

**SFE Energy Texas, Inc (“SFE”)  
PUCT Certification No. 10249  
TERMS OF SERVICE**

These Terms of Service, along with Your Rights as a Customer (“YRAC”), Electricity Facts Label (“EFL”) and any document of your enrollment authorization (“Letter of Authorization”, “LOA”) (collectively called the “Agreement”) explains the terms and conditions that apply to a residential customer’s purchase of electricity from SFE Energy Texas, Inc (“SFE”). By accepting electric service from SFE, you are entering into an Agreement with SFE and will be bound by the provisions of the Agreement including the Terms of Service, 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>).

By enrolling in the Agreement, you consent to receive all required communications and documents electronically. These electronic communications include written notices, disclosures, texts, billing statements, and other important account-related materials. You acknowledge that electronic communications satisfy any legal requirements that such documents be provided to you in writing. If you wish to withdraw this consent or request paper copies at any time, please contact SFE.

**Key Defined Terms.**

**AutoPay:** Our automatic payment system provides a convenient option to pay your energy bill automatically, from your bank account or credit card. You can authorize autopay on your account.

**Base Charge:** a charge assessed to each ESI ID during each billing cycle without regard to the customer’s demand or energy consumption.

**Agreement:** collectively, these Terms of Service (TOS), the Electricity Facts Label (EFL), Your Rights as a Customer (YRAC), and Letter of Authorization (LOA).

**Customer:** the account holder named on the Letter of Authorization, also referred to as “you” and “your”.

**Energy Charge:** a charge per kWh for electricity consumed, which includes the cost of electricity supply (and Utility Pass-Through Charges if specified on your EFL).

**ERCOT:** Electricity Reliability Council of Texas.

**ESI ID:** the electric service identifier(s) that is unique to your premise. Each ESI ID is bound by this Contract.

**SFE Energy:** SFE Energy Texas, Inc, also referred to as “SFE”, “SFE Energy”, “we”, “our”, “us”, “REP”,

**PUCT:** the Public Utility Commission of Texas.

**REP:** Retail Electric Provider.

**2. Contact Information.** SFE Energy Texas, Inc., PUC Certification No. 10249, may be contacted for questions, concerns, billing inquiries, or information regarding services using the contact information below.

Contact Information	
Toll-free Telephone#:	1-888-351-2169
Hours:	*Monday - Friday, 9am to 5pm
Email:	<a href="mailto:cs@sfeenergy.com">cs@sfeenergy.com</a>
Fax:	1-877-685-6765
Mail:	SFE Energy Texas, Inc. PO Box 25366, Houston, TX 77265

\*Additional information about SFE Energy’s services is available on the company’s website at [www.sfeenergy.com](http://www.sfeenergy.com).

**3. Spanish Language (Idioma Español).** The Applicant’s Agreement documents are available in Spanish by contacting SFE at 1-888-351-2169. Usted puede obtener los documentos de su contrato comunicándose con nosotros al 1-888-351-2169.

**4. Agreement Term.** The term of this Agreement is as stated in the EFL. The term of the Agreement begins on the “Start Date” and expires on the “End Date” (if no selection is made, the Term deemed to be the longest of the available options).

“Start date” means the day that SFE begins supplying electricity to your ESI ID under this Agreement. If you are a move-in customer, the Start Date will be as close as reasonably possible to the move-in date provided by you. If you are a standard switch customer, the Start Date will be within seven (7) business days of your first available switch date. If you are a self-selected switch customer, your Start Date will be as close as reasonably possible to the switch date that you select. Applicant understands that the Start Date may be delayed at SFE’s discretion.

“End date” means the last day that SFE supplies electricity to your ESI ID under this Agreement, plus any time required to obtain a final meter read. A new term will begin if you enter into a new Agreement with SFE or if this Agreement is renewed.

## 5. Products.

Transmission and Distribution Utility (TDU) charges, non-recurring charges, taxes, public utility gross receipts assessments (if applicable), and miscellaneous gross receipts taxes are not included in the energy charge. The Applicant agrees to pay all pass-through fees imposed by the TDU, which may include delivery charges, service connection, disconnection or reconnection fees, meter test fees, special meter read fees, or third-party charges.

