

## Terms of Service – Residential and Small Commercial Postpaid

**TERMS OF SERVICE:** This Terms of Service (“TOS”) document explains the details of your electric service from First Choice Power, LLC, (“First Choice Power” or “we” or “us”), PUCT Certificate No. 10008. This TOS document, together with your enrollment documentation, your Electricity Facts Label (“EFL”), and the Your Rights as a Customer (“YRAC”) document constitute your agreement (“Agreement”) with First Choice Power. If you accept this Agreement, there’s nothing else that you need to do. To cancel this Agreement at any time without penalty, please read “Your Right to Cancel” within the Terms of Service. By accepting service from First Choice Power pursuant to your Agreement, you’re giving us the right to supply electricity to all of the electric service accounts under your name or address, which will be transferred to First Choice Power.

**CUSTOMER INFORMATION:** You give us the right to use any information that we think we will need or find helpful to provide the best possible electric service, which may include address, telephone number, account numbers, historical usage data, payment and credit history and other information, whether from you, your transmission distribution utility (“TDU”), or current retail electric provider (“REP”).

**OUR CONTACT INFORMATION:** First Choice Power Customer Service Representatives are available to help you Monday through Saturday from 7:30 a.m. to 8:00 p.m. CST. Toll-free for residential customers: 1-866-469-2464; toll-free for commercial customers: 1-866-469-2464. Write to us at First Choice Power, P.O. Box 180, Tulsa, OK 74101-0180. Our payment address is First Choice Power (Remittance), P.O. Box 650808, Dallas, TX 75266-0808. Fax us toll-free at 1-800-666-8867, view other products and services at [www.firstchoicepower.com](http://www.firstchoicepower.com), or e-mail us at [FirstChoicePower@directenergy.com](mailto:FirstChoicePower@directenergy.com).

**TERM OF AGREEMENT:** This Agreement will be effective as of your first scheduled meter read date following completion of enrollment with us. Unless terminated as outlined in this Agreement, your service will continue for the term specified in the EFL until the end of this term at which time you can choose another product with us, or choose another electricity provider. If you fail to pay the amount due on your invoice, your service is subject to disconnection as specified in the disconnection section, below. If you fail to have your service reconnected within 5 business days of its disconnection, this Agreement will be terminated.

### PRICING:

**Residential and Small Commercial Customers:** The price you will pay us for electricity is as provided in the EFL. The total average price per kilowatt-hour (“kWh”) includes the costs for electricity generation, monthly kWh usage, a monthly base charge, and costs of delivery of electricity to your premise, and is exclusive of state and local taxes and the state miscellaneous gross receipts tax reimbursement. To learn more about specific pricing information, see the EFL. For small commercial customers, demand charges (if applicable) are assessed by your TDU and passed onto your monthly invoice. Demand charges are based on each customer’s maximum 15-minute demand on the TDU distribution system each month. Demand is measured in kilowatts (“kW”). Customers are billed according to kW of demand for their rate.

Your price is subject to change and may increase without notice for any reason, including but not limited to if: (1) there are changes to TDU Delivery Charges or TDU surcharges; (2) there are changes to the Electric Reliability Council of Texas (“ERCOT”) or Texas Regional Entity (“TRE”) administrative fees; (3) 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; (4) we determine in our sole discretion that the rate class or type of service originally designated by ERCOT, us, or you is incorrect; or (5) we determine in our sole discretion that the price should change, and subject to the provisions in the attached EFL. Pricing features and product details of this price product can also be changed under the Changes to Terms of Service provision of this Agreement.

In addition, you may be required to pay nonrecurring fees and charges originated by your TDU including, but not limited to, fees and charges related to establishing, switching, disconnecting, reconnecting, or maintaining electric service or equipment. Charges for required, nonrecurring fees will be listed as a separate line item on your monthly bill. All bills for electric service will include applicable federal, state, and local taxes. Tax-exempt customers must provide us with appropriate exemption certificates before assessment and collection of taxes can be waived. For additional price information, see the EFL. Please refer to the “Billing and Payment Terms” section within these TOS, for more detailed information.

