

## RESIDENTIAL TERMS OF SERVICE

Thank you for choosing Octopus Energy as your Retail Electric Provider (“REP”). The Terms of Service (“TOS”) will explain the terms and conditions that govern your agreement with Octopus Energy (“we,” “us,” or “Octopus Energy”). The TOS, along with your Electricity Facts Label (“EFL”), Your Rights as a Customer document (“YRAC”) make up your Agreement with Octopus Energy (“Agreement”).

By accepting service from Octopus Energy, you agree to be bound by the terms of your Agreement. You authorize us to obtain information we find necessary or helpful to provide the best possible electric service, which may include, but is not limited to, your address, telephone number, account number(s), historical usage data, and other information. Most of the information we gather will come from you when you enroll with Octopus Energy, but you also authorize Octopus Energy to collect relevant information from your Local Utility, current REP, or other third parties. You additionally agree that you are either the account holder or that you are authorized by the account holder to sign up with Octopus Energy.

**Contact Information:** Octopus Energy customer service representatives are available to assist you 9 am – 5 pm CT, Monday through Friday, and 10 am – 2 pm, Saturday. You may make payments twenty-four (24) hours a day, seven (7) days a week with a debit or credit card through the Octopus Energy app on your mobile device or during business hours by calling toll-free at (844) 386-5832. You may also e-mail us at [heretohelp@Octopusenergy.com](mailto:heretohelp@Octopusenergy.com). You can visit us any time at [www.Octopusenergy.com](http://www.Octopusenergy.com) for more information.

***In the event of an electricity-related emergency, such as a power outage, or in the event of problems related to the Transmission & Distribution Service Provider (“TDSP”), please contact your TDSP.***

Local Utility / TDSP	Outage	Service Requests
AEP Texas	(866)223-8508	(877) 373-4858
CenterPoint Energy	(713) 207-2222	(800) 332-7143
Oncor Electric Delivery	(888) 313-4747	(888) 313-6862
Texas-New Mexico Power	(888) 866-7456	(888) 866-7456

Enrollment at Octopus Energy’s requires you to provide and maintain a valid, text-capable cell phone number or e-mail address. We will use e-mail or text messaging to communicate your current balance and low balance alerts. Standard data fees and text messaging rates may apply based on your plan with your mobile phone carrier. You are responsible for contacting Octopus Energy to provide updated and correct contact information if your contact information has changed, is not functioning properly, or is no longer valid. Octopus Energy will send copies of your TOS, EFL and YRAC via e-mail or text message with links to Internet webpages containing the documents.

**Eligibility:** This Agreement applies strictly to residential electric service and to those customers eligible to receive residential service pursuant to Chapter 25 of the Substantive Rules of the Public Utility Commission of Texas (“PUC”) ([www.puc.state.tx.us/agency/rulesnlaws/subrules/electric/Electric.aspx](http://www.puc.state.tx.us/agency/rulesnlaws/subrules/electric/Electric.aspx) for the full text of these rules) and the applicable TDSP tariff. Participation in prepaid service is not available to critical care or chronic condition residential customers. If you qualify as a critical care or chronic condition customer prior to or upon enrollment, you cannot be served on this prepaid product.

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To receive prepaid electric service, your service location must have a provisioned Advanced Metering System (“AMS”) meter installed. Additionally, you must establish and maintain either a text-enabled cell phone or an email account to receive account information.

Your eligibility for the price provided herein is based on you representing and warranting that your residential load profile or service classification qualifies for residential service as defined by the applicable TDSP tariff. Octopus Energy reserves the right, upon receiving information evidencing a load profile or service class that does not qualify for residential service, to provide you with fourteen (14) days advance written notice of any material changes you will incur under the applicable contract for your then current, non-residential load profile or service class.

Octopus Energy does not deny residential electric service or determine eligibility for pricing based on credit history, payment data or credit score. Octopus Energy does not deny service based on 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 an economically distressed geographic area, or qualification for low income or energy efficiency services.

**Release of Customer Information:** By enrolling with Octopus Energy, you authorize us to obtain any information that we think we will need or find helpful to provide electric service, which may include address, telephone number, account number(s), historical usage data, payment and other information, whether from you, a third party, your TDSP or current REP.

