

David Energy Supply (Texas) LLC [Certificate No. 10309]  
Toll Free: (855) 524-0270 | Email: [texas@davidenergy.com](mailto:texas@davidenergy.com) | [www.davidenergy.com](http://www.davidenergy.com)  
417 Grand St., Brooklyn, NY 11211

You have chosen David Energy as your Retail Electric Provider (REP). David Energy is not affiliated with your Transmission & Distribution Company (TDSP). David Energy will be responsible for your electric supply. The charges for the electricity supplied by David Energy will appear on the bills rendered to you by David Energy.

## **TERMS OF SERVICE – ELECTRIC SUPPLY TERMS & CONDITIONS**

1. **Agreement to Sell and Purchase Energy.** This is an agreement between David Energy Supply (Texas) LLC (“David Energy” “REP” or “Supplier”), an independent Retail Electric Provider, and the undersigned Customer (“Customer”) under which Customer shall initiate electricity service and begin enrollment with David Energy. This Terms of Service (“TOS”) explains the terms and conditions that govern your electric service with David Energy. This TOS, together with your enrollment documentation, your Electricity Facts Label (“EFL”), and the Your Rights as a Customer (“YRAC”) document compose your Contract with David Energy (the “Agreement”). Subject to the terms and conditions of this Agreement, David Energy agrees to sell and deliver, and Customer agrees to purchase and accept the quantity of electricity as per the actual meter readings provided by the Transmission & Distribution Service Provider (“TDSP”). If David Energy does not receive meter readings on a timely basis, we may issue your bill based on estimated usage. Once actual meter readings are received, we will make all needed adjustments on a subsequent bill. The customer acknowledges that they are a residential customer, and that they have the responsibility for selecting the electricity plan that is the most appropriate for their home. David Energy is not affiliated with and does not represent the TDSP.
2. **Term & Renewal.** For Fixed Rate service, this Agreement shall commence as of the meter switch date as processed by the TDSP, and shall continue for the number of monthly billing cycles in the term specified in your EFL (the “Initial Term”). At least thirty (30) days prior to the renewal date, David Energy will provide a notice to Customer in writing of the terms of renewal of this Agreement and obtain Customer’s affirmative consent to renew, reject or renegotiate this Agreement. Otherwise, upon completion of the Initial Term, Customer’s account will roll-over to a default month-to-month variable rate Agreement.
3. **Pricing.** David Energy will calculate your charges for each billing period by multiplying (i) the price of electricity per kWh by (ii) the amount of electricity consumed during the billing period.

Customer’s price per kilowatt hour (“kWh”) will be fixed at the price indicated on your EFL, for the Initial Term. The price per Kwh will exclude all TDSP charges (or credits) attributable to your ESIID(s); Regulatory charges/assessments and taxes including Sales and Use Tax, Miscellaneous Gross Receipts Tax (MGRT), and PUC Assessments (PUCA) attributable to or incurred as a result of your ESIID(s); Additional Fees (as defined below) and any disconnection notice fees, administrative fees or any additional charges that are authorized in the Agreement, Non-Recurring Fees charged by your TDSP and passed through to you at cost including but not limited to: Move In, Install, Priority Move In, Reread, Off Cycle, Disconnection Fee, Reconnection Fee, Priority Reconnection Fee, Weekend Reconnection Fee, and Meter Test. These fees are imposed by your respective TDSP. Fixed Rates may be modified due to a subsequent change in the law per Section 27 - Regulatory Change.

If you have signed up for a solar buy back rate, you will receive a credit equal to the volume of kWh exported during the month multiplied by the solar buy back price as defined in your EFL. The solar buy back period will be indicated on your bill and may lag the billing period by up to 5 business days. If your net monthly bill is in a credit position, we will roll over the credit against the following month. At the end of your Term (or upon termination as a result of a move to another location), you may request a payment of any net credit value so long as your account remains in compliance with the terms of this Agreement.

If you have signed up for the Sunnova Adaptive Retail rate, you will receive the benefits of the solar buyback rate. You will also receive a credit each calendar quarter equal to 50% of the ERCOT zonal Settlement Point Price (SPP) multiplied by the volume of kWh discharged from the battery in response to discharge signals from David Energy. This credit will apply regardless of whether the battery reduces your consumption or results in exports. Savings per quarter will vary, but at no time will you incur charges for your participation in the Sunnova Adaptive Retail rate. Exports specific to the Sunnova Adaptive Retail rate battery discharge are distinct from solar exports and credited exclusively at the shared savings value. At the end of your Term (or upon moving to another location), you may request a payment of any net credit value so long as your account remains in compliance with the terms of this Agreement.

