

RESIDENTIAL TERMS OF SERVICE
BRILLIANT ENERGY, LLC
PUCT REP License #10140
800 Wilcrest Dr., Ste. 109
Houston, Texas 77042
customerservice@brilliantenergylc.com
www.brilliantenergylc.com

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

- I. **WELCOME!**
- II. **SERVICE.** Brilliant Energy LLC [“Brilliant Energy”], a certified Retail Electric Provider [“REP”] in the state of Texas, provides electricity service as set forth in the terms and services of this Service Agreement [“Service Agreement”], which includes the attachments: this Terms of Service [“TOS”], ‘Your Rights as a Customer’ [“YRAAC”], the online or paper Letter of Authorization [“LOA”], the Electricity Facts Label [“EFL”], and any service location addendums.
- II.A. **PROVIDER SERVICES.** By executing the LOA, Customer authorizes Brilliant Energy to (1) provide all of the services required of a REP; and (2) act as Customer’s REP for all purposes. The Service Agreement does NOT make Brilliant Energy responsible for payment of outstanding debts owed by Customer to previous supplier of electricity or to the Transportation and Distribution Utility/Service Provider [“TDU”].
- II.B. **NON-DISCRIMINATION.** Brilliant Energy 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 TDU, 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 Brilliant Energy 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 Service Agreement, if applicable. Brilliant Energy has the right to pass through to Customer, AT COST, TDU charges, the Public Utility Commission of Texas [“PUCT”] assessment tax and any other charges imposed by the TDU, 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 TDU Transfer Date is delayed for a period of time which, at Brilliant Energy’s sole discretion, is perceived as unreasonable, Brilliant Energy may terminate the Service Agreement without penalty.
- III.A.2. Upon no less than thirteen (13) days written notice, Brilliant Energy 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 RESCIND WITHOUT PENALTY THE SERVICE AGREEMENT WITHIN THREE FEDERAL BUSINESS DAYS AFTER RECEIVING THE TERMS OF SERVICE.** Customers rescinding are responsible for charges relating to energy flowed prior to the third business day as a result of a priority move-in or a self-selected switch. Once Service Agreement is executed, if Customer terminates the Service Agreement without cause, then Customer shall pay Brilliant Energy all reasonable costs of termination in accordance with Article XII.B of these Terms of Service.
- III.B.2. If Customer terminates the Service Agreement for cause, including, but not limited to, default by Brilliant Energy or Brilliant Energy’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 least 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 Electricity Reliability Council of Texas [“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 TDU, if it is required to pay, all taxes applicable to the sale of capacity and energy incurred by Brilliant Energy for Customer’s account unless otherwise specified herein. Customer shall provide Brilliant Energy 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 Brilliant Energy shall be bound by the measurement from the meters owned, installed, maintained and read by the TDU. The supply of energy and capacity under the Service Agreement shall be measured at the point of delivery by the TDU 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 TDU, Brilliant Energy may calculate an invoice based on estimated meter readings. When actual meter readings are received, Brilliant Energy 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 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 [“Due Date”]. Unless Customer provides Brilliant Energy with written notice disputing all or some of the charges prior to the Due Date, the Customer shall pay Brilliant Energy (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 Brilliant Energy immediately if unable to pay its bill on time. Brilliant Energy 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. Brilliant Energy 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 Brilliant Energy 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 Brilliant Energy 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, Customer shall pay Brilliant Energy a fee of \$25.00 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 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 may charge the Customer a fee of \$75.00 for each request to reconnect service after the service has been terminated.
- VII.A.8. **Minimum Usage Fee.** Brilliant Energy will not charge a Minimum Usage Fee if the Electric Service Identifier [“ESI”] energy consumption is greater than the kiloWatt hour [“kWh”] per billing period threshold defined in the Service Agreement. For each ESI with billing period energy consumption less than or equal to that threshold, the Minimum Usage Fee per ESI shall be charged, as defined in the Service Agreement.
- VII.B. **AVERAGE BUDGET BILLING PLAN.** Brilliant Energy’s level-pay average budget billing plan [“Level-Pay Plan”] helps customers offset high monthly costs, and minimizes the fluctuation of energy costs by spreading them evenly over a specific time period. Requirements for qualification include no delinquencies on your current payments and no unpaid balances. Brilliant Energy’s reconciliation [“True-Up”] of Level-Pay Plan budget payments against actual charges includes recalculation of the Level-Pay Plan monthly payment amount, and is done no less frequently than every 12 months. Since Brilliant Energy does True-Up for all customers at the same time, a Customer’s True-Up may be for less than 12 months. The Level-Pay Plan monthly payment amount is based on (a) the last 12 months of usage, actual or estimated if not available, (b) estimated TDU pass-through charges, (c) estimated taxes, (d) estimated PUCT/ERCOT charges, and (e) eligible True-Up adjustments if any. The Customer may terminate their Level-Pay Plan at any time, at which time Brilliant Energy performs a True-Up and places the True-Up charge/credit adjustment on the Customer’s account.
- VII.C. **CREDIT REQUIREMENTS.** Brilliant Energy may require Customer to demonstrate and maintain satisfactory creditworthiness as a condition of providing electric service to Customer under the Service Agreement pursuant to Brilliant Energy’s internal credit policies applied on a non-discriminatory basis [“Credit Requirements”]. Customer authorizes Brilliant Energy to access and use information about Customer in order for Brilliant Energy to review Customer’s credit and payment history and determine whether Customer meets Brilliant Energy’s Credit Requirements. All Residential Customers will be deemed to have satisfactory credit and meet Brilliant Energy’s Credit Requirements if Customer (i) is 65 years of age or older and is not currently delinquent in payment of any amounts owed to Brilliant Energy; or (ii) submits a