**Pre-Paid Agreement Term:** The prepaid agreement terms can be cancelled at any time. Your service under this Agreement begins when Octopus Energy is assigned as your REP of record following the completion of your enrollment with Octopus Energy, provided that you have established a Prepaid Balance (as defined below) and will continue until the electricity purchased with your initial payment is consumed. Your Agreement will continue for additional service terms so long as you continue to make any additional payment(s) and consume electricity. If you fail to make any additional payment(s), your Agreement (and your electric service) will be terminated.

**Pre-Paid Service Balance:** Your service balance is calculated daily based on the electricity consumed, the passed-through local utility fees and other taxes and fees, and your membership with us, all of which is debited from your account daily (“Service Fee”).

**Pre-Paid Enrollment:** Upon your pre-paid enrollment with Octopus Energy (a “Subscription”), an initial amount of \$75.00 will be charged and credited to your prepaid balance (“Prepaid Balance”). You will be charged a monthly Subscription fee of \$10 for access to the service (“Subscription Fee”), and daily Service Fees for energy based on the price posted on the Electricity Facts Label on the date that you register an account with us (“Energy Fees”). At the end of each month, your account will be reconciled with the smart meter reading of the TDSP, and any additional remaining balance (if any) will be charged to your account. Whenever Your Prepaid Balance falls below \$10, we will alert You that it is time to replenish your balance or, if you have signed up for automatic refills, we will automatically charge your payment method \$75 to refill your Prepaid Balance. We reserve the right to change prices at any time, and do not provide price protection or refunds in the event of promotions or price decreases. Each Subscription and the rights and privileges provided are personal and non-transferable. All sales and payments of Subscription fees will be in US Dollars. All Subscription fees are non-refundable under any circumstances.

You may pay for your Subscription by ACH transfer, or with credit and debit card payments (Visa, MasterCard, American Express, and Discover), subject to applicable processing fees, which may apply each time your card is charged. We will charge you for your first Subscription fee on the date that we process your order for your Subscription. If You do not pay on time or if We cannot charge Your bank account, credit card, or other payment method for any reason, or if your Prepaid Balance drops below \$10, We reserve the right to either suspend or terminate Your access to the Services and account and terminate these Terms. You are expressly agreeing that We are permitted to bill You for the applicable fees, any applicable tax and any other charges You may incur in connection with Your use of Our service and the fees will be billed to Your credit card, PayPal or other payment method designated during enrollment, and thereafter at regular intervals for the remainder of the term of this TOS.

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**Pre-Pay Billing and Payment:** You will not receive a bill from us. Instead, Octopus Energy (or an authorized payment location) will display a confirmation page or provide a purchase receipt that will show you the amount of payment added to your account and a confirmation number. Octopus Energy will send confirmation of the payment through an Account Update (as defined below). Debit and credit card payments are accepted online at [www.Octopusenergy.com](http://www.Octopusenergy.com) or on the Octopus Energy mobile application (“Octopus Energy App”). Automated payments online may have a payment fee. Payments by personal check will not be accepted by Octopus Energy. If for some reason your payment is processed, you agree and acknowledge that there may be a delay in posting the payment to your account. If your Prepaid Balance is below \$10.00 during this delay, Octopus Energy may contact the TDSP to disconnect your service.

You may request that we send you a Summary of Usage and Payment (SUP) by email upon request at no cost. You may also request that we send you a SUP, which will be delivered through the US postal service where a SUP fee (up to \$5.00) may apply. Upon request, a SUP shall be provided to an energy assistance agency in accordance with PUCT rule §25.498(h)(6).

**IMPORTANT NOTICE:** IF YOU HAVE SIGNED UP FOR AUTOMATIC REFILLS, WE WILL AUTOMATICALLY CHARGE YOUR PAYMENT METHOD WHEN YOUR PREPAID BALANCE REACHES A BALANCE BELOW \$10 (UNLESS YOU CANCEL PRIOR TO THE AUTOMATIC CHARGE). YOU MAY CANCEL YOUR AUTOMATIC REFILLS AT ANY TIME BY CONTACTING US AT [HELP@OCTOPUSENERGY.COM](mailto:HELP@OCTOPUSENERGY.COM) PROVIDED THAT ANY AUTOMATIC REFILLS CHARGED PRIOR TO THE EFFECTIVE DATE OF CANCELLATION WILL NOT BE REFUNDED OR RETURNED, IN WHOLE OR IN PART, EXCEPT PURSUANT TO A CANCELLATION OF THE SUBSCRIPTION.