You must have solar power to be eligible for any David Energy rate that includes solar buy back. David Energy will use your historic meter data to verify your eligibility. If you sign up for a solar buy back rate but are not eligible because you do not have solar, your account will roll-over to a default month-to-month variable rate Agreement.

For any David Energy rate that specifies device connection as a requirement in the Electricity Facts Label, you must connect an eligible device to your account within 30 days of your start date. If you sign up for a device connection rate but are not eligible because you do not connect an eligible device, your account will roll-over to a default month-to-month variable rate Agreement.

If you are on a product with renewable energy, the renewable component of your plan's electricity usage will be matched by the generation of energy from renewable resources by retiring renewable energy certificates (RECs). RECs represent the environmental attributes associated with the applicable amount of renewable energy generation from various renewable sources that comply with the appropriate locational and delivery requirements. RECs will be purchased and retired to satisfy the percentage of renewable generation guaranteed by this agreement. In order to satisfy the terms of this contract, RECs must be purchased from eligible renewable generators; by procuring RECs from eligible renewable generators through bilateral contracts; by entering into bundled energy and REC purchase agreements with eligible renewable generators; or by making Alternative Compliance Payments to ERCOT. Customers may contact David Energy at any time for information related to its renewable sourcing and documentation.

4. **Deposits.** David Energy will require a Customer deposit if customer does not pass the required credit check during enrollment (alternatively, a Customer may establish satisfactory credit pursuant to [§25.478\(a\)\(4\)](#)). If enrolling online, David Energy must receive a deposit, if required, within 15 days of a Customer completing the online enrollment process, after which David Energy will reject the account enrollment. David Energy may also ask for a deposit if the Customer is delinquent in payments and a

Disconnection Notice has been issued. The maximum deposit amount will be \$300. Interest will be paid on the deposit at the rate approved by the Texas Public Utility Commission. David Energy will refund the deposit if the Customer has timely paid invoices (twelve (12) months for residential customers and twenty-four (24) months for non-residential customers) or upon termination of this Agreement, along with any interest accrued.

5. **Additional Fees.** Customer will pay the balance due on each invoice from David Energy in full, less any amounts disputed in accordance with Section 25 – Dispute Resolution, within sixteen (16) days after the invoice date or be subject to a late payment charge of 5.0% per month on the late bill's past due amount. A minimum \$25 fee will be charged for all failed payments. Customers may be charged \$5 per month for paper billing or non-autopay billing. David Energy will pass through any TDSP charges for out-of-cycle meter reads and disconnect and/or reconnect service.
6. **Taxes and Laws.** Except as otherwise provided in the Agreement or provided by law, all taxes of whatsoever kind, nature and description due and payable with respect to service provided under this Agreement, shall be paid by Customer, and Customer agrees to indemnify David Energy and hold David Energy harmless from and against any and all such taxes. If Customer is tax exempt, Customer must provide a tax exemption certificate at the time of enrollment; otherwise, taxes will be charged until such time an exemption certificate has been provided.
7. **Billing Methods & Payment.** Customer will receive a single bill for both commodity and delivery costs from the Supplier. Bills are due within sixteen (16) days of receipt, and payable via ACH or Credit Card (additional 3% processing fee applies).

#### **Monthly Recurring Payments**

Enrollment in David Energy rates requires AutoPay. By enrolling in AutoPay, you authorize and order David Energy to have your Payment Method debited or charged for the amount noted on your monthly David Energy bill (please note that credit card payments will incur an additional 3% processing fee). Your monthly charges will be deducted from or charged to your Payment Account up to three (3) days prior to the due date.

You understand that this authorization and order will remain in effect until you cancel it in writing, and you agree to notify David Energy of any changes in your account information or termination of this authorization and order at least fifteen (15) days prior to the next billing date. If the above noted payment date does not fall on Business Day, you understand that the payment may be executed on the next Business Day.

You understand that because this is an electronic transaction, these funds may be withdrawn from your account each period as soon as the above noted transaction date. You have the right to stop automatic payment by notifying David Energy of that fact as contemplated above. This authorization is to remain in full force and effect until David Energy has received written notification from you in such time and in such manner as set forth above.