The pass-through fees will appear as separate line items on the Applicant's invoice. If the Applicant's location is exempt from state or local taxes, the Applicant must provide SFE with valid proof of exemption at the time of Agreement (see Taxes section).

**5.1 Fixed Rate Products.** The price the Applicant will pay for the fixed rate product is the price and term specified in the EFL and will remain the same for each billing period throughout the contract term, except that the price may vary from the disclosed amount solely to reflect actual changes in TDU charges, changes to ERCOT or Texas Regional Entity, Inc. administrative fees charged to loads or changes resulting from federal, state or local laws that impose new or modified fees or costs on a REP that are beyond the REP's control. Price changes resulting from these limited circumstances do not require us to provide you with advance notice. However, each bill issued for your remaining contract term will notify you that a price change has been made. The price may not vary from the disclosed amount to reflect changes in ancillary service charges without approval from the PUCT.

**5.2 Variable Rate Products. Variable rate products have a contract term of 31 days or less and** are offered on a month-to-month contract. After the first billing cycle, the price you pay may vary without advance notice according to a method determined in SFE's sole discretion and as described in the EFL.

**6. Renewable Energy Product.** If you have selected a renewable energy product, SFE Energy will purchase renewable energy certificates or attributes resulting from electricity generated from renewable energy sources in an amount corresponding with your electricity usage on your SFE Energy commodity electricity product. Renewable energy sources include those that rely on energy derived directly from the sun; or wind, geothermal, hydroelectric, wave, or tidal energy; or on biomass or biomass-based waste products, including landfill gas. Each REC represents 1,000 kilowatt-hours. RECs financially support generators of renewable energy, but you will not have electricity from a specific generation facility delivered directly to your meter.

**7. Rewards Program.** As a SFE customer, You may receive access to "SFE Rewards", at SFE's sole discretion (by providing a valid email address when enrolling with SFE). SFE Rewards is an online reward program, which is

both free and voluntary. The primary benefit of the SFE Rewards is an enrolled customer's receipt of, and ongoing access to, select shopping, dining, and travel rewards, given on enrollment and refreshed at regular intervals, as determined by SFE, good for use on the deals, products, discounts on goods and services of Your choice. This is an ongoing, accrued monthly benefit to You. You understand that the manner in which a customer activates their reward, accesses their reward and related benefits, redeems their reward and related benefits, etc. is all online. Action on Your part is required to activate and claim Your reward. You are under no obligation to activate or use Your reward.

SFE Rewards apply only to the Initial Term of the Agreement(s), not the renewal Term. If You are eligible for/active in SFE Rewards, SFE (or its agents) may send You email regarding SFE Rewards, subject to its email policy. Once You have activated Your account and/or reward, You will enjoy unlimited access to the SFE Rewards Program website for as long as You wish to access it, and are an active customer. Your account and/or reward is non-transferable and has no cash value. Your account and/or Your reward are not a gift card or a gift certificate, but rather a premium discount and couponing reward program used for shopping and dining discounts. Benefits are not for resale and are subject to change and availability. SFE Rewards is limited to residents of the United States and Canada only and to individuals over the age of eighteen (18). Benefits provided through SFE Rewards are provided by third parties and SFE shall not be responsible for the content, actions, or inactions of any such third party.

**8. Loyalty Program.** Four (4) LED bulbs will be sent to the Service Address after You contract SFE with the request. To be eligible, You must have received continuous, uninterrupted service from SFE for a minimum of two (2) months from the Supply Date and be an active customer at the time of Your request. All LED bulbs offered under this Agreement will be covered by a lifetime warranty as long as You remain enrolled in any of our programs. Please contact SFE for any warranty inquiries.

**9. Non-Recurring Charges for Service.** SFE may apply the following non-recurring charges for services associated with the Applicant's retail electric product. These charges will be itemized on the Applicant's invoice where applicable. Routine Non-Recurring Charges (Move-In or Switch) include an Out-of-Cycle Meter Read Fee, Move-In Fee, and Service Connection, Disconnection or Reconnection Fees with any connection, disconnection or reconnection charges imposed by the TDU to be passed through to the Applicant. Non-Recurring Charges include, but is not limited to:

- I. **Late Payment Fee:** For late payments, SFE may charge 5% on the past due electric service amount from the previous month;
- II. **Non-Sufficient Funds Fee:** SFE may charge \$25 for each payment transaction that is returned unpaid or not processed, including returned checks, returned electronic fund transfers, and

rejected credit card transactions which will be billed as "Returned Payment Charge", if applicable;

