) days thereafter (the "Due Date"). Unless Customer provides REP with written notice disputing all or some of the charges prior to the Due Date, the Customer shall pay REP (a) a penalty equal to 5% of the uncontested and unpaid balance, plus (b) interest on the uncontested and unpaid balance which shall accrue on each calendar day from the Due Date at a rate equal to 1.5% per month or the highest rate allowed by law, whichever is less.
- VII.A.2. Customer should contact REP immediately if unable to pay its bill on time. REP may allow Customer to pay the outstanding bill after its due date, but payment must be made before the due date of the next bill. REP will offer a payment plan or alternative payment arrangement if Customer has been under-billed by \$50 or more or the bill becomes due during an extreme weather emergency.
- VII.A.3. Dispute of any invoice or portion thereof shall be submitted in writing prior to the Due Date, and Customer shall provide REP with all substantiation, documentary or otherwise, of the dispute. If negotiations between the parties fail to resolve the dispute, the entire invoice shall be due and owing and interest shall begin to accrue upon written notice from REP to Customer.
- VII.A.4. Customer will be in violation of contract terms if Customer is past due more than twice within a twelve-month period, or if Customer has not paid the amount of any invoice within 16 days of its Due Date.
- VII.A.5. Customer is responsible for the terms and aggregate liability of Customer contracts if Customer has multiple service locations.
- VII.A.6 **Insufficient Funds.** In the event of a returned payment by a bank from a customer attempting to remit payment to Brilliant Energy, LLC, Customer shall pay Brilliant Energy, LLC a fee of twenty-five (\$25.00) dollars per incident. Any check or electronic transfer that is returned by a bank for unavailable or insufficient funds will be considered as a non-payment. This will constitute a breach of contract and the result can be a termination of service. Brilliant Energy, LLC can give notice to Customer of intent to disconnect the Customer's electricity service after a ten (10) calendar day notice has been given to Customer.
- VII.A.7. **Reconnect Fee:** Brilliant Energy, LLC may charge the Customer a fee of Seventy-Five Dollars (\$75.00) for each request to reconnect service after the service has been terminated.
- VII.A.8. **Minimum Usage Fee.** Brilliant Energy, LLC will not charge a Minimum Usage Fee if the ESI-ID's energy consumption is greater than 500KWh per billing period. For ESI-IDs with energy consumption less than or equal to 499 KWh per billing period, a Minimum Usage Fee of \$6.95 per ESI-ID shall apply.
- VII.B **Average Budget Billing Plan.** An average billing plan helps residential customers offset high monthly costs and minimizes the fluctuation of energy costs by spreading them evenly over a specific time period as defined by this Agreement. Brilliant Energy, LLC will average the previous 12 months of usage and will determine an installment amount for the plan. Requirements for qualification include: No delinquencies on your current payments and no unpaid balances.

In order to compute an average monthly amount, Brilliant adheres to the following formula:

Monthly Amount = the previous 12 months of usage history (if there is no history available, we will estimate it for you) at the service address multiplied by a 5% adjustment factor, multiplied by the contracted price per KWh. The price per KWh includes all costs related to the energy, the expected 12 months of Pass-Through charges for your Utility, any applicable fees mandated and approved by the PUCT and ERCOT, and all the anticipated taxes for 12 months. The total figure is divided by 12. Non-recurring charges, for example Re-connect fees, are also billed.

The customer's actual usage and other charges are tracked separately to provide for an account pay-off balance which can be paid at any time

At the end of the agreement there will be a True-Up of the usage and the balance, and Brilliant will send Customer a statement with the overage or shortage of payments. At that time, Brilliant will also re-price the Agreement based on updated usage figures and current energy market prices.

