Constellation NewEnergy, Inc. (Constellation) | PUCT License #10014

Terms of Service

These Terms of Service ("TOS"), along with Your Rights as a Customer ("YRAC"), Electricity Facts Label ("EFL"), any ESID Addendum, and any documentation of your enrollment authorization pursuant to 25.474 of the Public Utility Commission of Texas ("PUCT") Customer Protection Rules (which can be accessed at http://www.puc.state.tx.us/agency/rulesnlaws/subrules/electric/Electric.aspx) ("Authorization"), collectively the Agreement ("Agreement") set forth the terms and conditions under which a residential customer ("Customer," "you" or "your") will receive electric service from Constellation NewEnergy, Inc. ("Constellation", "we" and "us") a certified Retail Electric Provider (REP) in the state of Texas, PUCT Certificate No. 10014. By entering into this Agreement, Customer hereby: 1) appoints Constellation to arrange for purchase and delivery of electricity (including volume balancing and billing) from any source on Customer's behalf for the period of time defined in this Agreement; and 2) Customer hereby requests that all electric service associated with Customer's name and/or address(es) or electric service identifiers ("ESIDs") be transferred to Constellation under the terms and conditions of this Agreement. Constellation and Customer may be referred to herein individually as a "Party" or together as "Parties." The TOS, EFL and YRAC together constitute your "Contract Documents." Please retain the Contract Documents for your records. A copy of the Contract Documents are available to Customer upon written request. For questions about this Agreement or your Contract Documents or other electric service needs, please contact Constellation's customer service department at:

INTERNET ADDRESS:	www.constellation.com	EMAIL ADDRESS:	CustomerCareTX@constellation.com
MAILING ADDRESS:	P.O. Box 4911 Houston, TX 77210-4911		
TELEPHONE:	Toll-Free: 1 (866) 917-8271	FAX NUMBER:	1 (866) 477-8576
HOURS:	Mon-Fri 7:00 am - 8:00 pm CST	Saturday 8:00 am - 5:00 pm CST	

24 Hour Emergency Outage Information: Please contact your TDU to report electricity outage or emergency conditions at the appropriate number below:

Centerpoint Energy (Houston Area): 800-332-7143	Oncor Electric Delivery (DFW Area): 888-313-4747
Nueces Electric Cooperative: 800-632-9288	AEP: 866-223-8508
Texas New Mexico Power Area: 888-866-7456	

Customer Information:

By entering into this Agreement, Customer authorizes its local Transmission and Distribution Utility ("TDU") to release to Constellation any information that is necessary or required to become the REP for Customer, including, but not limited to: Customer's address, account numbers, and historical usage information.

1. Term & Renewal:

This Agreement shall commence on the date of the initial meter reading by the applicable TDU and continue for the period indicated in your Authorization and/or in the EFL ("Initial Term"). Customer acknowledges that Constellation cannot guarantee a switch of Customer's account to Constellation by a specific date and hereby holds harmless Constellation from any liability for, or arising out of, delays in this process. For term products (non-month to month products), a contract expiration notice will be sent at least thirty (30) days prior to the end of the Initial Term. If you fail to renew your agreement with Constellation, your service will automatically continue on a month-to-month basis after the expiration of your Initial Term on a default renewal product, which is a variable price product whose price will be determined at the sole discretion of Constellation until cancelled by either you or Constellation.

2. Contract Pricing:

Current pricing for service is indicated in your Authorization and/or in the EFL. Customer understands and agrees that if it utilized a Third Party/Broker, Constellation will be making a payment to such Third Party/Broker in connection with its efforts to facilitate customer entering into this Agreement; Customer also understands and agrees that the Price reflects the fee Constellation is paying to the Third Party/Broker, and such Third Party/Broker is acting on Customer's behalf as Customer's representative, and is not a representative or agent of Constellation. Customer also understands and agrees that as such, it should direct any questions regarding such fees to its Third Party/Broker.

