



**Terms of  
Service  
Vital Power  
Energize Angels  
Post Paid 12 Plan**

Certificate No.: 10137  
[www.vitalpowertexas.com](http://www.vitalpowertexas.com)  
1(844) 674-4825 (8am-6pm M-F, 9am-1pm Sat CPT)  
P.O. Box 722434, Houston, TX 77272  
support@vitalpowertexas.com

**Welcome to Vital Power!** This Terms of Service (TOS) document is applicable for all of Brooklet Energy Distribution, LLC DBA Vital Power's Energize Angels Post Paid 12 Plan and, along with the applicable Electricity Facts Label (EFL), explain your rights and responsibilities regarding electricity service, as well as our rights and responsibility to you. Together with the Your Rights as a Customer (YRAC) document and your authorization for enrollment, these documents constitute your contract with Vital Power. As your Retail Electric Provider (REP), we arrange with your transmission and distribution utility (TDU) for electricity to be delivered to your home or business. If you ever have any questions regarding your electricity service, please do not hesitate to contact us.

**Term of Our Agreement.** Your initial term of service with Vital Power will begin on the date on which the first reading of your meter is provided to Vital Power OR Vital Power has been confirmed as your Retail Electric Provider by the Electric Reliability Council of Texas (ERCOT) and will last for the term specified on your EFL. If you fail to pay the amount due on your invoice, your service is subject to disconnection. If you fail to have your service reconnected within 5 business days of its disconnection, this agreement may be terminated.

**Plan Eligibility.** All customers who enroll on any non pre-paid plan (fixed or variable) are required to accept delivery of contract documents and other contract notices via electronic delivery (email). Customers on other post pay plans will be sent their contract documents electronically. As a result, the customer is required to provide an email address to Vital Power at time of enrollment and to maintain a valid email address during their contract with Vital Power for receipt of such documents. (The customer may opt to receive other documents such as bills, disconnect notices, and contract change notices from Vital Power, if Vital Power offers such option to the customer.)

**Pricing:** You agree to pay the Vital Power Charge and Base Charge shown on your EFL and all other amounts shown on your bill. Some products may require an advanced meter (smart meter) that records your usage more frequently and you will only be eligible for these prices if the appropriate meter and any other necessary equipment are installed at your location. All Vital Power Charges and TDU charges are subject to the verification of the correct load profile and customer class as assigned by ERCOT.

Regardless of usage, you will be assessed a monthly 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 monthly Base Charge will not be prorated. In no event will more than one monthly Base Charge be assessed per ESI-ID per billing cycle. This monthly Base Charge will be listed as a separate line item on your bill. If more than one ESI-ID is included in this agreement, you will be charged a separate monthly Base Charge for each included ESI-ID.

You will also be billed the Minimum Usage Charge (if one is shown on your EFL) for any consumption less than the threshold noted on your EFL in any given month. This minimum usage charge is calculated on a per ESI-ID basis.

Your EFL includes an estimation of all other recurring charges that you may expect to pay including TDU charges. Your TDU charges are listed as separate line items on your bill, and are not included in Vital Power Energy Charge, but will be in the total amount due on your bill statement. The TDU charges will be passed through to you without additional mark up and are subject to change per the discretion of your TDU and approval of the PUC.

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 PUC website at:

<http://www.puc.state.tx.us/industry/electric/rates/TDR.aspx> to view the rates for your TDU. All applicable non-recurring fees for Vital Power are described in the paragraph below and Exhibit 1 and will be listed separately on your bill.

If more than one meter identified by Electric Service Identifier ("ESI-ID") is included in this 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. "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 gross receipts taxes, municipal administrative fees, and generation, utility, TDU, regulatory, BTU 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 Vital Power can update your account accordingly.



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**Pricing – Variable Price Product.** Vital Power will bill you an Energy Charge in accordance with your EFL for the Variable Price Product. All recurring Vital Power charges are determined by Vital Power each month and so may vary month-to-month without advance notice. The historical prices of this product are available at <http://www.vitalpowertexas.com> or call toll-free 1-844-674-4825. All subsequent month's prices will be posted on our website within the first 10 days of each month. Vital Power's recurring charges may also change to reflect adjustments resulting from federal, state or local laws that impose new or modified fees or costs on Vital Power that are beyond Vital Power's control. Such charges will be passed through to you without advance notice and shall be shown as one or more separate line items on your bill.