- III. **Disconnection Notice Fee:** SFE may charge \$25 each time a disconnection notice is sent to the Applicant; Including but not limited to notices delivered by mail or electronically, which will be billed as "Printed Correspondence Fee", if applicable.
- IV. **Printed Correspondence Fee:** SFE may charge a \$25 fee when a notice is issued regarding your service as required under regulations.
- V. **Disconnection Fee:** SFE may charge a \$25 disconnection fee for the issuance of a disconnect order to your TDU;
- VI. **Reconnection Fee:** SFE may charge a \$25 reconnect fee for the issuance of a reconnect order to your TDU;
- VII. **Request for Summary of Usage and Payment:** SFE may charge \$2.95 if you request additional copies of usage and payment information;
- VIII. **Payment Transaction Fee:** SFE may charge \$4.95 if you conduct a payment transaction with the assistance of a customer care center agent or if you submit payment on your account through any method other than Autopay; To avoid being charged this fee, selection of autopay must be made by the date the invoice is issued ("Invoice Date").
- IX. **Collections Recovery Fee:** SFE may charge \$24.95 if we transfer your past due amounts to a collection agency;

If additional fees apply, those fees will be disclosed in the EFL. Any additional non-recurring charge imposed by the TDU or a regulatory authority that are not listed in this Agreement may be passed through to the Applicant, with notification provided in the Applicant's invoice.

**10. Taxes.** The Applicant will be responsible and indemnify SFE for any and all Taxes. "Taxes" means all federal, state and local taxes, fees, governmental charges, and assessments presently or hereafter imposed on the Applicant as purchaser of electricity, on SFE as seller of electricity, or on electricity sales transactions, including gross receipts taxes, municipal administrative fees, and generation, utility, TDU, regulatory, or electricity taxes and assessments. Sales tax exemptions will be recognized only upon timely receipt of certificates of exemption or other satisfactory evidence of exemption as SFE reasonably requests. SFE cannot recognize any sales tax exemption until proper documentation is provided. Any lawful sales tax exemption will only be recognized on a prospective basis from the date the proper documentation has been provided to SFE. In the event the Applicant is owed a sales tax refund due to SFE's failure to timely recognize valid exemption documentation that has been

submitted, the Applicant agrees and consents to have the overpaid sales tax credited by SFE to the Applicant's account(s). The Applicant has the responsibility to petition the taxing authority for all other sales tax refunds.

**11. Deposit.** This Agreement is conditional upon the Applicant demonstrating and maintaining satisfactory creditworthiness and/or payment history and is subject to the ongoing review and approval of the Applicant's creditworthiness during the Agreement term.

If the Applicant fails to establish or maintain satisfactory credit, SFE may require an initial deposit or an additional deposit during the agreement. The Applicant will be deemed to have satisfactory credit and entitled to deposit relief if: 1) the Applicant is 65 years of age or older and is not currently delinquent in payment of any electric service account; or 2) the Applicant has been determined to be a victim of family violence as defined in the Texas Family Code §71.004 (<https://statutes.capitol.texas.gov/docs/fa/htm/fa.71.htm>) and evidenced by the submission of an official certification letter. An initial deposit from an existing customer will be required if the customer was late paying a bill more than once during the last 12 months of service or had service terminated or disconnected for nonpayment during the last 12 months of service. An additional deposit from an existing customer will be required if: (a) the average of the customer's actual billings for the last 12 months are at least twice the amount of the original average of the estimated annual billings; and (b) a termination or disconnection notice has been issued or the account disconnected within the previous 12 months. The maximum deposit amount will not exceed the greater of either: (1) the sum of the estimated billings for the next two months or (2) one-fifth of the estimated annual billing. SFE will pay interest on deposits held for more than thirty (30) calendar days at the rate approved annually by the Public Utility Commission of Texas (PUCT). Interest accrues from the date the deposit is received and will be credited to the Applicant's account on the January invoice of each year.

SFE may disconnect the Applicant's service, or decline to connect the Applicant's service, if it has not yet been connected, and terminate the Applicant's agreement if the Applicant does not pay the deposit as requested.