3. Product Types:

Constellation provides three different types of products including fixed rate, indexed and variable price. Your Authorization and/or EFL specify the product type and the term that applies to your Agreement. 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 term of at least (three) 3 months. The price of a fixed rate product may only change during your Initial Term to reflect actual changes in TDSP charges, changes to the Electric Reliability Council of Texas ("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 Price Products. Variable price products have a term of thirty-one (31) days or less and a price that varies according to the method disclosed on your EFL.

Indexed Products. Indexed products may have a contract term of three (3) months or more, or may be month-to-month. Indexed Products have a price that changes according to a pre-defined pricing formula that is based on publicly available indices or information. The price for term indexed products may also change without advance notice 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 or regulatory actions that impose new or modified fees or costs on us that are beyond our control.

4. Material Changes by Constellation:

Constellation will provide Customer with at least fourteen (14) calendar days advance written notice of any Material Change in this Agreement, either in Customer's bill or in a separate mailing. The changes will become effective on the date stated in the written notice. Customer may cancel this Agreement before the effective date of the Material Change, as identified in the advance written notice provided to Customer, without any Early Termination Fee.

5. Early Terminations:

In the event that Constellation, or its activities hereunder, becomes subject to regulations of any kind whatsoever under any law, government body action or ERCOT action that has the effect of materially changing the circumstances from those that exist on the effective date of this Agreement then Constellation may pass through the economic effects to Customer of such change or Constellation may unilaterally terminate this Agreement without Customer's consent upon at least thirty (30) calendar days written notice to Customer without any obligation, payment or otherwise, to Customer or an Early Termination Fee.

6. Early Termination Fee:

If Customer terminates this Agreement or defaults as described in Section 11 and/or 12 of this Agreement, then, unless otherwise provided herein, an Early Termination Fee shall be immediately due and paid by Customer to Constellation. The amount of the Early Termination Fee is set forth in the EFL. In the event that Customer moves out of the location(s) identified in this Agreement and the Customer provides Constellation with the following items: 1) proper and reasonable evidence of such move, such as a bill in Customer's name at Customer's new location and 2) a forwarding address for which Constellation is able to confirm as the new residence of Customer, then the Early Termination Fee will not apply.

7. Invoicing, Payment, Interest, and Credit Requirements:

Customer will receive a monthly invoice from Constellation (Customers in the Nueces service territory only have a choice of billing options. Nueces customers have the right to request a single bill or two bills for electricity service. For business reasons, Constellation only offers the two bill option. You will receive a bill each month from Nueces for its delivery services, and you will receive a bill from Constellation for our power supply services. Please note that BOTH bills will need to be paid each month.). All invoices are due and payable sixteen (16) calendar days from the date the invoice was issued. Customer must provide to Constellation written notice setting forth in particular detail any disputed amount, including the calculations with respect to any errors or inaccuracies claimed. If it is subsequently determined that Customer owes Constellation any portion of the disputed amount, Customer shall remit to Constellation within 5 (five) business days following such determination the outstanding balance. Any amounts that may have been overpaid or underpaid shall be applied to the next monthly invoice.

Customer is responsible for all regulatory charges, taxes, duties, fees, levies, premiums or any other charges of any kind, whether direct or indirect, relating to the sale, purchase or delivery of electricity, together with all interest, penalties or other additional amounts imposed, including but not limited to gross receipts tax, PUCT Assessment, sales tax, consumption tax, use tax, value added tax, kWh, commercial activity or other privilege tax, and any other tax (whether in effect as of the effective date of this Agreement or thereafter) imposed by any governmental entity. Constellation reserves the right to include in any subsequent invoice, adjustments related to previous invoices, previous invoicing errors, meter read errors, miscalculation of taxes or other errors or omissions. Customer authorizes Constellation, and Constellation reserves the right, to charge Customer's credit/debit card and/or checking account without notice for any unpaid balances that are past due. If the account is referred to a collection company, Constellation reserves the right to bill Customer a fee not to exceed thirty-three percent (33%) of the amount being collected. If the account is referred for legal actions, any and all attorney fees and court costs will be billed to the Customer. Customer shall be responsible for any and all fees associated with or incurred by Constellation in collecting any amounts owed to Constellation, including, but not limited, to attorneys' fees, court costs and any fees charged by a collection agency.