For E-Plan Customers, you may also be charged fees for services that First Choice Power provides. These fees will be listed separately on your bill and are described below:

- Customer Services Access Fee: E-Plan is an online product so we may charge a \$5.95 fee if you contact a First Choice Power customer care representative. To avoid this fee, you can use our automated phone service or website.
- Autopay Breakage Fee: A \$15.00 fee may be assessed for your failure not to establish autopay on your account at the time of bill generation.

Regardless of usage, you will be assessed a base charge, as listed on your EFL, for each billing cycle, which is defined as a period bounded by a start date and stop date that the TDU uses to determine when a customer used electric service. A billing cycle may be less than 30 days but the base charge will not be prorated. In no event will more than one base charge be assessed per Electric

Service Identifier (“ESI-ID”) per billing cycle. This base charge will be listed as a separate line item on your bill. If more than one ESI-ID is included in your Agreement, you will be charged a separate base charge for each included ESI-ID per billing cycle.

You will also be billed the Minimum Usage Charge (if one is shown on your EFL) for any consumption less than the threshold set forth on your EFL in any given billing cycle. A billing cycle may be less than 30 days but the Minimum Usage Charge (if one is shown on your EFL) will not be prorated if assessed. All applicable governmental taxes and non-recurring TDU fees, such as, but not limited to, connection charges, move-in charges, meter installation charges and reconnection charges will also be listed separately on your bill. Please visit the Public Utility Commission of Texas (“PUCT”) website at: <http://www.puc.state.tx.us/industry/electric/rates/TDR.aspx> to view the rates for your TDSP. All applicable non-recurring fees for First Choice Power will be listed separately on your bill and are described in the “Billing and Payment Terms” section within these TOS.

If more than one meter identified by an ESI-ID is included as a part of your Agreement, you will be charged for all of the usage at all of the included ESI-IDs.

**Taxes:** You will be responsible and guarantee us for any and all Taxes. The term “Taxes” means all federal, state and local taxes, fees, governmental charges, and assessments presently or hereafter imposed on you as purchaser of electricity, on us as seller of electricity, or on electricity sales transactions, including, without limitation, gross receipts taxes, municipal administrative fees, and generation, utility, TDSP, regulatory, or electricity taxes and assessments. If you are exempt from gross receipts tax due to living in an unincorporated area, it is your responsibility to provide us with this information, so that we can update your account accordingly. All bills for electric service will include applicable federal, state, and local taxes. Tax-exempt customers must provide us with appropriate exemption certificates before assessment and collection of taxes can be waived. For additional price information, see the EFL.

**NOTICE OF APPLICABILITY OF THE PROMPT PAYMENT ACT TO GOVERNMENTAL ENTITIES:** Our service to governmental entities is governed by the Prompt Payment Act (the “PPA”). The PPA and the definition for the “governmental entities” to which it applies are established in Texas Government Code, Chapter 2251 (available at: <http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2251.htm>). Pursuant to PUCT Subst. R. 25.482 (available at: <http://www.puc.state.tx.us/rules/subrules/electric/25.482/25.482.pdf>), a payment by a governmental entity subject to the PPA shall become overdue as provided in the PPA; any billing dispute between a governmental entity and us about any bill for service will be resolved as provided in the PPA; and interest on a governmental entity’s overdue payment shall be calculated and remitted pursuant to the PPA.