**Pre-Pay Automatic Refill Terms:** To facilitate continuity of service to You, each Subscription may contain automatic refill terms. By signing up for automatic refills, you agree that Your payment method will be periodically charged whenever your balance is below \$10 until You cancel at any time by emailing [help@Octopusenergy.com](mailto:help@Octopusenergy.com), calling (844) 386-5832, or through Your Account Settings page. You authorize Us to charge Your payment method now and upon each refill. Any cancellation will be effective immediately following Your notice of cancellation.

**Pre-Pay CANCELLATION TERMS:** YOU MAY CANCEL YOUR AUTOMATIC REFILLS, OR YOUR SUBSCRIPTION, AT ANY TIME BY GOING TO <https://www.Octopusenergy.com> OR EMAILING [HERETOHELP@OCTOPUSENERGY.COM](mailto:HERETOHELP@OCTOPUSENERGY.COM) FOR ASSISTANCE, EXCEPT THAT IF YOU CANCEL YOUR SUBSCRIPTION, YOU WILL BE CHARGED SUBSCRIPTION FEES UNTIL THE EXPIRATION OF YOUR THEN-CURRENT SUBSCRIPTION TERM AND SUBSCRIPTION FEES WILL NOT BE REFUNDED, IN WHOLE OR IN PART, SUBJECT TO APPLICABLE LAW. OCTOPUS ENERGY WILL TERMINATE SALES OF ENERGY TO YOU IMMEDIATELY UPON CANCELLATION. YOU WILL NOT BE ELIGIBLE FOR A REFUND OF ANY SUBSCRIPTION FEES, BUT WILL BE REFUNDED ANY REMAINING PREPAID BALANCE, WHICH REFUND WILL BE ISSUED WITHIN THIRTY (30) DAYS OF CANCELLATION. WE REQUIRE A REASONABLE AMOUNT OF TIME TO PROCESS YOUR SUBSCRIPTION CANCELLATION REQUEST. IF YOU CANCEL YOUR SUBSCRIPTION, YOU WILL ENJOY ACCESS TO YOUR ACCOUNT UNTIL THE EXPIRATION OF THE THEN-CURRENT SUBSCRIPTION TERM FOR WHICH YOU HAVE PAID, AND YOUR ACCOUNT ACCESS WILL EXPIRE AT THE END OF THE THEN-CURRENT SUBSCRIPTION TERM.

You will be liable for paying any and all applicable sales and use taxes for the purchase of your subscription based on the mailing address that you provide when you register as a user, and you authorize us to charge your credit or debit card for any such applicable taxes.

We reserve the right to modify pricing at any time (but not the price in effect for your then-current subscription term), upon advance notice to you. If you have not cancelled your subscription or turned off the auto-renew function within the specified time after receiving notice of a price change, your subscription will auto-renew at the price indicated in your notice.

**Pre-Pay Disconnection of Electricity Service:** You are required to have a positive Prepaid Balance of \$10.00 or more on your account except as otherwise authorized in this Agreement. If your Prepaid Balance is less than \$10.00, Octopus Energy may request that the TDSP disconnect your electricity service. When this happens, your electricity service will cease until you restore a minimum reconnect Prepaid Balance (as stated in your PDS) in your account. In some circumstances, Octopus Energy will not disconnect your

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electricity service in accordance with PUCT rule §25.498(j) even if your Prepaid Balance is less than \$10.00. In such instances, disconnection of electricity service may be delayed until the next eligible business day.

You will be sent a warning alert one to seven (1-7) calendar days before your Prepaid Balance is estimated to fall below \$10.00 through an Account Update.

**Customer Account Updates:** Octopus Energy will communicate with you through an Account Update process. At the time of enrollment with us, you must provide a valid mobile phone number that can accept text messages. Standard text messaging charges may apply as charged by your mobile phone service provider. After enrollment, you may add an email address to your account. You must have an Account Update method that is either a text-messaging-capable mobile phone or a valid email. By providing your mobile phone number, you authorize Octopus Energy to contact you using an automated dialer.

**Account Updates contain account information which may include:**

- Your Prepaid Balance or recent electricity usage, which may be reduced by all known charges and fees that have been incurred, including charges based on estimated usage.
- The most recently available energy consumption information as provided by the TDSP (which may contain delayed information and usage estimated by Octopus Energy in a reasonable manner for the time period in which the TDSP has not provided actual or estimated usage data)
- Current energy charge
- Estimated time or days of electricity service remaining.
- Confirmation of valid payments or other notices related to your account.