Budget Billing:

Constellation offers a levelized payment plan ("Budget Billing") which allows customers to pay a calculated average amount for electric service each month. The program is available to 1) customers who are not currently delinquent in payment and 2) delinquent customers in limited situations. At least every twelve (12) months, Constellation will reconcile Customer's account and calculate a new Budget Billing amount accordingly. Constellation will credit Customer's account for any over-billed amount and will include any under-billed amount in the new Budget Billing amount. Customer may opt-out of Budget Billing by 1) paying the full balance due and 2) providing Constellation with notice of your desire to be removed from Budget Billing. Budget Billing does not affect your obligation to pay for all actual usage and other associated charges taxes and fees. Failure to pay your monthly bill on or before the stated due date may result in Constellation's cancellation of your participation in Budget Billing.

Bill Payment and Other Assistance:

An energy assistance program is available to Customers who have severe financial hardships and temporarily may be unable to pay their bills. The program is funded in part by contributions from Constellation customers. In certain circumstances for which Customer must qualify, you may have the right to establish a payment arrangement or deferred payment plan with Constellation. A payment plan allows you to pay your bill after the due date, but before the next bill is due. A deferred payment plan is an arrangement between Constellation and Customer that permits the Customer to pay an outstanding bill in installments that extend beyond the due date of the next bill. Constellation will confirm all deferred payment plans in writing. Please call for additional information.

If Customer or a person permanently residing at Customer's residence has special needs that require Customer or such person to be dependent on electrical equipment or power medical equipment, then you may qualify as a Chronic Condition or Critical Care residential customer. It is Customer's responsibility to advise Constellation in writing upon application for service if Customer or a person permanently residing at Customer's residence is or may qualify as a Critical Care or Chronic Condition residential customer. Upon request, we will provide you the PUCT's standardized Critical Care or Chronic Condition Eligibility Determination Form, which must be completed by your physician and returned to us or the TDU. The ultimate decision to grant either designation rests with your TDU. Additional information regarding Critical Care and Chronic Condition designations may be found in your YRAC.

8. Additional Charges & Fees:

Constellation will charge a one-time late payment penalty of 5% for each delinquent month's charges that remain unpaid after the close of business on the bill due date. Additionally, Constellation will charge: 1) a $30 fee for any returned check, electronic fund transfer or credit card transaction not processed due to insufficient funds or credit availability; 2) a $20 disconnection fee for processing an electric service disconnection transaction; 3) a $20 reconnection fee in the event that Constellation processes a reconnection transaction on your account, (such fees are in addition to any disconnect/reconnect fees that may be assessed by your TDU, and are assessed regardless of whether or not your electric service is actually disconnected by the TDU if the transaction orders are sent); 4) a $6.95/call fee for customers who make a payment via a call center agent; and 5) any charges or fees that the TDU charges Constellation including but not limited to fees to initiate or switch service, transport and distribute electricity to your service location, read your meter, and terminate or restore service. These charges are passed on to you by Constellation, along with certain charges and fees assessed by ERCOT.

9. Customer Acknowledgements:

Customer acknowledges that the TDU is solely responsible for reading Customer's meter or recorded data, as applicable, and that Constellation cannot and does not read a Customer's meter or recorded data, but is bound by the readings and data provided by the TDU. Customer further acknowledges that Constellation's ability to invoice Customer depends on the TDU's ability to furnish Constellation with all necessary information including meter readings or recorded data, as applicable. In the absence of such information from the TDU, Constellation may invoice Customer based on estimated meter reading according to the Customer's historical usage. As soon as practicable, and after receipt of actual Customer's energy consumption from the TDU, Constellation will reconcile any difference(s) between estimated and actual usage charges.