**CHANGES TO TERMS OF SERVICE:** Except as indicated in the “Pricing” section of these TOS, we will first send you a written notice at least 14 days in advance before making any changes to your Agreement. Written notice will be provided either through a separate document or on your bill. Notice is not required for a change that benefits you. This written notice will be clearly labeled “Important Notice Regarding Changes to Your Contract.” If you’re satisfied with the changes, there’s nothing else you have to do to continue to receive service. If you find the changes unacceptable, you may choose another energy company before the changes go into effect, without charge or penalty. These TOS, YRAC, or EFL shall be provided to you whenever a change is made to the specific document and upon your request, at any time free of charge. Please remember that cancelling your Agreement does not excuse you from paying all outstanding balances on your account.

**CONTRACT EXPIRATION:** For residential customers on contracts with terms of 3 months or more, we will notify you of the contract expiration date at least 30 days but no more than 60 days prior to the end of the initial term with a contract expiration notice. For small commercial customers on contracts with terms of 3 months or more, we will notify you of the contract expiration date at least 14 days but no more than 60 days prior to the end of the initial term with a contract expiration notice. The contract expiration notice will advise you of what you need to do if you want to renew your service for another term or change your plan. At the end of your initial term, if you take no action, you will continue to receive service from First Choice Power on a default month-to-month renewal product. The EFL for your month-to-month default renewal product, which will describe its price and other terms, will be included with your contract expiration notice. Nothing in this section shall preclude us from offering a new contract to you at any other time during the contract term.

**YOUR RIGHT TO CANCEL:** If you are switching to us from another REP, you can cancel this Agreement without charge or penalty, but you must do so within three (3) federal business days of receiving this Agreement. If you accept this Agreement, then no further action is necessary. You may also cancel without penalty if you move to another location and provide evidence of the move, such as a forwarding address and any other reasonable evidence that you no longer occupy the service location, and you agree to provide us with at least 14 days advance notice of your move date. To cancel, contact us via the information below:

**First Choice Power by telephone toll-free; for residential customers: 1-866-469-2464 for commercial customers: 1-866-469-2464, Monday through Saturday from 7:30 a.m. to 8:00 p.m. (CST), by fax: 1-800-666-8867, or e-mail us at [FirstChoicePower@directenergy.com](mailto:FirstChoicePower@directenergy.com). Be sure to include your name, address, phone number, ESI ID or account number, and Social Security number.**

If you are enrolled on a Fixed or Indexed term product and you cancel for any reason other than those specifically stated to be without penalty, you will owe us an early cancellation fee in the amount provided for in the EFL. If you move without canceling this Agreement, you will remain responsible for payment of all outstanding balances and charges on your account until service is terminated.

**OUR RIGHT TO CANCEL:** By signing up with us, you are affirming to us that you have provided us with your correct and complete name, address and contact information and you do not have any outstanding balance with us or our affiliated providers, including without limitation, Direct Energy, CPL Retail Energy, WTU Retail Energy and Bounce Energy. If there is any evidence that any of these statements are or become untrue or you otherwise provide fraudulent or misrepresented information, we may terminate this Agreement and your service. Cancellation of your Agreement doesn't excuse you from paying for all outstanding balances on your account.

**OUR RIGHT TO REFUSE SERVICE:** We may refuse to give you electric service for the reasons specified in §25.477 ("Refusal of Electric Service" at <http://www.puc.state.tx.us/agency/rulesnlaws/subrules/electric/25.477/25.477.pdf>) of the PUCT Substantive Rules and the Texas Utility Code §17.008 ("Protection of Residential Electric Service Applicants and Customers" at <http://www.legis.state.tx.us/tlodocs/79R/billtext/html/HB00412F.HTM>).

**OUR RIGHT TO DISCONNECT YOUR ELECTRIC SERVICE: WE MAY DISCONNECT YOUR ELECTRIC SERVICE IF YOU DO NOT PAY YOUR DEPOSIT OR BILL IN FULL BY THE DUE DATE.** We will notify you at least 10 calendar days before we disconnect your electric service. We may disconnect your electric service without prior notice immediately if: (1) there is an existence of a known dangerous condition; (2) where service is connected without authority by a person who has not made application for service; (3) where service is reconnected without authority after disconnection for nonpayment; (4) where there has been tampering with equipment; or (5) where there is evidence of theft of service.