**Pricing – Fixed Rate Product.:** Vital Power will bill you an Energy Charge and Base Charge in accordance with your EFL for the Fixed Rate Product. Vital Power's recurring charges may change from the prices disclosed on your EFL solely to reflect actual changes in the TDU charges, changes to 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 Vital Power that are beyond our control. Such changes will be passed through to you without advance notice and will be shown as one or more separate line items on your bill or with a note on your bill that explains any such price change.

**Calculation of your charges:** Your electricity service charges shall be calculated as follows: Energy Charge (energy price per kWh x total kWh consumed) + Monthly Base Charge + TDU non-recurring discretionary charges + any applicable late fees or Vital Power non-recurring discretionary charges + all applicable taxes, including reimbursement of Gross Receipts Tax and PUC Assessment.

**Vital Power Non-Recurring Fees.** In addition to the recurring fees discussed above, please see Exhibit 1 for a listing of all non-recurring fees that can be assessed to you by Vital Power. Vital Power also reserves the right to pass through any other fees assessed to Vital Power by third parties (including, but not limited to, ERCOT, the PUC, or your TDU) to service the account.

**Promotional Credits.** Promotional credits may be claimed by an existing Vital Power customer (if offered) only once in any 6 month calendar period per ESI ID. The 6 month calendar will reset if a new customer provides satisfactory proof to Vital Power that they are new to the premise. Such proof may include a copy of the lease or mortgage closing documents, verifying that the customer is new to the premise.

## PRODUCT TYPES

Vital Power offers the following product types. Only the specific section for your product type will apply to your contract. ***Your EFL contains your specific product type and term information.***

### ***Fixed Rate Products (Term)***

**Early Termination Fee:** Your contract has the early termination fee noted on your EFL. If you cancel your contract prior to the end of its term, you will be assessed this Early Termination Fee.

**Changes to Contract Provisions:** Vital Power can make changes to the provisions of the contract at any time during the contract term with appropriate notice except for changes to your price other than stated above or the length of your contract term. We will notify you of any material change to the contract in writing at least fourteen (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.

**Contract Expiration Notice:** A contract expiration notice will be sent to you at least 30 days but not more than 60 days before the end of your initial contract term specified in your EFL. You have the right to terminate your contract without penalty if you terminate your contract within 14 days of its expiration date. If you do not take action to ensure that you continue to receive service upon the expiration of your contract you will continue to be served by us automatically under a default renewal product on a monthly basis after the end of your initial contract term, until you switch to another provider, select another Vital Power electric service plan, or we terminate or disconnect your electric service.

**Default Renewal Product:** The Default Renewal Product applies to customers whose contract term has expired and who have not affirmatively selected a new product from Vital Power. You will not experience any interruption in your electric service, as you will automatically continue under Vital Power's month-to-month variable price plan product at the then current price. Your price will vary according to a method determined by Vital Power as set forth in the EFL provided with your contract expiration notice. A Customer's account that has transitioned to a Default Renewal Product may contact Vital Power to enroll on any applicable products that are offered at that time and there will be no termination fee associated with making this change.

### ***Variable Price Products (Month to Month)***



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Variable price products are only month-to-month and have a contract term of 31 days or less and a price that may vary without advance notice according to a method determined by the provider. The price of a variable price product can change after the first billing cycle at the discretion of the provider without contacting the customer first. An introductory rate may apply.

**Establishment of Satisfactory Credit.** You may qualify to receive service from Vital Power by demonstrating satisfactory credit by possessing a satisfactory credit score or providing a letter from your current or most recent Retail Electric Provider which verifies that you have been a customer of any REP or electric utility within the two years prior to your request for electric service from Vital Power, are not currently delinquent in payment for electric service, and during the previous 12 consecutive months have not been late paying your bill more than once or been disconnected for non-payment. Applicants or customers 65 years of age or older who are not currently delinquent in payment as well as victims of family violence are considered to have satisfactory credit once documentation substantiating that is received by Vital Power. Please contact us for additional information.