If a transaction is rejected for non-sufficient funds or declined credit you understand that David Energy may at its discretion attempt to process the charge again within thirty (30) days. David Energy is not responsible for any overdraft fees, over-the-limit fees, or insufficient fund charges

(including finance charges, late fees, or similar charges) charged to you by your financial institution from your failure to maintain a balance or have available credit in the Payment Account sufficient to process our payment. David Energy reserves the right to charge you for any overdraft fees, over-the-limit fees, or insufficient fund charges (including finance charges, late fees, or similar charges) assessed to David Energy that result from your failure to maintain a balance or credit in the Payment Account that is sufficient to process your payment. You acknowledge that the origination of payment transactions to the Payment Account must comply with the provisions of U.S. law.

You will not dispute David Energy's recurring billing with your financial institution, bank or credit card company so long as the transaction corresponds to the terms indicated in these Terms. Any disputes should be first brought to our attention by contacting us at [texas@davidenergy.com](mailto:texas@davidenergy.com) or (855) 524-0270. Transaction fees may apply for credit card and ACH bank debit payments.

#### **David Energy Multiple Services & Auto-Pay**

If you are enrolled in multiple David Energy Services, and terminate one service, you may continue to be enrolled in the additional services. You will continue to be enrolled in Autopay for those additional services until your contract term ends or until you terminate those services.

#### **Electronic Consent Regarding Recurring Payment Authorization**

You acknowledge and agree that by accepting these recurring payment terms and conditions ("Recurring Payment Terms"), you consent to receive a copy of your payment authorization for recurring monthly payments in electronic form only instead of receiving a paper copy. If you wish to obtain a paper copy of your recurring payment authorization, you may do so by printing the Recurring Payment Terms yourself or by calling us at (855) 524-0270 to request a paper copy. We may charge you a reasonable service charge for the delivery of a paper copy of the Recurring Payment Terms.

8. **Payment Plans.** For Customers that are not currently delinquent on their payment, David Energy will offer a Level Payment Plan. For customers that are delinquent on their payment, David Energy will offer a Deferred Payment Plan. For more information, contact David Energy at (855) 524-0270 or email [texas@davidenergy.com](mailto:texas@davidenergy.com).
9. **Metering.** All measurement of electricity supplied under this Agreement will be provided by the TDSP. Supplier may use estimated Metered Usage if measurements of usage are not received timely from the TDSP, in which case Supplier will indicate that an estimate was used and will make appropriate adjustments upon receipt of definitive data verifying Metered Usage. Upon subsequent receipt of actual electricity usage data, David Energy will promptly reconcile any differences between the estimated data and actual data in a commercially reasonable manner. If reconciliation results in additional Customer payment due, David Energy reserves the right to charge Customer that amount, provided it does not charge for amounts incurred beyond the back bill limit set by the TDSP.
10. **Cancellation.** A Customer may cancel the agreement without penalty within three (3) business days of receipt of confirmation by emailing [texas@davidenergy.com](mailto:texas@davidenergy.com) or calling toll-free at (855) 524-0270. A Customer may also cancel the agreement without penalty, if they provide proof that they have moved within or outside the TDSP's franchise area, and/or the Customer of record's death. Customer is liable for

all David Energy charges until Customer returns to the TDSP or goes to another supplier, including Early Termination Fees or Late Fees, if applicable. David Energy reserves the right to charge the Customer for all costs related to collection of an outstanding debt from a Customer including court fees, legal fees, and other administrative costs.