**ESTABLISHING A NEW ACCOUNT:** If you don't meet one or more of our credit requirements, we have the right to collect security deposits. Our credit requirements are:

**Residential Customers:** 1) You have a good credit rating or report with your previous energy company or a consumer reporting agency and such proof or written reference can be provided to us as defined by the Federal Trade Commission; 2) You or your spouse are over the age of 62 and can provide proof of age via a driver's license or state ID; 3) You have not been late paying an electric bill more than once during the last year; 4) You are a victim of family violence and can send us a certification letter developed by the Texas Council on Family Violence as evidence; 5) You are considered medically indigent and can send us the proper documentation each year you are eligible; or 6) You haven't had your electric service terminated or disconnected for not paying a bill during the last year of service. For customers who enroll more than one premise/ESI-ID with us, we may require a security deposit for each premise/ESI-ID. If service to one or more of the premises/ESI-IDs is disconnected for any reason, once we are no longer your provider of record, we may apply any deposit amount you've paid, plus any accrued interest, to any outstanding balances on your account.

**Small Commercial Customers:** 1) You have a good credit rating or report with your previous energy company or a consumer reporting agency and such proof or written reference can be provided to us as defined by the Federal Trade Commission; 2) You have not been late paying an electric bill more than once during the last year; or 3) You haven't had your electric service terminated or disconnected for not paying a bill during the last year of service. For customers who enroll more than one premise/ESI-ID with us, we may require a security deposit for each premise/ESI-ID. If service to one or more of the premises/ESI-IDs is disconnected for any reason, once we are no longer your provider of record, we may apply any deposit amount you've paid, plus any accrued interest, to any outstanding balances on your account.

**SECURITY DEPOSITS:**

**Residential and Small Commercial Applicants:** If you don't meet the requirements listed in "Establishing a New Account," we may ask you to pay a security deposit before receiving service. For residential applicants, any required deposit won't be more than the sum of the estimated billings for the next two months' billings or one-fifth of your estimated annual billing. After 12 months of continuous service with us, you can ask us to recalculate the security deposit amount based on your actual historical usage. If we require a deposit, residential applicants may be required to provide us with one of the following forms of security for each electric service account prior to receiving service: (1) a written letter of guarantee; or (2) a cash deposit. If we require a deposit, small commercial applicants may be required to provide us with one of the following forms of security for each electric service account prior to receiving service: (1) an irrevocable letter of credit from a financial institution; (2) a surety bond; or (3) a cash deposit equaling the sum of the next three months estimated billings, or one-fourth of your estimated annual billing.

**Residential and Small Commercial Customers:** We may ask you to pay a security deposit if one was not required when you first enrolled, if you were late paying your bill more than once during the last year of service or if you had service disconnected for non-payment during the last year of service. We may also ask you to pay an additional security deposit if your average bill over the last year is at least twice as much as the original estimated annual billing and you got a disconnection notice from us within the last year or your account has been disconnected within the previous 12 months. Also, we may send you a disconnection notice, along with the request for an additional security deposit, which you will have 10 days to pay after we issue the request.

Residential customers who have verified that they qualify for the state's low-income discount program may pay a security deposit exceeding \$50 in two equal installments. Please note: the first installment is due no sooner than ten days and the second installment due no sooner than forty days from the date we give you on the written notice of your security deposit requirement.

We will refund your security deposit when you've paid your bills on time for 12 consecutive months (residential customers) or 24 consecutive months (small commercial customers). This refund will show as a credit on your bill. If we are no longer your provider of record for any reason, we'll apply any security deposit amount, plus interest, first to your electric account, and then to any past due amount owed by you to us. If the result is a credit balance, you'll receive a final bill showing the credit balance. Any remaining credit balance will be either refunded to you or transferred to your new energy company if agreed between us and your new energy company. We will send you a final bill if there is still an outstanding balance on your account. If you pay us a security deposit, you'll receive interest on it once a year. The interest rate is set by the PUCT in December of the preceding year. If we hold the interest for less than a year, we'll prorate the interest and pay it based on the number of months we held the security deposit. No interest will be paid on security deposits held for less than 30 days.