10. Credit Requirements & Deposit:

Constellation may investigate the Customer's credit history at any time. Constellation may refuse electric service at any time to anyone who does not meet Constellation's credit standards or if Customer cannot pay the requisite deposit or demonstrate satisfactory credit. Constellation may also refuse to provide service to a Customer for one or more of the reasons specified in Section 25.477 of the PUCT rules and regulations (http://www.puc.state.tx.us/agency/rulesnlaws/subrules/electric/Electric.aspx).

Applicants who are sixty-five (65) years of age or older who are not currently delinquent in payment of any electric service account are deemed as having established satisfactory credit. A Customer or applicant may be deemed as having established satisfactory credit if the Customer or applicant has been determined to be a victim of family violence as defined in the Texas Family Code §71.004 (see website for more details at http://www.statutes.legis.state.tx.us/), by a family violence center or by treating medical personnel. This determination shall be evidenced by submission of a certification letter developed by the Texas Council of Family Violence.

Deposits:

If Customer fails to demonstrate satisfactory credit, as determined in the sole discretion of Constellation, then Customer may be required to pay a deposit prior to service being provided, if at all. Such deposit shall not exceed an amount equal to the greater of one-fifth of the Customer's estimated annual billing or; the sum of the Customer's estimated billings for the next 2 (two) months. Deposits may be waived or refunded with a valid letter of credit for electric services received at the address and account name supplied on this application.

Deposits held more than thirty (30) days will accrue interest from the date of receipt at the annual rate established by the PUCT. Accrued interest will be applied annually to Customer's account. Upon termination of service or after twelve (12) consecutive months of service with no late payments of any kind, Constellation will apply the deposit plus accrued interest, if any, against Customer's account or outstanding balance on Customer's final bill. 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 thirty (30) calendar days.

11. Default and Disconnection:

A Default means:

- Failure of Customer to pay any amounts due under this Agreement within the time strictly provided herein; or
- Failure of Customer to perform any material term of this Agreement; or
- Determination that any representation upon which this Agreement is based is false; or
- Immediately after Customer files for or is otherwise placed in bankruptcy; or
- Determination by the TDU that any tampering has occurred at the Customer's meters.
- Prevention by Constellation to initiate and/or provide service to Customer's meters for any reason, including but not limited to a switch-hold or permitting issues.

Default of this Agreement, including without limitation, non-payment of Customer's bill may result in an order for the TDU to disconnect the Customer's electric service at the Customer's meters; and the termination of this Agreement at the sole discretion of Constellation. Moreover, Constellation may seek to have your electric service disconnected after providing you at least ten (10) calendar days' notice for any of the following reasons: (1) failure to pay a bill owed to Constellation, or to make a deferred payment arrangement by the date of disconnection; (2) failure to comply with the terms of a deferred payment agreement made with Constellation; (3) using service in a manner that interferes with the service of others or the operations of non-standard equipment; (4) failure to pay a deposit required by Constellation; or (5) failure of the guarantor to pay the amount guaranteed when Constellation has a written agreement, signed by the guarantor, which allows for disconnection of the guarantor's service.

Constellation may authorize your TDU to disconnect your electric service without prior notice to you if: (1) certain dangerous circumstances exist; (2) service is connected without the authority by a person who has not made application for service; (3) service is reconnected without authority after disconnection for non-payment; (4) there has been tampering with the equipment used to measure the amount of electricity used; or (5) there is evidence of theft of service . Payments may be made in person at any authorized payment center (please call us or visit our web site to get a list of the cash payment locations in your area), by phone to Constellation during normal business hours (Monday – Friday 8:00 am to 5:00 pm) or on-line at www.constellation.com. SERVICE MAY BE DISCONNECTED AGAIN WITHOUT NOTICE FOR ANY RETURNED PAYMENTS. A deposit or additional deposits may be required on accounts that have been disconnected for non-payment.