If the Applicant maintains satisfactory credit with SFE by making timely payments for twelve (12) consecutive months, then SFE will apply the amount of the deposit plus accrued interest as a bill credit towards any outstanding amount that is still owed. If SFE is no longer the Applicant's provider, a check will be issued for the balance of the credit if the deposit amount is greater than the outstanding amount or if there is no outstanding amount. If the Applicant does not maintain satisfactory credit during the Term, the deposit plus accrued interest will be applied against the outstanding balance amount at the time of the Applicant's final invoice. Any remaining balance will be invoiced and shall be due upon receipt. SFE will refund any credit balance directly to the Applicant or

transfer the credit balance to the Applicant's new REP, at the Applicant's request and with the consent of SFE and the Applicant's new REP.

**12. Information Release and Authorization.** By enrolling in the Agreement, the Applicant authorizes SFE to obtain information from the TDU and/or ERCOT through the term including, but not limited to, contact information, historical and future electric usage, rate classification, meter readings, characteristics of electric service, and billing and payment information. The Applicant authorizes SFE to obtain a credit report and investigate the Applicant's credit rating, credit history and utility bill payment status and history. The Applicant authorizes SFE to obtain an identity verification using a form of identification accepted by SFE. SFE is not obligated to accept, or continue performing, this Agreement if Applicant does not meet our credit requirements, fails to complete or successfully pass an identity verification, or provide required deposits.

**13. Billing.** SFE will provide a monthly invoice that will include current charges and the amount due, payable by the due date, which will be no earlier than sixteen (16) calendar days from the invoice date. The Applicant may receive invoices less frequently if meter readings or usage information from the TDU or ERCOT are delayed. SFE may issue invoices electronically if agreed upon by the Applicant. SFE may assess collection fees, including attorney fees and other costs, if legal action is required to recover overdue amounts. SFE may calculate the Applicant's invoice based on estimated meter readings absent actual meter readings from the TDU or ERCOT. Once actual meter readings are received, SFE will issue an invoice or make adjustments on a subsequent invoice. If the Applicant agrees to purchase other products or services from SFE or the Applicant purchases products or services that are offered by SFE but provided from third parties ("Third Party Services"), the Applicant acknowledges that the invoice SFE provides to the Applicant may include the charges for those products and services. SFE will apply all payments the Applicant makes on the invoice first to the amounts the Applicant owes SFE for electric service.

**14. Bill Payment Options.**

**14.1 Average Billing Plan.** The average billing plan is available to applicants who are not currently delinquent. Payments are based on prior usage and may be adjusted if significant differences between actual and billed usage occur. Reconciliation of payments shall occur at least every twelve months.

**14.2 Deferred Payment Plan.** You may be eligible for a deferred payment plan. The plan allows repayment of an outstanding balance in equal installments, with a percentage of the amount due required upfront. The remaining balance is due in no more than three (3) billing periods. The installment length decision is based on the payment history of the account, the amount of outstanding balance, and the Applicant's ability to repay the balance. If the Applicant is on

a Deferred Payment Plan, SFE reserves the right to place a switch-hold on the account. A switch-hold means that you will not be able to buy electricity from other companies until you pay the total deferred balance. The switch-hold will be removed once full payment is paid and processed.

**14.3 AutoPay.** You have the option of participating in SFE's autopay program under which recurring charges to your debit or credit card are applied each month for amounts owed. If you participate in autopay, SFE will charge your account three (3) days before the invoice due date.

**14.4 Online Account Management.** You may view and manage your account electronically through our online account system.

**14.5 Third-Party Bill Payment Center.** Certain authorized bill payment centers allow you to pay your SFE balance in person by cash, credit card, check or money order. Payment centers may charge a payment processing fee.

**15. Disconnection of the Applicant's Electric Service.** **SFE MAY REQUEST DISCONNECTION OF THE APPLICANT'S ELECTRIC SERVICE IF THE APPLICANT DOES NOT PAY THE DEPOSIT OR THE PAST DUE AMOUNT OF THE APPLICANT'S INVOICE IN FULL BY THE DUE DATE ON THE DISCONNECT NOTICE.** SFE will provide the applicant with a formal written disconnection notice at least ten (10) calendar days before disconnection. SFE may also immediately disconnect service without prior notice in certain circumstances, including the existence of a dangerous condition at the service address, theft of service, unauthorized use of electricity, or tampering with the meter or equipment. By signing this Agreement, the Applicant consents to the receipt of any disconnection notice by email. , A disconnection notice shall be issued as a separate email bearing "Disconnection Notice" in the subject line and stating the scheduled disconnection date. A disconnection notice may be issued concurrently with a deposit demand.