**BILLING AND PAYMENT TERMS:** You will receive one bill from us per billing cycle. Your payment on all bills is due within 16 days of the bill issuance date. Your bill will include the recurring charges as specified on your EFL and as outlined in this document. From time to time, your bill could include nonrecurring charges or other fees from your TDU and us. Please refer to the "Pricing" section within the Terms of Service, for more detailed information.

If you've signed up for any of our other products or services, including any non-commodity products or services, those charges will appear as separate items on your bill. We may transfer any outstanding balance from your previous accounts with us to your current account. We will identify the delinquent balance and specific account or address on the bill. If you decide to keep a single electric service account for more than one service address, you'll be responsible for full payment on the entire account within 16 days of the billing issuance date. If you want to reapply for electric service from us and you still owe us money, or have an outstanding balance from a previous account, you must pay that amount in full, plus a security deposit, before continuing service with us. We have the right to include on your monthly bills any charges or credits necessary to correct: (1) previous estimated bills; (2) billing errors; (3) meter read errors; (4) miscalculations of taxes; and (5) any other errors or omissions, to the extent permitted by PUCT rules or applicable law.

We charge a 5% penalty on each late payment, unless you're qualified to receive a low-income discount as required under § 25.454(i)(3) ("Rate Reduction Program" at <http://www.puc.state.tx.us/agency/ruleslaws/subrules/electric/25.454/25.454.pdf>) of the PUCT's Substantive Rules. We charge a \$25 fee on all returned checks, electronic payments or rejected credit card payments that weren't processed because of: (1) insufficient funds; (2) a lack of available credit; or (3) any other reasons for bank returns. Any check or electronic transfer returned by a bank for insufficient or unavailable funds will be treated as if we received no payment at all. If you have two or more returned payments in 12 months, you must pay us by money order or in cash. We are not responsible for notifying you of bounced checks or returned electronic payments. We may use consumer reporting agencies to report and retrieve your credit information or that of any other responsible person. We may also use debt collection agencies to collect any outstanding balances on your account. **We, or anyone acting on our behalf, reserve the right to assess and collect from you, as a current or former customer, or other responsible persons any and all costs, fees or charges related to the collection of delinquent balances, including but not limited to commissions, costs, fees and attorney's fees incurred when recovering outstanding balances through the use of any collection agency or an attorney.**

We may charge you a Collection Recovery Fee, a minimum of \$10, but will not exceed the maximum permitted by law, each time we initiate collections activity or provide you a written disconnection notice. The Collection Recovery Fee will be assessed regardless of whether your electric service is disconnected.

**BILL PAYMENT OPTIONS/PAYMENT ARRANGEMENT PLANS:** Bill Payment Options let you pay your monthly bills through a variety of options: (1) on our website (under the "Account Manager" feature); (2) by mail; (3) set up Auto-Pay, which allows automatic payments from a credit card or bank account by creating your account on our website under the "Account Manager" feature; (4) by using a debit/credit card; (5) in person at one of our authorized pay stations, which can be found at <https://www.firstchoicepower.com/texas/billing-and-payment/pay-bill-now>; or (6) by calling us at the number in "Our Contact Information". A charge may apply for payments made at an authorized pay station. If you make a payment on an outstanding balance on your account at either an authorized pay station or by using a debit/credit card, you should call a Customer Service Representative at the number in "Our Contact Information" to verify the payment. This could help you to avoid having your electricity disconnected.