Upon satisfactory correction of the reasons for the disconnection, Constellation will notify your TDU to reconnect your service. Constellation will continue to serve you under this Agreement in effect prior to issuance of the disconnection notice. If your service was disconnected due to a dangerous situation, your service will be reconnected once you notify Constellation that you have corrected and satisfactorily resolved the dangerous situation. Please allow 24 to 48 hours for completion of reconnect orders.

12. Remedies upon Default:

If Customer defaults then, in addition to any rights and/or remedies available to Constellation in this Agreement, in law or in equity, Constellation may unilaterally terminate this Agreement and issue a "move out" transaction, and Customer shall be subject to and responsible for payment of any applicable Early Termination Fee. Thereafter, Constellation may calculate all amounts due under this Agreement and Customer shall pay those amounts within five (5) calendar days from the date of invoice. Customer shall be liable for payment of any and all fees related to and/or arising out of Customer's default, including without limitation, attorneys' fees, court costs, collection fees, and demands for payment. If Customer defaults, then Customer may be required to reapply for electric service and pay a deposit in order to again become a Customer.

13. Representations and Warranties:

As a material inducement to entering into this Agreement, Customer hereby represents and warrants to Constellation as follows:

- This Agreement constitutes a legal, valid, and binding obligation of Customer, enforceable against Customer in accordance with its terms, subject to bankruptcy, insolvency, reorganization, and other laws affecting creditor's rights generally, and with regard to equitable remedies, subject to the discretion of the court before which proceedings to obtain same may be pending; and
- Customer has knowledge, understanding and experience that enable Customer to evaluate the merits and risks of entering into this Agreement;

14. Forward Contract:

Constellation and Customer 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 Constellation is a "forward contract merchant." (http://uscode.house.gov/download/pls/11C1.txt).

15. Assignment:

Customer shall not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of Constellation, which consent may not be unreasonably withheld. Notwithstanding the foregoing, Constellation may, without the consent of Customer:

- Transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements; and
- Transfer or assign this Agreement to its affiliate; and
- Transfer or assign this Agreement to any person or entity succeeding to all or substantially all of its assets; and

Customer hereby acknowledges and consents to Constellation's pledge and contingent assignment or subrogation of all rights and obligations hereunder. In the event any other provision of this Agreement shall be deemed to prohibit or otherwise restrict Constellation's assignment, subrogation or pledge of its rights hereunder, this provision shall control.

16. Binding Effect:

This Agreement shall inure to the benefit of, and be binding upon, Constellation and Customer and their respective successors and permitted assigns.

17. Force Majeure:

Constellation shall not be liable in damages for any act or event that is beyond its control and which could not be reasonably anticipated and prevented through the use of reasonable measures, including, but not limited to, an act of God, act of the public enemy, war, terrorism, insurrection, riot, fire, explosion, labor disturbance or strike, wildlife, unavoidable accident, equipment or material shortage, breakdown or accident to machinery or equipment, or good faith compliance with a then valid curtailment, order, regulation or restriction imposed by governmental, military, or lawfully established civilian authorities, including any order or directive of ERCOT.

18. Excuse:

If an event occurs which makes it impossible for Constellation to perform this Agreement, including without limitation, any of the foregoing force majeureevents, then our performance under this Agreement shall be excused for the duration of such event. This could be an event affecting Customer's TDU, such as a facility outage on their electric distribution lines.

19. LIMITATION OF REMEDIES, LIABILITY AND DAMAGES:

CONSTELLATION AND CUSTOMER CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF, FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY.

SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNDER NO CIRCUMSTANCE SHALL CONSTELLATION BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

IT IS THE INTENT OF CONSTELLATION AND THE CUSTOMER THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, CONSTELLATION AND CUSTOMER ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

20. Dispute Resolution:

Constellation and Customer agree in good faith to attempt to resolve any disputes as detailed in the YRAC. Any communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to the attention of the "Legal Department" at P.O. Box 4911 Houston, TX 77210-4911.

21. UCC:

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).