**16. Right of Rescission.** Residential customers who are switching to SFE from another REP may rescind the Agreement without penalty or fee by midnight of the third federal business day after enrollment authorization and receipt of the Agreement documents. This right of rescission does not apply to an Applicant requesting move-in. The request must include: a statement requesting rescission of the Agreement; Applicant's name, service address, and phone number; and the Applicant's Account number or ESI ID number.

To rescind, contact SFE by:

Phone: 1-888-351-2169

Email: [cs@sfeenergy.com](mailto:cs@sfeenergy.com)

Fax : 1-877-685-6765

**17. Terminating Your Agreement.** The Applicant's Agreement term is stated in the EFL. At the end of the Applicant's Agreement

term, the Applicant may switch to a new provider without penalty. If the Applicant terminates the Agreement before the end of the Agreement term, the Applicant agrees to pay an early termination fee as specified in the EFL, if applicable, and the Applicant must select another REP to continue receiving electric service. Contact SFE (see Section 2., Contact Information) to terminate service.

If the Applicant moves from the Applicant's existing premise during the Agreement term and provides a forwarding address to SFE, the Applicant will not be responsible for the termination fee stated in the EFL. SFE may also request that the Applicant provide reasonable evidence that the Applicant is no longer occupying the location covered by the Agreement. In order to ensure timely processing, the Applicant should notify SFE at least three (3) business days before the requested termination date. SFE's obligations will end at the meter read date when SFE is no longer designated as the Applicant's REP or when the Applicant's electric service is disconnected by the TDU. The Applicant's obligations under the Agreement will end when the Applicant's account balance is paid in full.

SFE reserves the right to terminate this Agreement for non-payment, fraud, or for insufficient payments past the due date. Regardless of the method or reason for termination of the Agreement, you are responsible for all outstanding charges incurred through the date on which the termination is affected by the TDU.

**18. Early Termination Fees.** If the Applicant terminates service before the end of the Agreement, an early termination fee shall apply as set forth in the EFL. You will remain responsible for all other amounts due, including utility disconnection and reconnection fees. If SFE terminates the Agreement, unless for a reason out of the Applicant's control, early termination fees will apply to the remainder of the Agreement.

**19. Contract Expiration Notice.** At the end of the initial term of the Agreement, if the Applicant does not select another REP, SFE will automatically renew the Agreement on a month-to-month default renewal product. The price of the default renewal product may vary each month at SFE's sole discretion. The Applicant may cancel the month-to-month product at any time without a fee. The terms of the default renewal product, including pricing details, will be provided in the contract expiration notices and available upon request. SFE will provide three separate contract expiration notices, with the final notice sent at least fourteen (14) days before the end of the initial contract term. These notices will inform the Applicant of the renewal options and any actions required to avoid automatic enrollment in the default renewal product. If the Applicant provides notice to not renew before the Agreement expires, SFE will no longer serve as the Applicant's REP, and the Applicant must select a new provider to ensure uninterrupted electricity service. If the Applicant does not select a new provider after receiving all required expiration notices, they will continue to receive service

automatically under the month-to-month default renewal product, subject to SFE's pricing at that time.

**20. Changes to the Agreement.** SFE cannot change the Applicant's price or pricing formula, except as specified in the product description in the EFL and/or the Pricing section of the Terms of Service, nor can it change the length of the Agreement term. If SFE makes a material change to this Agreement, the Applicant will receive written notice at least fourteen (14) days in advance of the date that the change in the contract will be applied to the Applicant's bill or take effect. If the Applicant does not accept the change, they have the right to cancel their Agreement without penalty before the effective date of the change. If the Applicant does not cancel, the change will apply as stated in the notice. No advance notice is required for changes that are solely beneficial to the Applicant.