**Deposits.** Customers unable to demonstrate satisfactory credit may be required to post an initial deposit or other acceptable collateral to receive service. Estimated billings for an initial deposit from an applicant may be based upon a reasonable estimate of average usage for the customer class or may be based on the customer's estimation of anticipated usage or the premise's actual historical usage. Vital Power shall not require an initial deposit from an existing customer unless that customer, during the previous 12 months of service, has been late paying a bill more than once or has had service terminated or disconnected for nonpayment. Additional deposits may be required from an existing customer if the average of their actual billings for the last 12 months is at least twice the amount of the original average of the estimated annual billings; and a termination or disconnection notice has been issued or the account's electric service has been terminated or disconnected within the previous 12 months. Estimated annual billings for an initial or additional deposit from an existing customer shall be based upon actual historical usage; to the extent it is available. In no event will the total of an initial and an additional deposit exceed the greater of either the sum of your estimated billings for the next two months or one-fifth of your estimated annual billing.

If a deposit is required to maintain service with Vital Power, you shall receive written notice informing you of Vital Power's deposit policy. If any required deposit is greater than fifty dollars (\$50), customers who qualify for a rate reduction program may pay the deposit in two equal installments.

If an initial or additional deposit is required for an existing customer, Vital Power may require the customer to pay the deposit within ten days after issuance of a written notice that requests such deposit, and a disconnection notice may be combined with or issued concurrently with the request for deposit. Service may be terminated or disconnected, whichever is applicable, if the additional deposit is not paid within this ten day period if a written termination or disconnection notice has been issued to the customer.

**Interest On and Refund Of Deposits.** You will accrue interest on your deposit, if held more than 30 days, at an annual rate approved by the PUC. Your deposit will be refunded when you have paid your bill for electric service for 12 consecutive months without having any late payments. When your account with Vital Power is closed, your deposit and accrued interest, less any outstanding balance owed for electric service, will be refunded to you. Payment of accrued interest will be made once a year as a credit to your account.

**Refunds.** In the event you cancel or otherwise discontinue service with Vital Power and are owed a refund, we will attempt to refund such monies to you within 30 days of your service termination. However, such refunds can take up to an additional 60 days to process as we wait to receive final billing information and meter reads from your TDU. We rely on the TDU's final meter read information to prepare your final account balance and determine the proper refund balance. You can assist us in processing your refund check by providing us with a valid mailing address. Please note that there will be a Refund Check Fee of (see TOS fee exhibit 1) for all refund checks mailed to you which will be automatically deducted from your balance prior to issuing you a refund. Any energy credits provided by Vital Power to the customer will be reversed prior to calculating any remaining balance owed to the customer if the customer terminates their contract with Vital Power within 6 months of becoming a Vital Power customer. Any check issued to a customer that is not presented for payment within 60 days of issuance will be charged a cancellation fee \$25.00 and a stop payment may be issued on the check. If the refunded balance remains uncashed after 60 days of issuance, they will be subject to a Customer Account Maintenance Fee of \$9.95 monthly, up until depletion of the balance or until they are re-issued at the request of the customer.



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**Right of Rescission.** For switch requests, until midnight on the third federal business day after you receive this Terms of Service, you have the unconditional right to rescind this Agreement without penalty or fee of any kind. The right of rescission does not apply if you are requesting a move-in. To rescind, contact us before the deadline with the following: (1) your name; (2) account number; (3) the address of the service location; and (4) a statement that you are cancelling under the three-day right of rescission.

**Billing and Payment; Late Fees; NSF fees; Payment Methods.** We will provide a monthly bill that will be due and payable 16 calendar days from the date shown on the bill, except you agree that we may issue a bill less frequently if we do not receive meter readings or usage information from the TDU or ERCOT in time to prepare and send a monthly invoice. We reserve the right to adjust your invoice, and may calculate an invoice based on estimated meter readings absent actual meter readings from the TDU or ERCOT. Once actual meter readings are received, we will issue a invoice or make adjustments on a subsequent invoice. We may also issue bills less frequently or send your bills electronically if you agree to accept alternate arrangements. If you do not pay your bill by the due date, we may charge you a Late Payment Penalty of 5% on the amount for the previous month's past-due electric service. Late Payment Penalties will not exceed the maximum amount permitted by the PUC.

Additionally, customers will be charged a fee as shown on Exhibit 1 for payments returned for: (1) insufficient funds; (2) a lack of available credit; (3) rejected credit card transactions; or (4) 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. If you fail to make timely payments of the amounts due under this Contract, we reserve the right to refer the outstanding balance to an attorney or collection agency for collection. If we refer your outstanding balance to an attorney or collection agency for collection, or if we file a lawsuit, or collect your outstanding balance through probate, bankruptcy, or other judicial proceedings, then you agree to pay reasonable fees and expenses (including attorney fees) that we incur in the collection process. "Law" means any law, statute, regulation, rule, ERCOT protocol, exchange rule, decision, writ, order, decree or judgment or any interpretations by any court, agency or instrumentality that has jurisdiction, including ERCOT.