VIII. **REP'S RIGHTS**

VIII.A. **Right to Disconnect.** As of June 1, 2004, the Public Utility Commission of Texas allows a REP to request disconnection of service if Customer does not pay the electric bill by the final due date. A REP having disconnection authority may order the disconnection of a Customer's electric service after proper notice for any of the following reasons:

1. Failure to pay any outstanding bona fide debt for electric service owed to the REP or to make deferred payment arrangements by the date of disconnect stated on the disconnection notice.
2. Failure to pay a deposit as required by §25.478 of the Customer Protection Rules of the PUCT (relating to Credit Requirements or Deposits).
3. Failure to comply with terms of a deferred payment agreement made with REP
4. Failure of guarantor to pay the amount guaranteed, when REP has a written agreement, signed by guarantor, which allows for disconnection of the guarantor's service.
5. If a reasonable attempt has been made to notify Customer and Customer is provided with a reasonable opportunity to remedy the situation, for violation of the REP's terms and conditions relating to using service in a manner which interferes with the service of others or the operation of non-standard equipment.

VIII.B. **Right to Offset.** REP is hereby authorized, to the fullest extent allowed by law, to apply any and all payments by Customer toward the settlement of any sum Customer owes REP. If REP owes Customer any payment, then REP may apply that amount toward settlement of any sum Customer owes REP. The referenced payments from or to either party may be those due either under the Electric Service Agreement or any other Agreement between Customer and REP; they may be received from or credited to multiple ESI locations; and, they may be used to settle any obligation, including but not limited to, sums, deposits, fees and charges either under the Electric Agreement or a separate Agreement between the Parties. REP may exercise this right to offset at any time or from time to time whether or not REP has made any demand under the Agreement or these Terms of Service.

IX. **WARRANTIES.** REP warrants that it will deliver to Customer, Customer's energy and capacity requirements in accordance with this Agreement, free and clear of liens, claims and encumbrances arising prior to the delivery point or points. Customer shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of the capacity and energy after receipt at the delivery point or points. OTHER THAN SET FORTH IN THIS ARTICLE, REP MAKES NO WARRANTY, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

X. **INDEMNITY.** CUSTOMER AND REP SHALL, AND EACH HEREBY DOES, INDEMNIFY, DEFEND, AND HOLD HARMLESS THE OTHER FROM ANY CLAIMS ARISING FROM ANY ACT OR INCIDENT OCCURRING WHEN TITLE TO CAPACITY AND ENERGY IS VESTED IN THE INDEMNIFYING PARTY.

XI. **OBLIGATIONS.** REP shall sell and deliver, or cause to be delivered, to Customer, and Customer shall purchase and receive, or cause to be received from REP all of Customer's capacity and energy

requirements during the term of the Agreement in accordance with the terms and provisions herein.