certification letter to Brilliant Energy prepared by the Texas Council on Family Violence evidencing that Customer is a victim of family violence, in each case as further described in Section 25.478(a)(4) of the PUCT Rules (see Section 25.478 at <http://www.puc.state.tx.us/rules/subrules/electric>); or (iii) is medically indigent with a household income is equal or less than 150% of the poverty guidelines as certified by a governmental entity.

VII.C.1. **Antidiscrimination.** The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract), because all or part of an applicant's income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. Brilliant Energy will not and is unable to use a credit score as basis for determining the price with contract less than 12 months.

VII.D. **DEPOSIT REQUIREMENTS.** A new Customer enrolling with Brilliant Energy may be required to pay an initial deposit prior to initiation of service on the Effective Date if such Customer does not meet Brilliant Energy's Credit Requirements. An existing Customer receiving a new Product from Brilliant Energy also may be required to pay a deposit prior to the initiation of service if Customer fails to maintain Brilliant Energy's Credit Requirements; provided, with respect to existing Residential Customers of Brilliant Energy, a deposit will not be required unless, during the previous twelve (12) months, Customer (i) was late paying an invoice more than once; or (ii) had service terminated or disconnected for nonpayment. During the Term of the Service Agreement, Customer may be required to pay Brilliant Energy an additional deposit to continue to receive electric service if (i) the average of Customer's actual billings for the last twelve (12) months are at least twice the amount of the original average of Customer's estimated annual billings when Customer initiated service with Brilliant Energy; and (ii) a termination or disconnection notice has been issued to Customer or Customer's account has been disconnected within the previous twelve (12) months. Brilliant Energy may require Customer to pay any additional deposit to Brilliant Energy within ten (10) days after Brilliant Energy requests the additional deposit. Failure by Customer to pay the additional deposit within such ten (10) day period may result in subsequent disconnection of Customer's electric service (as further described in Section VI herein). In certain circumstances, Customer may have the right to provide a guarantee in lieu of a cash deposit pursuant to Section 25.478(i) of the PUCT Rules (see Section 25.478 at <http://www.puc.state.tx.us/rules/subrules/electric>).

VII.D.1. The total amount of all deposits required from Customer under the Service Agreement (whether an initial deposit or additional deposit) shall not exceed the greater of (i) one-fifth (1/5) of Customer's estimated annual billing; or (ii) the sum of Customer's estimated billings for the next two (2) months. Cash deposits shall accrue interest at the rate specified by the PUCT if such deposit is held for more than thirty (30) days. In accordance with Section 25.478(e)(3) of the PUCT Rules (see Section 25.478 at <http://www.puc.state.tx.us/rules/subrules/electric>), if Customer is a Residential Customer and qualifies for the LITE-UP Program, a deposit exceeding fifty dollars (\$50) may be made to Brilliant Energy in two (2) equal payments.

VII.E. **RIGHT OF RESCISSION.** Customer switching electrical service to Brilliant Energy may rescind this service without penalty by contacting Brilliant Energy before midnight of the third federal business day from the date listed above. This right of rescission may be exercised by telephone, email, by fax, or by regular mail.

- By Phone/Fax: 713-789-8800 (Houston); toll free 877-789-8801 (outside Houston); Fax: 713-789-8806
- By Email: customerservice@brilliantenergyllc.com
- By Mail: Brilliant Energy Customer Service, 800 Wilcrest Drive, Suite 109, Houston, TX 77042

VII.F. **REGULATORY CHANGES.** The price and terms of the Service Agreement are based on the laws, rules, tariffs and protocols in place at the time of execution. If, during the term of this Agreement, the PUCT, ERCOT, the Texas Comptroller's Office or any other government body or agency with jurisdiction over the Texas electricity market or retail electric providers operating in Texas approves changes which impact the cost to provide electricity service to Customer (including, but not limited to, the implementation by ERCOT of a nodal market in Texas), Brilliant Energy reserves the right to adjust the prices, terms, rates, riders, fees, tariffs or any other charges under this Agreement accordingly in accordance with Section 25.475(d) of the PUCT Rules (see Section 25.475 at <http://www.puc.state.tx.us/rules/subrules/electric>).