In addition to making a payment via check and through the U.S. Mail, payments may be made using one of the following methods:

**Automatic Credit Card Pay:** You may pay your bill by Visa or Master Card.

**Online Account Management:** You may receive, view and/or pay your bill electronically through our online account management.

**Enrollment on AutoPay Mandatory.** You are required to enroll on Vital Power's AutoPay plan with either a MasterCard or a Visa. With Vital Power's AutoPay plan, payment for the full amount of each electric bill will be charged to your credit card on **(the payment due date/date of your choosing)**. You are responsible for ensuring that your credit card is in good standing. If you do not enroll in Auto Pay or Auto Pay fails you will be charge the Failed Auto Pay Fee (see fee exhibit for details).

If you agree to purchase other products or services from Vital Power or you purchase products or services that are offered by Vital Power but provided from third parties (Third Party Services), you acknowledge that the bill we provide you may include the charges for those products and services. We will apply all payments you make on your bill first to the amounts you owe us for electric service.

If you have any questions, concerns, billing inquiries, or you are interested in applying for the following services we offer, please contact our office for assistance.

**Alternate payment arrangements, payment assistance, and low income discounts.** Please contact us before the invoice due date if you will have difficulty making your payment. Together we may be able to work out an alternate payment plan, such as a courtesy deferment, or some other payment arrangement. We accept payment from a 3rd party on behalf of a customer. We will offer each customer the opportunity to contribute to a bill payment assistance program for qualified residential customers. We participate in state programs that offer rate reductions for low income customers who qualify.

**Deferred Payment Plans:** Vital Power offers a Deferred Payment Plan which allows a residential customer to pay an outstanding balance in installments over a period of time. To enroll in a Deferred Payment Plan we may require from you an initial payment of 50% of the outstanding balance on your account and for the remaining balance to be paid over five billing cycles. Your service may be terminated and disconnected if you do not meet the terms of the Deferred Payment Plan issued to you. You may request a deferred payment plan for bills that become due during



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extreme weather emergencies, during governor-declared disasters as directed by the Public Utility Commission, or if you have been underbilled by \$50 or more. You may also request a deferred payment plan for bills that become due in July, August or September (or in January or February in certain situations) if you are eligible to receive the LITE-UP (the Texas low-income) discount, are designated as a Chronic Condition or Critical Care Residential Customer, or if you cannot pay your bill on time unless (1) you have been disconnected for non-payment during the previous 12 months, (2) have made more than two payments during the previous 12 months that were returned due to insufficient funds available or, (3) you have received service from us for less than three months and you lack sufficient credit or a satisfactory history of payment for electric service from a previous retail electric provider. If you are on a deferred payment plan, your account will be subject to a switch-hold. 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 after your deferred balance is paid. While a switch-hold applies, if you are disconnected for not paying, you will need to pay us to get your electricity turned back on.

**Average Billing Plan:** Vital Power offers an average billing plan. With this plan your monthly payment will be based on the historical usage associated with your account. Your monthly payment amount may be adjusted quarterly based on your actual usage. We will notify you of any change in your average payment amount. We will reconcile your account at least annually and may charge or credit your account based on any difference between actual usage charges and payments received under the average billing plan. This program is available to any customer who is not currently delinquent in payment to Vital Power and any residential customer eligible to receive the LITE-UP discount. In the event the Terms of Service are canceled or terminated or your electric service is disconnected, the level or average billing option does not affect your obligation to pay for all actual usage.

**Collections.** We may collect any outstanding debts related to your account, including amounts related to a Deferred Payment Plan or Prior Account Deferred Payment Plan if you do not honor the terms of each plan. We may 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.