Please remember that failure to make an on-time payment while participating in one of our bill payment plans could result in not only removal from the payment plan but also collection activities and possible disconnection of your electric service. For more information on any of these payment assistance programs or bill payment assistance organizations, contact us.

**Special Payment Arrangement Plans** may be available based on your qualifications and eligibility. Here are some examples:

**Average Billing Plan:** The Average Billing Plan is designed to even out the highs and lows in your electric bill and is based on your current price plan and usage history at your service location. Your Average Billing Plan recalculates each month and is based on an average of your current month's usage plus your prior usage up to 11 months, plus or minus a portion of your accumulated variance, multiplied by the plan rate you chose originally.<sup>1</sup> You may elect to have your account returned to regular billing; however, any variance in actual charges and average monthly payments will be immediately applied to your account and become due with your next regular bill. An account may be automatically removed from the Average Billing Plan if, within the most recent 12 months, 2 or more service disconnection notices are issued, service is disconnected for non-payment, or two or more checks or other forms of payment are returned to First Choice Power as unpaid by your financial institution. If your account is removed from the Average Billing Plan and returned to regular billing, any variance in actual charges and average monthly payments will be immediately applied to your account and become due with your next regular bill.

The Average Billing program is also available to you if you are receiving the LITE-UP Texas discount, even if you are delinquent in payment. Before starting the Average Billing program, we may require a down payment (no more than 50%) of the delinquent amount and that you pay the remainder of the delinquent amount in equal installments over at least five billing cycles. If you enroll in the Average Billing program with a deferred delinquent amount, we may put a switch-hold on your account. The switch-hold will be removed the earlier of (i) your deferred delinquent amount is paid and processed, or (ii) after you have made 12 consecutive payments with no more than one late payment. If you are disconnected for non-payment while a switch-hold is in place, a payment will be required to resume service and you may not obtain services from another provider until you pay the total deferred delinquent amount.

**Deferred Payment Plan** is an extended payment plan, which lets you pay an outstanding balance in installments over a period of time. Before starting a deferred payment plan, we may require a down payment (no more than 50%) of the amount due. We may also ask you to pay the balance owed on the deferred payment plan in equal amounts over no more than 5 billing cycles. If you establish a deferred payment plan we may put a switch-hold on your account that will be removed after your deferred balance is paid and processed. If you are disconnected for nonpayment while a switch-hold is in place a payment will be required to resume service and you may not obtain services from another provider until you pay the total deferred balance. If you establish a deferred payment plan, we'll confirm the details of the plan in writing. Applicants must meet our eligibility requirements.

**Payment Extension Plan** gives you a short-term extension to pay the full amount of an outstanding balance on your account. Bill Payment Assistance Programs distribute money through local organization(s) that provide energy bill payment assistance to qualifying customers with financial needs. Neighbor to Neighbor, funded through our corporate and voluntary customer donations, is a bill payment assistance program that specifically serves our customers.

**TERMINATION OF AGREEMENT AND DISCONNECTION OF SERVICE:** After the rescission period described above in the "Your Right to Cancel" section expires, you will be assessed a cancellation fee specified in your EFL if you cancel your service under this Agreement prior to the expiration of your initial term, or if your service is cancelled by us due to your breach of the terms of this Agreement. If you breach this Agreement for nonpayment or otherwise, we may terminate this Agreement and have your electricity disconnected. We will give you no less than 10 days written notice before terminating your Agreement and disconnecting your service in the event of non-payment. If we terminate this Agreement for any reason, you are still responsible for paying all outstanding bills. If you miss a payment or if we do not receive your payment by the bill due date, we will send you a disconnection notice no sooner than the first day after the bill was due.

After we issue a disconnection notice, you have two options available before the notice "due date": (1) you can contact us to find out if you qualify for a payment arrangement; or (2) you can pay us the full balance due. Otherwise, your electricity may be disconnected. You would then be liable for all fees and charges associated with any disconnection and reconnection of service. Please refer to the "Pricing" and "Billing and Payment Terms" sections within the Terms of Service, for more detailed information. If you choose to maintain a single electric service account for more than one service address and you miss a payment for any of the service addresses, then all service addresses associated with that account may be included in the disconnection notice and subject to disconnection.