VII.F.1. Notably, any change in the price or terms of Customer's Agreement requires Brilliant Energy to provide notice of such change to Customer under Section 25.475(d). Upon receiving notice of such change in terms or price, Customer has the option to terminate the Service Agreement without penalty within 14 days of receiving such contract change notice. Such termination right must be expressly disclosed to Customer in the contract change notice.

VIII. RIGHTS OF REP.

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. Brilliant Energy may order the disconnection of a Customer's electric service after proper notice for any of the following reasons:

- Failure to pay any outstanding bona fide debt for electric service owed to Brilliant Energy or to make

deferred payment arrangements by the date of disconnect stated on the disconnection notice.

- Failure to pay a deposit as required by §25.478 of the Customer Protection Rules of the PUCT (relating to Credit Requirements or Deposits). See PUCT Electric Rules at www.puc.state.tx.us.
- Failure to comply with terms of a deferred payment agreement made with Brilliant Energy
- Failure of guarantor to pay the amount guaranteed, when Brilliant Energy has a written agreement, signed by guarantor, which allows for disconnection of the guarantor's service.
- 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 Brilliant Energy'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.** Brilliant Energy 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 Brilliant Energy. If Brilliant Energy owes Customer any payment, then Brilliant Energy may apply that amount toward settlement of any sum Customer owes Brilliant Energy. The referenced payments from or to either party may be those due either under the Service Agreement or any other agreement between Customer and Brilliant Energy; 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 Service Agreement or a separate agreement between the Parties. Brilliant Energy may exercise this right to offset at any time or from time to time whether or not Brilliant Energy has made any demand under the Service Agreement or these Terms of Service.

IX. **WARRANTIES.** Brilliant Energy warrants that it will deliver to Customer, Customer's energy and capacity requirements in accordance with the Service 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, Brilliant Energy MAKES NO WARRANTY, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

X. **INDEMNITY.** CUSTOMER AND BRILLIANT ENERGY 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.** Brilliant Energy shall sell and deliver, or cause to be delivered, to Customer, and Customer shall purchase and receive, or cause to be received from Brilliant Energy all of Customer's capacity and energy requirements during the term of the Service Agreement in accordance with the terms and provisions herein.

XII. **DAMAGES.**

XII.A. **DAMAGES TO CUSTOMER.** Brilliant Energy's payment of damages to Customer for any actionable breach by Brilliant Energy, except when excused in writing by Customer of Brilliant Energy'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 REP minus the fixed price of energy supply as provided in Article 3 of the Service 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 Brilliant Energy for early termination of the Service Agreement, unless executed in writing by Brilliant Energy shall be in the amount of Two Hundred (\$200) Dollars. Customer shall also be liable to Brilliant Energy for payments of all outstanding charges incurred prior to cancellation by Customer. This Service Agreement shall be deemed to be a separate agreement for each such location if more than one location (multiple ESI's) is listed in the Service Agreement. Notwithstanding the foregoing, Brilliant Energy 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 Brilliant Energy'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 event that is beyond the reasonable control of, and without the fault or negligence of, the Party whose performance under the Service 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 REPs, qualified scheduling entities, TDU'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. Brilliant Energy 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 Service 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 Service 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 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 Service Agreement by either party shall operate to release the assignor, pledger, or transferor of any of its obligations under the Service Agreement. Notwithstanding any other provision of the Service Agreement, Customer agrees that Brilliant Energy shall have the right to assign the Service Agreement, together with all rights and obligations hereunder, to Brilliant Energy'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 Brilliant Energy 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 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 Service 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 Service Agreement, including all attachments thereto, shall operate as a waiver of a future default whether of a like or different character.
- XX. **AMENDMENT.** The Service 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 Brilliant Energy 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 Service 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 Service Agreement had been executed without the invalid portion. In the event any provision is declared invalid, the Parties shall promptly renegotiate to restore the Service Agreement as nearly as possible to its original intent and effect.
- XXII. **SURVIVABILITY.** The portions of the Service Agreement and its attachments concerning payment, confidentiality and indemnification shall survive the termination or expiration of the Service Agreement.
- XXIII. **TERMINATION BY REP.** Brilliant Energy shall have the right to terminate the Service Agreement and transfer Customer to the POLR if Customer breaches any term, warranty, representation, or condition of the Service Agreement or its attachments and fails to remedy or correct the same within thirty (30) days after written notice of such breach from Brilliant Energy. The transfer to Customer to the POLR shall be in addition to any and all other remedies available in the Service Agreement and under law. As previously noted herein, Brilliant Energy may also terminate the Service Agreement without penalty if the TDU Transfer Date is delayed for a period of time which Brilliant Energy, at its sole discretion, perceives as unreasonable. Brilliant Energy may also terminate the Service Agreement if Customer commits fraud or misrepresents information to Brilliant Energy or others. Termination is in addition to any and all other remedies available in the Service Agreement and its attachments or under law.
- XXIV. **ENTIRE AGREEMENT.** The Service Agreement and all attachments thereto constitute the entire agreement between the Parties relating to the subject matter herein of. Any other agreements, written or oral, between the parties concerning the subject matter of the Service Agreement are hereby superseded.