11. **Termination & Early Termination Fee.** If Customer fails to meet its obligations under this Agreement then, in addition to any other remedies that it may have, David Energy may terminate this Agreement upon thirty (30) days written notice to Customer. A final bill will be rendered within thirty (30) days after the final scheduled meter reading or if access is unavailable, an estimate of consumption will be used in the final bill, which will be trued up subsequent to the final meter reading. Customers may be assessed an early termination fee as disclosed in your EFL. This fee does not apply if you move to another location.
12. **Disconnection for Non-Payment.** David Energy may seek to have your electric service disconnected for: (1) Failure to pay a bill owed to David Energy or to make a deferred payment arrangement by the disconnection date set out in the disconnection notice; (2) Failure to comply with the terms of a deferred payment agreement made with David Energy; (3) Using service in a manner that interferes with the service of others or the operation of nonstandard equipment; or (4) Failure to pay a deposit required by David Energy. Prior to disconnecting your service, David Energy must provide you a disconnection notice. This notice must be mailed to you separately no earlier than the first day after the date your bill is due. The disconnection date must be no earlier than ten (10) days from the date the notice is issued and may not fall on a holiday or weekend or the day preceding unless personnel are available to take payments and service can be reconnected. David Energy will pass through any TDSP disconnect fees.
13. **Switch-Hold.** A switch-hold may be applied to your ESI ID if you enter into certain payment arrangements. Additionally, your TDSP will apply a switch-hold to your ESI ID if there is evidence of meter tampering. A switch-hold means that you will not be able to buy electricity from other companies until you have satisfied the terms of your payment arrangement or, in cases of meter tampering, have paid all applicable charges and backbilling. While a switch-hold applies, if you are disconnected for not paying, you will need to pay David Energy to get your electricity turned back on.
14. **Reconnection of Service.** You have the right to be reconnected as quickly as possible upon the satisfactory correction of the reasons for disconnection. David Energy shall inform you when reconnection is expected to occur. David Energy will continue to serve you under the terms and conditions of service in effect prior to issuance of the disconnection notice. David Energy will charge Customer a \$50 administrative fee and pass through any TDSP reconnect or disconnect fees.
15. **Title.** All electricity sold under this Agreement shall be delivered to a location considered the “Point of Delivery”, which shall be at the ERCOT David Energy load bus (located outside of the municipality where Customer resides) and shall constitute the point at which title transfers and the sale occurs.
16. **Consumer Protections.** The services provided by David Energy to Customer are governed by the terms and conditions of this Agreement and the Public Utility Commission of Texas (PUCT) rules and regulations, including [Subchapter R](#) (Customer Protection Rules for Retail Electric Service). Customer may obtain additional information by contacting David Energy at (855) 524-0270, writing to the PUCT at Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or calling (512) 936-7120 or toll-free in Texas at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.



17. **Anti-Discrimination.** You cannot be denied electric service, or be required to pay a prepayment or deposit, based on your race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, level of income, disability, familial status, location of a customer in an economically distressed geographic area, or qualification for low income or energy efficiency services. David Energy cannot use a residential customer's 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 twelve (12) months or less.
18. **Assignment.** Customer may not assign its interests in and delegate its obligations under this Agreement without the express written consent of David Energy, which may not be unreasonably withheld. David Energy may sell, transfer, pledge, or assign the accounts, revenues, or proceeds hereof, in connection with any financing agreement or receivables purchase program, and may assign this Agreement to another energy supplier or other entity duly licensed in Texas by providing thirty (30) days written notice to Customer.
19. **Liability, Damages, Waivers.** The remedy in any claim or suit by one party against the other will be solely limited to direct actual damages. All other remedies at law or in equity are hereby waived. In no event will either David Energy or Customer be liable for consequential, incidental, indirect, special or punitive damages. These limitations apply without regard to the cause of any liability or damages. There are no third-party beneficiaries to this Agreement.
20. **Indemnification.** Each Party shall indemnify, defend and hold harmless the other Party from and against any Claims brought by a third party arising from or out of any event, circumstance, act or incident caused by the negligence or willful misconduct of the indemnifying party.
21. **Representation & Warranties.** This Agreement, including any enrollment form and applicable attachments, as written makes up the entire Agreement between Customer and David Energy. David Energy makes no representations or warranties other than those expressly set forth in this Agreement, and David Energy expressly disclaims all other warranties, express or implied, including merchantability and fitness for a particular use.
22. **Information Release Authorization & Privacy Policy.** Customer authorizes David Energy to obtain and review information regarding Customer's credit history from credit reporting agencies, and the following information from the TDSP, Smart Meter Texas and connected solar PV systems, thermostats, battery and /or generators or other energy management device(s): historical and real-time energy usage and consumption; billing determinants; account number; credit information; tax status and eligibility for economic development or other incentives ("Customer Information"). Customer's execution of this Agreement shall constitute authorization for the release of Customer Information to David Energy. This authorization will remain in effect during the Initial Term and any Renewal Term. Customer may rescind this authorization at any time by providing written notice thereof to David Energy, emailing David Energy at [texas@davidenergy.com](mailto:texas@davidenergy.com) or by calling David Energy at (855) 524-0270. David Energy reserves the right to cancel this Agreement in the event Customer rescinds the authorization. This information may be used by David Energy to determine whether it will commence and/or continue to provide energy supply service to Customer. Customer agrees that David Energy may share Customer information with David Energy's subsidiaries and/or affiliates, Customer's utility, and any service vendor or others David Energy requires to support its business, including any third-party entities with whom David Energy has

relationships. Customer Information as described will be treated confidentially by David Energy in accordance with best practices and industry standards.