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<sup>1</sup> 1/12th of the accumulated difference between average and actual bills is added or subtracted. This difference will fluctuate over time, as your actual usage differs from the average amount you are billed. If there is no previous billing in your name at the service address or you do not have 11 months of bill amounts at your service address, then previous usage at that service address (if available) will be applied to your current price to calculate an average monthly amount. If you terminate service with First Choice Power, you will still be responsible for any usage you may have used, regardless if it exceeds the amount billed through the Average Billing Plan.

**Disconnection Without Notice.** First Choice Power or your TDU may disconnect your service without notice if a known dangerous condition exists for as long as the condition exists; where service is connected without authority by a person who has not made application for service; where service is reconnected without authority after disconnection for nonpayment; where there has been tampering with the meter or other service provider equipment of the transmission and distribution utility, municipally owned utility, or electric cooperative; or where there is evidence of theft of service.

**DISCRIMINATION:** We will not deny service or require a prepayment or a security deposit for electric service based on a customer's race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, level of income, disability, familial status, location of a customer in a distressed geographic area, or qualification for low-income or energy-efficiency programs and services. For residential customers, we 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 contract term of 12 months or less for an existing residential customer or in response to an applicant's request to become a residential customer.

**FORCE MAJEURE:** We will make commercially reasonable efforts to provide your electric service but do not guarantee a continuous supply of electricity. Certain causes and events are out of our reasonable control and may result in interruptions in service. We do not transmit or distribute electricity. We are not liable for damages caused by acts of God, changes in laws, rules, or regulations or other acts of any governmental authority (including the PUCT or ERCOT or TRE), accidents, strikes, labor troubles, required maintenance work, inability to access the local distribution utility system, nonperformance by the TDU or any other cause beyond our reasonable control.

**LIMITATIONS OF LIABILITIES:** LIABILITIES NOT EXCUSED BY REASON OF FORCE MAJEURE OR OTHERWISE SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES. NEITHER OF US WILL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES. WE ARE NOT LIABLE FOR INTERRUPTIONS TO OR SHORTAGES OF ELECTRICITY SUPPLY NOR ANY ASSOCIATED LOSS OR DAMAGE RESULTING THEREFROM. THESE LIMITATIONS APPLY WITHOUT REGARD TO THE CAUSE OF ANY LIABILITY OR DAMAGE. THERE ARE NO THIRD-PARTY BENEFICIARIES TO THIS AGREEMENT.

**REPRESENTATIONS AND WARRANTIES:** THE ELECTRICITY PROVIDED UNDER THIS AGREEMENT WILL MEET THE QUALITY STANDARD OF THE APPLICABLE TDU AND WILL BE SUPPLIED FROM A VARIETY OF SOURCES. WE MAKE NO REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT, AND WE EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**MISCELLANEOUS:** This Agreement is subject to applicable laws and supersedes any previous promises, understandings and agreements. If any provision of this Agreement is deemed invalid, illegal or otherwise unenforceable, we agree that it shall be modified to the minimum extent necessary to render it valid, legal and enforceable. If a provision cannot be modified in a manner that would make it valid, legal and enforceable, the provision shall be severed from the Agreement, and all other provisions shall remain in full force and effect. Any failure on our part to enforce any of the terms of this Agreement or to exercise any right under these terms and conditions shall not be considered a waiver of our right to enforce each and every such term or exercise such right or any other right under these terms and conditions.

**ASSIGNMENT:** You may not assign this Agreement without our prior written consent. We may: (a) transfer or sell this Agreement or your account in connection with any financing; (b) transfer this Agreement to any of our affiliates; (c) transfer or assign this Agreement to anyone succeeding to all or substantially all of our assets or of our business segment; and (d) transfer this Agreement to another PUCT-certified REP. After assignment, we will have no further obligations under this Agreement.