- XII.A. **DAMAGES TO CUSTOMER.** REP's payment of damages to Customer for any actionable breach by REP, except when excused in writing by Customer of REP's electric generation supply obligations shall be limited to the lost savings, if positive, equal to the most economical price available to Customer from the Provider of Last Resort (POLR) or a third party Retail Electric Provider minus the fixed price of energy supply as provided in Article 3 of the Agreement times the Customer's energy usage at the corresponding times for the duration of the breach.
- XII.B **DAMAGES TO REP.** Customer's payment of damages to REP for early termination of this Agreement, unless executed in writing by REP shall be in the amount of Two Hundred (\$200) Dollars. Customer shall also be liable to REP for payments of all outstanding charges incurred prior to cancellation by Customer. This Agreement shall be deemed to be a separate agreement for each such location if more than one location (multiple ESI's) is listed in this Agreement. Notwithstanding the foregoing, REP shall, at its sole discretion, be authorized to combine all such locations into a single invoice. In addition, any default by Customer with respect to single or multiple locations may, at REP's sole discretion, constitute a default with respect to all locations listed herein. Customers who terminate early due to moving from the service address will not be charged the early termination fee, but may be asked to provide proof of moving.
- XIII. **FORCE MAJEURE.**
- XIII.A. Force Majeure shall mean any act or even that is beyond the reasonable control of, and without the fault or negligence of, the Party whose performance under the Agreement is adversely affected, interrupted, or precluded by the event. Force Majeure includes, but is not limited to, and act of God; labor disturbance; act of public enemy; terrorism; war; insurrection; riot; embargo; fire; storm; lightning; flood; explosion; breakage or accident to machinery or equipment; acts of other parties, including ERCOT, Aggregators, other Retail Electric Providers, qualified scheduling entities, TDSP's, and the respective employees and agents of such parties; a curtailment order, regulation, or restriction imposed by governmental, military or lawfully established civil authority; and any other condition beyond the control and without the fault of the Party affected thereby. The REP will pass to the customer all related and reasonable costs caused by such conditions.
- XIII.B. If either Party is rendered unable by Force Majeure to Carry out, in whole or in party, its obligations under the Agreement and such Party gives notice and full details of the event to the other party as soon as practicable after the event, then during the pendency of such Force Majeure, but for no longer period, the obligations of the Party affected by the event (other than the obligation to make payments then due or becoming due with respect to performance prior to the event) shall be excused to the extent required. The Party affected by the Force Majeure shall take all reasonable steps to remedy the cause or effect of the Force Majeure event with all reasonable dispatch.
- XIV. **NOTICES.** Notices shall be as provided in Article 2 of the Electrical Service Agreement to the designees listed at the end of the Agreement at the designated and contracted address, and shall be deemed to have been duly delivered if hand delivered or sent by United States certified or registered mail, return receipt requested, postage prepaid, or by Federal Express or similar overnight delivery service.
- XV. **ASSIGNMENT.** The Electric Service Agreement shall be binding upon and inure to the benefit of, and may be performed by, the successors and assigns of the Parties, except that no assignment, pledge or other transfer of the Agreement by either party shall operate to release the assignor, pledger, or transferor of any of its obligations under the Agreement. Notwithstanding any other provision of the Agreement, Customer agrees that REP shall have the right to assign the Agreement, together with all rights and obligations hereunder, to REP's electricity supplier, or such supplier's designee or to its banks or other lenders in connection with its financing activities, or to another reputable and sound REP. Nothing in this provision shall deny REP or Customer any benefits obtained, or relieve them of any obligations, duties, and responsibilities incurred prior to any assignment under this provision.
- XVI. **RESOLUTION OF DISPUTES.** The Parties shall negotiate all disputes in good faith. If negotiations fail, then the Parties may, by mutual agreement, submit the dispute to mediation and may choose to submit the dispute to a final and binding arbitration conducted in accordance with the rules of the American Arbitration Association (AAA) by a single arbitrator selected through the

procedures of the AAA. Arbitrations shall be held in Harris County, Texas, or as mutually agreed to by the Parties.