**Account Update Delivery Failure:** Octopus Energy is not obligated to resend Account Updates to you, even if the message could not be delivered for any reason. You are solely responsible for contacting Customer Service to provide us with updated and correct contact information if: (1) the information for your chosen method of contact for Account Updates has changed; (2) your chosen method of contact for Account Updates is not functioning properly; (3) your chosen method of contact for Account Updates is no longer valid; or (4) at any time after you have begun receiving service from Octopus Energy, forty-eight (48) hours pass in which you do not receive an Account Update.

**Pre-Paid Wholesale Electricity Plan and Pricing:** Octopus Energy provides an indexed plan that allows you to pay as you go. Octopus Energy's indexed plan gives you the published wholesale price of the Electric Reliability Council of Texas ("ERCOT"). Your initial price is shown on your EFL. Product prices are subject to change and may increase without notice for any reason, including but not limited to if: (1) there are changes to TDSP Delivery Charges or TDSP Surcharges; (2) there are changes to the ERCOT or Texas Regional Entity ("TRE") administrative fees charged to loads; (3) changes resulting from federal, state or local laws that impose new or modified fees or costs on a REP that are beyond the REP's control; (4) we determine in our sole discretion that the rate class or type of service originally designated by ERCOT, us, or you is incorrect; or (5) we determine in our sole discretion that the price should change, subject to the provisions in the attached EFL. Pricing features and product details of the product can also be changed under the Changes in Terms and Conditions provision of this Agreement. Nothing in this section shall preclude us from offering a new contract to you at any other time during this Agreement's term.

**How to Access Information about Your Account:** Access your account 24 hours a day online by visiting [www.Octopusenergy.com](http://www.Octopusenergy.com), using the Octopus Energy App or by phone at (844) 386-5832.

**Other Fees and Charges:** A detailed list of Other Fees and Charges is attached as Appendix A at the end of this TOS document. Any applicable Fees and Charges will be automatically deducted from your account at the time it is assessed by Octopus Energy. To see if a fee applies to your plan, please see your Prepaid Disclosure Statement (PDS).

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**Outstanding Prepaid Balance:** If, for any reason, you continue to receive electricity service when your Prepaid Balance is less than \$10.00, your account will continue to accrue all charges for the electricity service received. When your Prepaid Balance is less than \$10.00, Octopus Energy may request that the TDSP disconnect your electricity service. If the TDSP performs disconnection of your electricity service, then any costs incurred on your account while waiting for the TDSP to perform a disconnection may result in an increased outstanding Prepaid Balance owed on your account. Unless stated in this Agreement, after a service disconnection a Prepaid Balance of at least \$10.00 is required for your electricity service to be restored.

**Insufficient Funds & Returned Payments:** We charge a fee of up to \$35.00 on all returned electronic payments or rejected credit card payments that were not processed because of: (1) insufficient funds; (2) a lack of available credit; (3) stopped payment; or (4) any other reason(s) for returns. Any electronic transfer returned by a bank for insufficient or unavailable funds will be treated as if we received no valid payment at all. We are not responsible for notifying you of returned electronic payments. If no valid payment is received and your Prepaid Balance is less than \$10.00, Octopus Energy may request that your TDSP disconnect your electricity service.

**Deferred Payment Plan:** If at any time your Prepaid Balance has a negative balance of \$50.00 or more due to an extreme weather emergency as determined by the TDSPs, under billing, or during a state of disaster declared by the governor pursuant to Texas Government Code §418.014, if you are in an area covered by the declaration and the commission directs that deferred payment plans be offered, you are eligible to enroll in a Deferred Payment Plan (“DPP”). You must contact Customer Service to request enrollment in the DPP. You must repay your DPP balance over time as part of future payments, up to ten percent (10%) of all future payments being used to pay the DPP balance until the plan is fully paid. If you establish a DPP we may put a switch-hold on your account that will be removed after your deferred balance is paid and processed. If you are disconnected for nonpayment while a switch-hold is in place a payment will be required to restore service and you may not obtain services from another provider until you pay the total deferred balance. If you establish a DPP, we will confirm the details of the plan in writing. You have the right to satisfy your DPP balance at any time.

Failure to adhere to the terms agreed to in the DPP will result in the entire DPP balance becoming immediately due and automatically being deducted from your Prepaid Balance. If this results in your Prepaid Balance being less than \$10.00 Octopus Energy may request that your TDSP disconnect your electricity service. If you are disconnected for nonpayment while a switch-hold is in place a payment will be required to restore service and you may not obtain services from another provider until you pay the total deferred balance. If you establish a DPP, we will confirm the details of the plan in writing.