22. Warranty Disclaimer:

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT CONSTELLATION DOES NOT MAKE AND EXPRESSLY NEGATES ANY OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATION OR WARRANTY WITH RESPECT TO CONFORMITY TO MODELS OR SAMPLES, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE.

23. Notices:

Notices to and from Customer shall be furnished in writing and shall be delivered by electronic mail, United States Postal Service standard mail, certified mail, or overnight carrier. Notice to and from Customer 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 Customer by overnight mail or courier shall be deemed to have been received 2 (two) business days after it was sent. FOR PURPOSES OF PROVIDING NOTICE OF BANKRUPTCY TO CONSTELLATION, SUCH NOTICE SHALL ONLY BE EFFECTIVE IF DELIVERED TO THE FOLLOWING ADDRESS: "Legal Department" at P.O. Box 4911 Houston, TX 77210-4911.

24. Governing Law:

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF Constellation AND CUSTOMER HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAWS.

25. Non-Waiver:

No waiver by any Party hereto of any one or more defaults, by the other Party in the performance of any of the provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature.

26. Severability:

Except as otherwise stated herein, any provision or article declared or rendered unlawful by a court of law or regulatory agency with jurisdiction over Constellation or Customer, or deemed unlawful because of a statutory change, will not otherwise affect the lawful obligations that arise under this Agreement.

27. No Third Party Beneficiaries:

Subject to the provisions above under "Assignment," nothing in this Agreement shall provide any benefit to any third party nor shall it provide any third party any claim, cause of action, remedy or right of any kind.

28. Right of Rescission:

For switch requests, Customer has the right to rescind Customer's request for Constellation to become its REP without any Early Termination Fee within three (3) federal business days of the applicant's receipt of the TOS. To rescind this Agreement, Customer shall give notice to Constellation in writing via regular mail at P.O. Box 4911 Houston, TX 77210-4911, or by email at CustomerCareTX@constellation.com or by facsimile at 1 (866) 477-8576 or by calling 1 (866) 917-8271. Rescission requests received after three (3) federal business days are not guaranteed rescissions; however Customer has the right to select another REP and Customer may do so by contacting that REP, but Customer remains responsible for any Early Termination Fees. Regardless of the method or reason for termination or cancellation of this Agreement, Customer is responsible for the payment of any and all services provided to Customer before or after the termination or cancellation of this Agreement. If Customer requests that the TDU read its meter before the normal meter read date Customer may be charged a fee as set by the respective TDU.

29. Discrimination:

Constellation does not discriminate, deny service, or require a prepayment or deposit for service based on a customer's race, creed, color, national origin, ancestry, sex, religion, marital status, lawful source of income, level of income, disability, familial status, location in an economically distressed geographic area, or qualification for low income or energy efficiency services. Further, Constellation does not use a credit score, credit history, or utility payment data as the basis for determining the price for residential electric service for a product with a term of twelve (12) months or less.

30. Entirety of Agreement:

It is the intention of the Parties that the Agreement shall contain all terms, conditions, and protections in any way related to, or arising out of, the sale and purchase of electricity, and supersedes any and all prior such agreements between the Parties hereto, whether written or oral, as to the provision of electric service to any of Customer's ESI IDs. Both Parties have agreed to the wording of the Agreement and any ambiguities therein shall not be interpreted to the detriment of either party merely by the fact that such party is the author of the Agreement.

31. Venue.

The Parties acknowledge and agree that this Agreement has been negotiated, drafted, executed and is performable in Harris County, Texas and may be enforced in Harris County, Texas.

32. Counterparts.

This Agreement may be executed simultaneously in multiple originals or counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument, and each of which shall be sufficient for all purposes without producing or accounting for the other counterparts hereof.

33. No Oral Modification or Waivers.

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.

34. Own Judgment.

It is understood and agreed that the Parties hereto have carefully reviewed 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 negotiation and preparation of this Agreement, and that this Agreement has been negotiated and prepared by the joint efforts of the Parties.