- XVII. **GOVERNING LAW.** The Electric Service Agreement and all attachments thereto were executed in the State of Texas. They shall in all respects be governed by, interpreted, construed and enforced in accordance with the laws thereof, without regard to principles of conflicts of laws. Venue shall be Harris County, Texas.
- XVIII. **CONFIDENTIALITY.** Neither Party shall disclose the terms of the Agreement, including all attachments thereto, to any third party (other than such parties as employees, lenders, counsel, accountants or other advisors) except for the purpose of complying with any applicable law, order, regulator or exchange rule.
- XIX. **NO WAIVER.** No waiver by either Party of any default by the other Party under the Agreement, including all attachments thereto, shall operate as a waiver of a future default whether of a like or different character.
- XX. **AMENDMENT.** The Agreement and attachments thereto may be amended only upon mutual agreement of the Parties, which amendment shall not be effective until reduced to writing and executed by both Parties. A duly authorized representative of REP must expressly agree in writing prior to any changes, additions, or amendments at the request of or by Customer. If Customer attempts changes in any other manner, such changes shall be void and of no effect.
- XXI. **SEVERABILITY.** Should any provision of the Agreement or its attachments for any reason be declared invalid or unenforceable by final and applicable order or 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 the Agreement had been executed without the invalid portion. In the event any provision is declared invalid, the Parties shall promptly renegotiate to restore the Agreement as nearly as possible to its original intent and effect.
- XXII. **SURVIVABILITY.** The portions of the Agreement and its attachments concerning payment, confidentiality and indemnification shall survive the termination or expiration of the Agreement.
- XXIII. **TERMINATION BY REP.** REP shall have the right to terminate the Agreement and transfer Customer to the default Affiliated Retail Electric Provider (A-REP) if Customer breaches any term, warranty, representation, or condition of the Agreement or its attachments and fails to remedy or correct the same within thirty (30) days after written notice of such breach from REP. The transfer to Customer to the A-REP shall be in addition to any and all other remedies available in the Agreement and under law. As previously noted herein, REP may also terminate the Agreement without penalty if the Utility Transfer Date is delayed for a period of time which REP, at its sole discretion, perceives as unreasonable. REP may also terminate the Agreement if Customer commits fraud or misrepresents information to REP or others. Termination is in addition to any and all other remedies available in the Agreement and its attachments or under law.
- XXIV. **ENTIRE AGREEMENT.** The Electric Service Agreement and all attachments thereto constitute the entire agreement between the Parties relating to the subject matter hereinof. Any other agreements, written or oral, between the parties concerning the subject matter of the Agreement are hereby superseded.

BRILLIANT ENERGY LLC
PUCT LICENSE # 10140
RESIDENTIAL AUTHORIZATION ADDENDUM
RESIDENTIAL FIXED RATE PRODUCT

If there are any changes or cancellation to this order, it is the responsibility of Customer to contact Brilliant immediately. Please refer to the Terms of Service for all applicable terms and conditions.

Applicant Name: _____
Applicant Service Address: _____
Apt/Unit #: _____ City: _____ State: _____ Zip Code: _____

Phone for Contact: _____ E-mail: _____

Additional Contact Phone: _____

Applicant Billing Address (if different from service address):

Billing Address: _____
Apt/Unit #: _____ City: _____ State: _____ Zip code: _____

Check One: _____ Switching REPs or _____ New Service Move In Date _____
_____/_____/_____

ESI ID (if available): _____ Budget Billing? Yes _____ No _____

(please indicate if there are additional locations)

Tax ID/SSN: _____ Driver's License #: _____ State: _____

DOB: _____ E-mail address: _____

DRIVER'S LICENSE AND SOCIAL SECURITY NUMBER REQUIRED FOR PROCESSING

If applicable, name of individual legally authorized to act for applicant: _____

Relationship to applicant: _____

Telephone number of individual authorized to act for applicant: _____

_____ By initialing here, I acknowledge that I have read and understand the terms of service for the product for which I am enrolling.

_____ By initialing here, I acknowledge that I understand that the price I am agreeing to is _____ per KWh, the term of service that I am agreeing to is _____, that I will be required to pay a deposit in the amount of \$_____ in order to enroll, that I prefer to receive information from my REP in English/Spanish (circle one), and that there is a penalty for early cancellation of \$_____ as specified by the terms of service.

_____ By initialing here and signing below, I am authorizing Brilliant Energy LLC to become my new retail electric provider and to act as my agent to perform the necessary tasks to establish my electric service account with Brilliant Energy. This authorization to establish or switch my provider of electric service extends to the following locations (list each service address): _____

I have read and understand this Letter of Authorization and the terms of service that describe the service I will be receiving. I am at least eighteen years of age and legally authorized to select or change retail electric providers for the service address(es) listed above.

Signed: _____ Date: _____

You have the right to review and, in the case of a switch request, rescind the terms of service within three federal business days after receiving the terms of service without penalty. You will receive a written copy of the terms of service document that will explain all the terms of the agreement and how to exercise the right of rescission before your electric service is switched to Brilliant Energy.