## PRODUCT TYPE SECTIONS

**These TOS apply to the product types set forth below. The sections below will control to the extent there are any conflicts with any other provisions in these TOS.**

### **VARIABLE PRODUCT (MONTH-TO-MONTH):**

A First Choice Power's variable price product has no minimum term requirement and no cancellation fees. The variable rate may be higher or lower each month and will be set in First Choice Power's sole discretion. First Choice Power typically considers the following factors when setting variable rates:

- publically available competitor pricing;
- strategic business objectives;
- customer retention or attrition;
- market volatility or uncertainty;
- anticipated customer usage;

- the cost of procuring power including wholesale prices, ancillary service costs, capacity auctions, utility fees, transmission and distribution losses and storage costs;
- weather, supply congestion and infrastructure issues;
- legal or regulatory issues; and
- profit margin.

**This list of factors is not exhaustive and no single factor will determine the rate.** Some factors must be estimated or projected and the factors First Choice Power considers may be weighed differently each month. First Choice Power may amortize sudden cost increases over multiple billing cycles so that its customers do not bear the burden of such increases in a single month. In addition, First Choice Power seeks to acquire the majority of its anticipated electricity supply in advance rather than from the spot market. **For all of these reasons, the variable rate may not correlate with changes in wholesale market prices.** Further, the variable rate may be higher than other suppliers' rates.

Additionally, your actual price will be shown on each monthly statement, and will be used to calculate your monthly bill amount based on your actual electricity usage. We can make changes to the provision of the contract at any time with appropriate notice except for changes to the length of your contract term. We will notify you of any material change to the contract in writing at least 14 days before any change to the contract will be applied to your bill or take effect. If you do not cancel the contract before the effective date of the change, the change will become effective on the date stated in the notice. Notice is not required for a change that is beneficial to you. Your price will vary according to a method determined by First Choice Power in its sole discretion as described above.

#### **FIXED RATE PRODUCT (TERM):**

A First Choice Power's fixed term products have contract terms of 3 months or more. We will notify you at least 30 days (or one billing cycle) prior to the end of the initial term with a contract expiration notice. At the end of your initial term, unless a renewal term greater than one month is established with your affirmative consent, your Agreement will expire. If you take no action your service will automatically continue on a month-to-month product with no cancellation penalty. Your actual price will be shown on each monthly statement, and will be used to calculate your monthly bill amount based on your actual electricity usage. If you are enrolled on a Fixed Rate Product and you cancel for any reason other than those specifically stated to be without penalty (see "Your Right To Cancel" section of these TOS), you will owe us an early cancellation fee in the amount provided for in the EFL. If you move without canceling your Agreement, you will remain responsible for payment of all outstanding balances and charges on your account until service is disconnected.

#### **INDEXED PRODUCTS (TERM):**

Indexed plans requires a provisioned SMART meter and your premise is not serviced by a provisioned SMART meter we will be unable to bill you on the Indexed plan and you will be billed on our current lowest variable rate offering. We will notify you at least 30 days (or one billing cycle) prior to the end of the initial term with a contract expiration notice. At the end of your initial term, unless a renewal term greater than one month is established with your affirmative consent, your Agreement will expire. If you take no action your service will automatically continue under a month-to-month product with no cancellation penalty. Your actual price will be shown on each monthly statement, and will be used to calculate your monthly bill amount based on your actual electricity usage. If you are enrolled on an Indexed Term product and you cancel for any reason other than those specifically stated to be without penalty (see "Your Right To Cancel" section in these TOS), you will owe us an early cancellation fee in the amount provided for in the EFL. If you move without canceling your Agreement, you will remain responsible for payment of all outstanding balances and charges on your account until service is disconnected.