**Disconnection of Your Electric Service.** WE MAY REQUEST DISCONNECTION OF YOUR ELECTRIC SERVICE IF YOU DO NOT PAY YOUR DEPOSIT OR THE PAST DUE AMOUNT OF YOUR ELECTRIC SERVICE BILL IN FULL BY THE DUE DATE ON THE DISCONNECT NOTICE. We will notify you before we disconnect electric service, as authorized by the PUC. If you receive a disconnection notice we may also charge you a Disconnect Fee if you do not pay the past due amount before the date your service is subject to disconnection as stated in the disconnection notice. This charge will apply regardless of whether your electric service is actually disconnected. A Vital Power Assistance program is also available to provide payment assistance to qualified customers who have experienced an emergency or temporary hardship impacting their financial status. The program is funded by contributions from Vital Power customers. You may contribute to this program on your bill each month. Vital Power also offers energy efficiency programs to all customers, including low-income customers.

**Disconnection Without Notice.** Vital Power or your TDU may disconnect your service without notice if a known dangerous conditions 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.

**Dispute or Complaints.** If you have any questions, concerns, or complaints, please contact us via our dedication hotline at 855-447-2946. In the unlikely event we cannot immediately respond to your question or complaint, we will promptly investigate the matter and report our findings to you. During this time, you will not be required to pay the disputed portion of your bill. If for any reason you are not satisfied with our response, you may contact the PUC.

**Right to Cancel Your Service.** You have the right to cancel your service without penalty if you are moving-out of your premise. We may ask you to provide us with reasonable evidence that you are moving. To cancel your service, please contact us.

**PUC Rules.** The complete text of the PUC Customer Protection Rules referenced herein can be found at <http://www.puc.state.tx.us/rules/subrules/electric/index.cfm>.

**Assignment; Release of Customer Information.** You may not assign this Agreement. By entering into this Agreement, you authorize your Local Distribution Utility to release all information to Vital Power that we need in order to provide you with electricity service including, but not limited to, your address, phone number, account number, historical usage information, and previous payment history.

**Refusal of Service.** We may refuse to provide you electric service for any of the reasons specified in §25.477 of the PUC Substantive Rules.





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**Antidiscrimination.** Vital Power cannot deny service or require a prepayment or deposit for 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 economically distressed geographic area, or qualification for low income or energy efficiency services. For residential customers, Vital Power cannot 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.

**Force Majeure.** Vital Power makes commercially reasonable efforts to secure electricity but does not guarantee a continuous supply of electrical energy. Vital Power does not generate, transmit, or distribute your electricity. Events that are outside the control of Vital Power ("Force Majeure Events") may result in interruptions or irregularities in your electric service. YOU AGREE THAT Vital Power WILL NOT BE HELD LIABLE FOR ANY INTERRUPTIONS OR IRREGULARITIES IN YOUR ELECTRIC SERVICE. YOU AGREE THAT Vital Power WILL NOT BE HELD LIABLE FOR ANY DAMAGES OR CONSEQUENCES RESULTING FROM SUCH FORCE MAJEURE EVENTS.

**Entirety.** This Agreement, along with the applicable EFL, YRAC and your enrollment authorization constitutes the entire agreement between Vital Power and you, the customer. This agreement supersedes any prior agreements or representations, whether oral or written, with respect to these Terms of Service. No modification by change, addition or deletion shall be enforceable unless reduced to writing as provided for in this Agreement.

**Limitations of Liability**

YOU AGREE THAT CAUSES AND EVENTS BEYOND OUR CONTROL, INCLUDING ACTS OF GOD, ACTS OF ANY GOVERNMENTAL AUTHORITY, ACCIDENTS, STRIKES, LABOR TROUBLE, AND EVENTS OF FORCE MAJEURE OCCURRING WITH RESPECT TO THE TDU, ERCOT, OR OTHER THIRD PARTY SYSTEMS OR ASSETS (A FORCE MAJEURE EVENT), MAY RESULT IN INTERRUPTIONS IN SERVICE AND THAT WE WILL NOT BE LIABLE FOR THOSE INTERRUPTIONS. YOU ALSO AGREE THAT WE ARE NOT RESPONSIBLE FOR GENERATING YOUR ELECTRICITY OR FOR TRANSMITTING AND DISTRIBUTING ELECTRICITY TO YOUR SERVICE ADDRESS. FURTHERMORE, YOU AGREE THAT WE WILL NOT BE LIABLE WITH RESPECT TO ANY THIRD PARTY SERVICES; THAT OUR LIABILITY NOT EXCUSED BY REASON OF FORCE MAJEURE OR OTHERWISE WILL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY; AND NEITHER OF US ARE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES. YOU WAIVE ALL OTHER REMEDIES AT LAW OR IN EQUITY. THESE LIMITATIONS APPLY EVEN IF THE DAMAGES RESULT FROM NEGLIGENCE, WHETHER SOLE, JOINT, CONCURRENT, OR ACTIVE OR PASSIVE. THERE ARE NO THIRD PARTY BENEFICIARIES TO THE CONTRACT.