**Outstanding Debts:** We may collect any outstanding debts related to your account, including amounts related to a DPP or prior Account DPP 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, all costs, fees, or charges related to the collection of delinquent balances, including but not limited to commissions, costs, fees, and attorneys’ fees incurred when recovering outstanding balances with any collection agency or an attorney.**

If you fail to pay all amounts due and we refer your outstanding balance to an attorney or collection agent for collection, or file a lawsuit, or collect your outstanding balance through probate, bankruptcy or other judicial proceedings, then you agree to pay all reasonable fees and expenses (including attorney fees) that we incur in the collection process. If you are subject to a switch-hold you will not be able to buy electricity from another provider until you have fulfilled the terms of your Deferred Payment Plan.

**Service Termination:** You may cancel your Agreement without penalty at any time by simply declining to make further payments or by switching to another REP. Octopus Energy may terminate your electric service and your Agreement if your service remains disconnected for a period of more than (5) days. If your electric service and Agreement are terminated by Octopus Energy, all amounts owed by you to Octopus Energy shall become immediately due and payable; your payment obligation to Octopus Energy

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will continue until you have paid all amounts due. If you fail to pay all amounts due and we refer your outstanding balance to an attorney or collection agent for collection, or file a lawsuit, or collect your outstanding balance through probate, bankruptcy or other judicial proceedings, then you agree to pay all reasonable fees and expenses (including attorney fees) that we incur in the collection process. If you are subject to a switch-hold you will not be able to buy electricity from another provider until you have fulfilled the terms of your Deferred Payment Plan.

**Pre-Paid Octopus Energy Variable Product Termination:** As a buyer of a variable price product, you may terminate this agreement with Octopus Energy without penalty at any time for any reason.

**Changes in Terms and Conditions:** Octopus Energy will provide written notice at least fourteen (14) calendar days in advance of any material change in the terms and conditions of your Agreement for electric service unless the change benefits you. If you object to the change(s) in this Agreement before they become effective, you may terminate this Agreement with Octopus Energy by initiating service in your name with another REP. Pricing may change as provided in this Agreement and does not constitute a material change of electricity service by Octopus Energy. You will be able to find the most current Agreement at <https://www.Octopusenergy.com/legal>.

**Closeout Balance and Refunds: There will be no refund of any Prepaid Balance unless electricity service with Octopus Energy is terminated.** If you terminate electricity service with Octopus Energy (either by moving out or by switching your service to another REP), or we terminate electricity service with you, you are then entitled to a refund of the account credit, minus any outstanding balance accrued, any amounts owed under any payment plan (described above) or fees assessed until the date your electricity service with Octopus Energy ends. Octopus Energy refers to this amount as the "Closeout Balance". If you are moving out, you are responsible for contacting Customer Service and requesting that Octopus Energy close out your account, including recording the Closeout Balance at the time your service officially ends. If you are switching to another REP, your Closeout Balance will be determined by Octopus Energy on the last day of your service with Octopus Energy. Please note that a \$5.00 Closeout Balance Refund Check Fee may be deducted from your Closeout Balance prior to issuing you a refund. After termination of electricity service, if your Closeout Balance is positive by more than \$5.00, we will either credit the funds back to the credit or debit card used to make the payment or mail a check in your name to the billing address identified on your account. If your refund check is returned to Octopus Energy for whatever reason, this will indicate your agreement to have Octopus Energy donate the Closeout Balance refund check to a charity of Octopus Energy's choice. The normal timeline for refunds is seven (7) to ten (10) business days from the final meter reading. If a positive Closeout Balance of \$5.00 or less remains unclaimed for more than thirty (30) days after termination of electricity service, you agree to allow Octopus Energy to donate the Closeout Balance to a charity of Octopus Energy's choice.

**Deposits and Credit Checks on Pre-paid Products:** Octopus Energy will not require a security deposit or credit check at time of enrollment in Pre-Paid products. Acceptance of payment is solely for your convenience and is not considered a deposit by Octopus Energy.