23. **Agency**. Customer designates David Energy as agent to arrange and administer contracts and service agreements between Customer and David Energy and entities duly licensed and engaged in providing demand response services and appoints David Energy as Authorized Customer Representative for energy data and usage matters related to Customer's TDSP account. You agree that David Energy may sign such contracts, agreements, and forms on your behalf with the signature "[USER FIRST NAME LAST NAME] BY DAVID ENERGY (LOA)" or similar language. Customer must notify Supplier of any changes or revocation in authority.
24. **Force Majeure**. David Energy will make commercially reasonable efforts to provide electricity hereunder but David Energy does not guarantee a continuous supply of electricity to Customer. Certain causes and events out of the control of David Energy ("**Force Majeure Events**") may result in interruptions in service. In the event that David Energy is rendered unable, wholly or in part, to perform its obligations under this Agreement due to events not reasonably anticipated or within either party's control, David Energy will not be liable for any interruptions or damages caused by Force Majeure Events. Force Majeure Events shall include acts of God, fire, flood, storm, terrorism, war, civil disturbance, accidents, strikes, labor disputes or problems, required maintenance work, inability to access the TDSP system, curtailment by Customer's TDSP or David Energy transportation capacity, non-performance by the TDSP (including, but not limited to, a facility outage on its gas distribution lines or electric facilities), or any other cause beyond David Energy's control.
25. **Dispute Resolution**. The services provided by David Energy to Customer are governed by the terms and conditions of this Agreement. In the event of a billing dispute or a disagreement involving David Energy's service hereunder, the parties will use their best efforts to resolve the dispute. Customer should contact David Energy by telephone or in writing as provided above. Customer must pay the bill in full, except for the specific disputed amount, during the pendency of the dispute, and such payment shall be refunded if warranted by the decision of the Texas PUC.
26. **Choice of Laws; Venue**. Venue for any lawsuit brought to enforce any term or condition of this Agreement shall lie exclusively in the State of New York. This Agreement shall be construed under and shall be governed by the laws of the State of New York without regard to the application of its conflicts of law principles.
27. **Regulatory Changes**. This Agreement is subject to present and future legislation, orders, rules, regulations or decisions of a duly constituted governmental authority having jurisdiction over this Agreement or the services to be provided hereunder. If at some future date there is a change in any law, rule, regulation, tariff, acts of any governmental authority, or regulatory structure ("**Regulatory Change**") which impacts all similarly situated market participants with respect to any term, condition or provision of this Agreement including, but not limited to price or environmental attributes, David Energy shall have the right to modify this Agreement to reflect such Regulatory Change by providing thirty (30) days written notice of such modification to the Customer and obtaining Customer's expressed consent; such notice to include supporting documentation with reasonable detail regarding the cause and cost impact of the Regulatory Change.

28. **Waiver of jury trial and class action claims.** Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action, claim or proceeding relating to this agreement. each party (i) certifies that no representative, agent or attorney of the other party has represented, expressly or otherwise, that such other party would not, in the event of such a suit, action, claim or proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other party have not been induced to enter into this agreement by among other things the mutual waivers and certifications in this section. Both parties further agree irrevocably and unconditionally to waive any right to initiate or become a party to any class action claims with respect to any action, suit or proceeding directly or indirectly arising out of or relating to this agreement or the transactions contemplated by this agreement.
29. **David Energy Contact Information.** Customer may contact David Energy’s Customer Service Center at (855) 524-0270, Monday-Friday 9:00am - 7:00pm EST (contact center hours subject to change). Customer may write to David Energy at: 417 Grand Street, Brooklyn, NY 11211 or email David Energy at [texas@davidenergy.com](mailto:texas@davidenergy.com).
30. **Telephone Communication.** You agree that by accepting this Agreement and providing to David Energy, its affiliates and/or assigns, your phone number, which can include a landline and/or mobile number, David Energy, its affiliates and/or assigns may call and/or text you with autodialed and/or pre-recorded information.
31. **Emergency Service.** The TDSP will continue to respond to leaks and emergencies. In the event of a gas leak, service interruption or other emergency, Customer should immediately call the utility at:
- CenterPoint Energy: (800) 332-7143
  - Oncor: (888) 313-4747
  - AEP: (866) 223-8508
  - Texas New Mexico Power (888) 866-7456
32. **Forward Contract.** Each Party acknowledges that this Agreement is a forward contract and a master netting agreement as defined in the United States Bankruptcy Code.
33. **Parties Bound.** This Agreement is binding upon the parties hereto and their respective successors and legal assigns.