**REPRESENTATIONS AND WARRANTIES**

THE ELECTRICITY SOLD UNDER THIS CONTRACT WILL BE SUPPLIED FROM A VARIETY OF GENERATING SOURCES. IF YOU ELECT TO PURCHASE A RENEWABLE ENERGY PRODUCT, WE WILL ENSURE THAT THE APPROPRIATE AMOUNT OF RENEWABLE ENERGY CREDITS (RECs) IS RETIRED TO AUTHENTICATE THE RENEWABLE ENERGY CONTAINED IN THE PRODUCT. THE TDU OR ERCOT SYSTEM WILL NOT DELIVER ELECTRICITY FROM A SPECIFIC GENERATING SOURCE TO YOUR SERVICE ADDRESS. IF YOU PURCHASE RENEWABLE ENERGY FROM US, YOU ARE PROVIDING FINANCIAL SUPPORT FOR RENEWABLE ENERGY GENERATION SOURCES AND NOT RECEIVING THE PRECISE ENERGY GENERATED FROM THAT SOURCE. WE MAKE NO REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN THE CONTRACT, AND WE EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING MERCHANTABILITY, CONFORMITY TO MODELS OR SAMPLES AND FITNESS FOR A PARTICULAR PURPOSE.

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

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

**Governing Law**

YOUR CONTRACT WITH Vital Power IS GOVERNED BY THE LAWS OF THE STATE OF TEXAS. THE TEXAS UNIFORM COMMERCIAL CODE APPLIES TO THE TERMS OF SERVICE 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>



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**Assignment.** You may not assign your contract with us, in whole or in part, or any of your rights or obligations under the contract without our prior written consent. Vital Power may, without your consent, (i) as part of any financing or other financial arrangements, assign, sell or pledge this agreement or its accounts, revenues, or proceeds, or (ii) assign this agreement to an affiliate of Vital Power or to any other person or entity succeeding to all or a substantial portion of the assets of Vital Power.

**Waiver:** If either of us waives any one or more defaults by the other in the performance of any of the provisions of the contract, 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.



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**Exhibit 1**

**Vital Power Non-Recurring Credits, Fees & Charges**

In addition to the electricity usage fees discussed in your applicable Terms of Service, Vital Power may impose the following fees and charges as shown below.

Fee Name	Fee Amount
Disconnect Recovery Fee (*plus applicable TDU charges, if any-see link below)	\$25.00
Reconnect Recovery Fee (*plus applicable TDU charges, if any-see link below)	\$25.00
Late Fee Penalty (% of current charges)	5%
<i>A Premium Contact Fee may be applied for the following reasons:</i>	
- Process Payment via live agent (no fee for on line or automated system payments)	\$2.95
-Provide Account Protection (Courtesy Extension of Disconnect Date)	\$5.00
- Service Order Change Request (that requires revising a TDU request sent)	\$1.95
Declined payment fee (payment rejected for any reason)	\$1.95
Insufficient Funds or Returned Payments	\$25.00
Refund Processing Charge (will be deducted from closeout balance prior to issuing a refund)	\$2.95
Additional Billing Summary (1 Free per Year)	\$2.95
Check cancellation/reissuance fee (to void refunded check)	\$35.00
Inactive Account Maintenance Fee (charge to any inactive account with a credit balance)	\$9.95
Failed Auto Pay Fee (non set up or failure of auto pay payments)	\$15.00
Early Termination Fee-Fixed Rate Plan with 12 month term	\$150.00
Early Termination Fee-Fixed Rate Plan with 6 month term	\$100.00
Early Termination Fee-Fixed Rate Plan with 3 month term	\$75.00

Vital Power also reserves the right to pass through any other fees assessed to Vital Power by third parties (including, but not limited to, ERCOT, the PUCT, or your regional transmission and distribution company) to service the account.

**\*Common TDU Non-Recurring Fees**

These fees are subject to change by the TDU with PUCT approval. For a full list, and to view the most current prices, please visit:

<http://puc.state.tx.us/industry/electric/rates/TDR.aspx>