**Post Pay Invoicing, Payment, Interest, and Credit Requirements:** Customer will receive a monthly electronic invoice from Octopus. All invoices are due and payable sixteen (16) calendar days from the date the invoice was issued. Customer must provide to Octopus written notice setting forth in particular detail any disputed amount, including the calculations with respect to any errors or inaccuracies claimed. If it is subsequently determined that Customer owes Octopus any portion of the disputed amount, Customer shall remit to Octopus within 5 (five) business days following such determination the outstanding balance. Any amounts that may have been overpaid or underpaid shall be applied to the next monthly invoice. Customer is responsible for all regulatory charges, taxes, duties, fees, levies, premiums or any other charges of any kind, whether direct or indirect, relating to the sale, purchase or delivery of electricity, together with all interest, penalties or other additional amounts imposed, including but not limited to gross receipts tax, PUCT Assessment, sales tax, consumption tax, use tax, value added tax, kWh, commercial activity or other privilege tax, and any other tax (whether in effect as of the effective date of this

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Agreement or thereafter) imposed by any governmental entity. Octopus reserves the right to include in any subsequent invoice, adjustments related to previous invoices, previous invoicing errors, meter read errors, miscalculation of taxes or other errors or omissions. Customer authorizes Octopus, and Octopus reserves the right, to charge Customer's credit/debit card and/or checking account without notice for any unpaid balances that are past due. If the account is referred to a collection company, Octopus reserves the right to bill Customer a fee not to exceed thirty-three percent (33%) of the amount being collected. If the account is referred for legal actions, any and all attorney fees and court costs will be billed to the Customer. Customer shall be responsible for any and all fees associated with or incurred by Octopus in collecting any amounts owed to Octopus, including, but not limited, to attorneys' fees, court costs and any fees charged by a collection agency.

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

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

**Post Pay Deposits:** If Customer fails to demonstrate satisfactory credit, as determined in the sole discretion of Octopus, then Customer may be required to pay a deposit prior to service being provided, if at all. Such deposit shall not exceed an amount equal to the greater of one-fifth of the Customer's estimated annual billing or; the sum of the Customer's estimated billings for the next 2 (two) months. Deposits may be waived or refunded with a valid letter of credit for electric services received at the address and account name supplied on this application. Deposits held more than thirty (30) days will accrue interest from the date of receipt at the annual rate established by the PUCT. Accrued interest will be applied annually to Customer's account. Upon termination of service or after twelve (12) consecutive months of service with no late payments of any kind, Octopus will apply the deposit plus accrued interest, if any, against Customer's account or outstanding balance on Customer's final bill. Any credit balance remaining on an inactive account after the final bill will be refunded in the form of a company check and will be mailed within thirty (30) calendar days.

#### **Post Pay Default and Disconnection:**

A Default means:

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

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Default of this Agreement, including without limitation, non-payment of Customer's bill may result in an order for the TDSP to disconnect the Customer's electric service at the Customer's meters; and the termination of this Agreement at the sole discretion of Octopus. Moreover, Octopus may seek to have your electric service disconnected after providing you at least ten (10) calendar days' notice for any of the following reasons: (1) failure to pay a bill owed to Octopus, or to make a deferred payment arrangement by the date of disconnection; (2) failure to comply with the terms of a deferred payment agreement made with Octopus. (3) using service in a manner that interferes with the service of others or the operations of non-standard equipment; (4) failure to pay a deposit required by Octopus; or (5) failure of the guarantor to pay the amount guaranteed when Octopus has a written agreement, signed by the guarantor, which allows for disconnection of the guarantor's service. Octopus may authorize your TDSP to disconnect your electric service without prior notice to you if: (1) certain dangerous circumstances exist; (2) service is connected without the authority by a person who has not made application for service. (3) service is reconnected without authority after disconnection for non-payment. (4) there has been tampering with the equipment used to measure the amount of electricity used; or (5) there is evidence of theft of service. Payments may be made through the App or by phone to Octopus Energy during normal business hours (Monday – Friday 9:00 am to 5:00 pm) or on-line at [www.Octopusenergy.com](http://www.Octopusenergy.com). SERVICE MAY BE DISCONNECTED AGAIN WITHOUT NOTICE FOR ANY RETURNED PAYMENTS. A deposit or additional deposits may be required on accounts that have been disconnected for non-payment. Upon satisfactory correction of the reasons for the disconnection, Octopus will notify your TDSP to reconnect your service. Octopus will continue to serve you under this Agreement in effect prior to issuance of the disconnection notice. If your service was disconnected due to a dangerous situation, your service will be reconnected once you notify Octopus that you have corrected and satisfactorily resolved the dangerous situation. Please allow 24 to 48 hours for completion of reconnect orders.