**21. Assignment.** The Applicant may not assign the Agreement, in whole or in part, or any of the Applicant's rights or obligations under the Agreement without SFE's prior written consent. SFE may, without the Applicant's consent, (i) as part of any financing or other financial arrangement, assign, sell or pledge this agreement or its accounts, revenues, or proceeds, or (ii) assign this Agreement to an affiliate of SFE or to any other person or entity succeeding to all or a substantial portion of the assets of SFE. If this Agreement is assigned to a new REP, SFE will provide the Applicant with written notice of the transfer at least thirty (30) days prior to the effective transfer date.

**22. Disputes or Complaints.** If the Applicant has any questions, concerns, or complaints, please contact SFE. In the unlikely event SFE cannot immediately respond to the Applicant's question or complaint, SFE will promptly investigate the matter and report SFE's findings to the Applicant. Customer shall remit all undisputed amounts during the pendency of the dispute. If, for any reason, the Applicant is not satisfied with SFE's response, the Applicant may contact the PUC. Further information on dispute resolution policies can be found in the Your Rights as a Customer document.

**23. ARBITRATION AGREEMENT. IN THE UNLIKELY EVENT THAT SFE AND THE APPLICANT ARE UNABLE TO RESOLVE A DISPUTE OR CLAIM TO THE APPLICANT'S SATISFACTION, BOTH SFE AND THE APPLICANT AGREE THAT THEY SHALL RESOLVE ALL DISPUTES AND CLAIMS BETWEEN THEM EXCLUSIVELY THROUGH EITHER BINDING ARBITRATION OR SMALL CLAIMS COURT. APPLICANT AGREES THAT, BY ENTERING INTO THIS AGREEMENT, APPLICANT AND SFE HAVE WAIVED THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION. IF THE APPLICANT CHOOSES ARBITRATION, THE FEDERAL ARBITRATION ACT SHALL GOVERN THE INTERPRETATION AND ENFORCEMENT OF THIS AGREEMENT. ANY SUCH ARBITRATION WILL BE ADMINISTERED BY THE AMERICAN ARBITRATION**

**ASSOCIATION (AAA) AND CONDUCTED BEFORE A SINGLE ARBITRATOR ACCORDING TO AAA RULES. THE AAA RULES ARE AVAILABLE ONLINE AT:WWW.ADR.ORG. THE ARBITRATOR WILL APPLY AND BE BOUND BY THIS AGREEMENT, APPLY APPLICABLE LAW AND FACTS, AND ISSUE A REASONED AWARD. THIS ARBITRATION AGREEMENT SHALL SURVIVE THE TERMINATION OF YOUR AGREEMENT.**

**24. Anti-discrimination.** SFE cannot deny service or require a prepayment or deposit for service based on the Applicant's race, creed, color, national origin, ancestry, sex, 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. For residential customers, SFE cannot use a credit score, credit history, or utility payment data as the basis for determining the price of electric service for a product with a contract term of 12 months or less. SFE reserves the right to refuse to provide service for any reason specified in section 25.477 of the PUC's rules:

(<https://www.puc.texas.gov/agency/rulesnlaws/subrules/electric/25.477/25.477.pdf>)

**25. Representations and Warranties.** SFE MAKES NO REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN THE AGREEMENT, AND SFE EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING MERCHANTABILITY, CONFORMITY TO MODELS OR SAMPLES AND FITNESS FOR A PARTICULAR PURPOSE.

**26. Indemnification.** SFE does not transmit or distribute Energy and does not generate the Energy used or consumed by Applicant. Therefore, SFE does not promise a steady, continuous supply. There are events outside of SFE's reasonable control which may result in fluctuations, interruptions or irregularities in Energy service. SFE WILL NOT BE LIABLE FOR ANY FLUCTUATIONS, INTERRUPTIONS OR IRREGULARITIES IN ENERGY SERVICE OR FOR ANY DAMAGE OR CONSEQUENCES RESULTING THEREFROM. SFE WILL ARRANGE FOR THE UTILITY TO DELIVER ENERGY TO THE FACILITY/METER(S) ASSOCIATED WITH THE LOCATION (THE "DELIVERY POINT"). FROM AND AFTER THE DELIVERY POINT, CUSTOMER WILL DEFEND, INDEMNIFY AND HOLD HARMLESS SFE, ITS PARENT, SUBSIDIARIES, AFFILIATES, AND ITS OWNERS, SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS, AND ASSIGNS FROM ANY AND ALL CLAIMS, LOSSES, EXPENSES, DAMAGES, CAUSES OF ACTION AND JUDGMENTS OF ANY KIND RELATED TO SFE'S DUTIES AND OBLIGATIONS HEREUNDER. SFE SHALL NOT BE LIABLE FOR MATTERS WITHIN THE CONTROL OF THE UTILITY (INCLUDING, BY WAY OF EXAMPLE ONLY, MAINTENANCE OF THE