**Interest on Payment:** Octopus Energy will not pay interest on any Prepaid Balance. Octopus Energy reserves the right to set a maximum limit on your Prepaid Balance.

**Assistance Agencies and Bill Payment Assistance:** Should you need assistance paying for your electricity service, contact 877.399.8939 or go to [www.tdhca.state.tx.us/ea/index.htm](http://www.tdhca.state.tx.us/ea/index.htm) for a list of assistance agencies. At your request or the request of an assistance agency, Octopus Energy will provide you with your recent usage and payment history. Octopus Energy will work with assistance agencies as necessary, and if you qualify, to assist you in maintaining your electricity service. We may initiate disconnection of service if we have not received payment from the energy assistance agency within forty-five (45) calendar days of our receipt of the commitment, or if after applying the payment your Prepaid Balance is less than \$10.00.

**Under-billing:** Octopus Energy reserves the right to correct any prior daily bills due to missing or erroneous customer charges that may arise because of: (1) meter errors; (2) miscalculations of taxes; (3) errors in collections at the authorized payment location; or (4) other errors and omissions. If the under-billed amount is not paid according to the above, and your Prepaid Balance is less than \$10.00, Octopus Energy may request that your TDSP disconnect your electricity service.

**Critical Care Residential Customer or Chronic Condition Residential Customer cannot enroll in Pre-Paid Products:** Octopus Energy will not be able to provide (or continue to provide) any Pre-Paid products to you if you indicate that your TDSP has designated you as a critical care residential customer or chronic condition residential customer, or if a disconnection of electricity service will cause a person residing in your residence to become seriously ill or more seriously ill. Critical Care Residential Customer and Chronic Condition Residential Customer are defined in PUCT rule 25.497. To be designated a critical care residential customer or a chronic condition residential customer, a customer must have the PUCT application form approved by the TDSP. If Octopus Energy becomes aware that you have become designated as a critical care residential customer or chronic condition residential customer, or that a disconnection of service will cause you or a person residing at the customer's residence to become seriously ill, we will work with you to transition you to another REP in a manner that avoids a service disruption; all eligibility requirements apply.

**Force Majeure:** Octopus Energy will make commercially reasonable efforts to supply electricity but does not guarantee a continuous supply of electricity. You acknowledge that certain causes and events outside of Octopus Energy's control (Force Majeure events) may result in disconnections in service and Octopus Energy shall not be liable for any such disconnections. Octopus

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Energy does not generate electricity, nor does it transmit or distribute electricity. Therefore, you agree that Octopus Energy shall not be liable for damages caused by electricity, TDSP, Force Majeure events, including acts of God, acts of any governmental authority, acts of terrorists or enemies of the state, accidents, strikes or lock outs, labor troubles, required maintenance work, inability to access the TDSP system, non-performance by the TDSP, or any cause beyond Octopus Energy's control.

If you provide notice that you are unable to receive service on the start date from Octopus Energy due to a Force Majeure event and you did not previously receive service at that electric service identifier ID number, then Octopus Energy shall either: (a) delay the start date or (b) following the first month's delay, terminate this Agreement without penalty.

**Change In Law Or Regulation:** If there is a change (including a change in interpretation) in law, regulation, rule, ordinance, order, directive, filed tariff, decision, writ, judgment or decree by a governmental authority (including ERCOT), including, without limitation, changes in TDSP tariffs and ERCOT protocols, including those changes affecting fees, costs, or charges imposed by ERCOT or the PUCT, changes in market rules, changes in load profiles or changes in nodal and zonal definitions, and such change results in Octopus Energy incurring additional costs and expenses in providing your electricity service, these additional costs and expenses shall be your responsibility and they will be assessed in your monthly bill as a pass-through charge.

**General Right of Rescission:** You have the right to rescind your Agreement, without any fees or penalties, by midnight of the third (3rd) business day after the date you first receive your TOS. To rescind, you must contact us in one of the following ways:

- Phone: (844) 386-5832 (toll free)
- Email: [help@Octopusenergy.com](mailto:help@Octopusenergy.com)
- Website: <https://www.Octopusenergy.com>
- Fax: (844) 386-5832
- Mail: 2700 Post Oak Blvd 21st Floor, Houston TX 70056

Please provide your name, address, phone number, account number, and a statement that you are rescinding your Agreement under your three (3) business day right of rescission period.