DISTRIBUTION SYSTEM, SERVICE INTERRUPTIONS, LOSS, DETERIORATION OR TERMINATION OF SERVICE, OR METER READINGS) OR ANY DAMAGES CLAIMED TO HAVE BEEN INCURRED DUE TO ANY ACT OR OMISSION OF SFE, WHERE SUCH ACT OR OMISSION IS DUE IN WHOLE OR IN PART TO ANY EVENT OR CIRCUMSTANCE BEYOND ITS REASONABLE CONTROL OR ITS ABILITY TO PERFORM. EACH PARTY SHALL USE COMMERCIALY REASONABLE EFFORTS TO MITIGATE DAMAGES.

**27. Limitation of Liability.** NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, IN NO EVENT WILL SFE OR ANY OF ITS AFFILIATED COMPANIES BE LIABLE FOR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST OPPORTUNITIES OR LOST PROFITS, EVEN IF SFE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SFE'S LIABILITY RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER BREACH OF AGREEMENT, TORT, STRICT LIABILITY OR OTHERWISE, IS LIMITED TO DIRECT ACTUAL DAMAGES AS THE SOLE REMEDY AND ALL OTHER REMEDIES OR DAMAGES ARE EXPRESSLY WAIVED.

**28. Provisions that Survive.** Obligations regarding indemnity, payment of Taxes, limitations of liability, waivers and arbitration will survive the termination of the Agreement indefinitely.

**29. Unenforceability.** If either party or its activities under the Agreement become subject to any Law enacted during the Agreement term that renders the Agreement unenforceable or illegal, then either the Applicant or SFE may terminate the Agreement without the consent of, and upon thirty (30) days' notice to, the other, and without any obligation, payment or otherwise (other than payment obligations for electricity previously supplied to the Applicant).

**30. Force Majeure.** SFE will make commercially reasonable efforts to provide service hereunder, but SFE does not guarantee a continuous supply of electricity to the Applicant. Certain causes and events out of the control of SFE ("Force Majeure Events") may result in interruptions in service. SFE will not be liable for any such interruptions caused by a Force Majeure Event, and SFE is not and shall not be liable for damages caused by Force Majeure Events. Force Majeure Events shall include but are not limited to acts of God, fire, flood, storm, terrorism, war, civil disturbance, acts of any governmental authority, accidents, strikes, labor disputes or problems, required maintenance work, inability to access the necessary distribution or transmission system, non-performance by the TDU (including, but not limited to, a facility outage on its electricity supply distribution lines), changes in laws, rules, or regulations of any governmental authority or any other cause beyond SFE's control.

**31. Governing Law.** THE APPLICANT'S AGREEMENT WITH SFE IS GOVERNED BY, CONSTRUED, ENFORCED, AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS (WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAWS). THE TEXAS UNIFORM COMMERCIAL CODE APPLIES TO THE AGREEMENT AND ELECTRICITY IS DEEMED A "GOOD." The Uniform Commercial Code can be viewed at the following website: <http://www.statutes.legis.state.tx.us/?link=BC>.

**32. Waiver.** No partial performance, delay, or failure on the part of SFE in exercising any rights under the Agreement(s), and no partial or single exercise thereof, shall constitute a waiver of such rights or of any other rights hereunder. If either SFE or the Applicant waives any one or more defaults by the other in the performance of any of the provisions of the Agreement, then such waiver will not be construed as a waiver of any other default or defaults whether of a like kind or of a different nature.

**33. Delay or Failure to Exercise Rights.** No partial performance, delay, or failure on the part of SFE in exercising any rights under the Agreement, and no partial or single exercise thereof, shall constitute a waiver of such rights or of any other rights hereunder.

**34. Parties Bound.** The Agreement is binding upon the Parties hereto and their respective successors and legal assigns.