**LIMITATION OF LIABILITY:** FOR BREACH OR DEFAULT ARISING FROM ANY PROVISION FOR WHICH AN EXPRESS REMEDY IS PROVIDED HEREIN, SUCH REMEDY OR MEASURES OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS MAY BE INCLUDED IN AN EXPRESS REMEDY PROVIDED FOR HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING LOST PROFITS OR BUSINESS DISCONNECTION DAMAGES, WHETHER BASED ON STATUTE, CONTRACT, TORT, UNDER ANY INDEMNITY OR OTHERWISE, WITHOUT REGARD TO CAUSE OR THE NEGLIGENCE OF ANY PARTY, WHETHER SOLE, JOINT, ACTIVE, OR PASSIVE, AND EACH PARTY HEREBY RELEASES THE OTHER PARTY FROM ANY SUCH LIABILITY, EVEN IF DURING THE TERM HEREOF IT ADVISES THE OTHER OF THE POSSIBILITY OF SUCH DAMAGES. TO THE EXTENT THAT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

**REPRESENTATIONS AND WARRANTIES:** NEITHER PARTY GIVES NOR RECEIVES ANY WARRANTY REGARDING THE SALE, PURCHASE OR DELIVERY OF ELECTRICITY, WHETHER EXPRESS, IMPLIED, OR STATUTORY, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT. OCTOPUS ENERGY DISCLAIMS ALL IMPLIED WARRANTIES AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OR MERCHANTABILITY OR FITNESS OF ELECTRICITY FOR A PARTICULAR PURPOSE OR USE. THE OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT ARE OBLIGATIONS OF THE PARTIES ONLY, AND NO RECOURSE SHALL BE AVAILABLE AGAINST ANY EMPLOYEE, OFFICER, DIRECTOR, SHAREHOLDER, MEMBER, PARTNER, OR AFFILIATE OF A PARTY UNLESS SPECIFICALLY PROVIDED FOR IN A SEPARATE AGREEMENT.

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THE ELECTRICITY SOLD UNDER THIS AGREEMENT WILL BE SUPPLIED FROM A VARIETY OF GENERATING RESOURCES. IF YOU ELECT TO PURCHASE A RENEWABLE ENERGY PRODUCT, OCTOPUS ENERGY WILL ENSURE THAT THE APPROPRIATE AMOUNT OF RENEWABLE ENERGY CREDITS (RECS) ARE RETIRED TO AUTHENTICATE THE RENEWABLE ENERGY CONTAINED IN THE PRODUCT. THE TDSP OR ERCOT SYSTEM WILL NOT DELIVER ELECTRICITY FROM A SPECIFIC GENERATION SOURCE TO YOUR SERVICE ADDRESS. IF YOU PURCHASE RENEWABLE ENERGY FROM OCTOPUS ENERGY, YOU ARE PROVIDING FINANCIAL SUPPORT FOR RENEWABLE ENERGY GENERATION SOURCES AND NOT FOR RECEIVING THE PRECISE ENERGY GENERATED FROM THAT SOURCE.

**Assignment:** You may not assign this Agreement, in whole or part, or any of your rights or obligations hereunder, without prior consent from Octopus Energy, which shall be executed in writing by Octopus Energy, you, and any party to whom this Agreement is being assigned. Nothing in this Agreement shall create, or be construed as creating, any express or implied rights in any person or entity other than Octopus Energy and you. You hereby acknowledge and consent that Octopus Energy may freely pledge, assign, or transfer all its rights hereunder as Octopus Energy may deem necessary. In the event any other provision of this Agreement shall be deemed to prohibit or otherwise restrict Octopus Energy's right to pledge, assign, or transfer its rights hereunder, this provision shall control.

**Notices:** Unless otherwise specified herein, any notices required or permitted under this Agreement, must be in writing and addressed to the party at the address, mobile phone or email listed in this Agreement or your proof of authorization. Notice by receipt of text message, email or hand delivery shall be effective on the Business Day received. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. Either party may change any address listed in this Agreement or your proof of authorization by providing written notice of same in accordance herewith.

**Dispute Resolution:** Please contact us if you have specific comments, questions, complaints, or if you feel your Account Update is incorrect. You may call an Octopus Energy customer care representative at 844-386-5832 or email us at [help@Octopusenergy.com](mailto:help@Octopusenergy.com). If you are not satisfied with our attempt to resolve the problem, you may file a complaint with our company and request a supervisory review. If we fail to resolve your dispute it is your right to file a complaint with the PUCT. You may contact the PUCT at: Public Utility Commission of Texas, Customer Protection Division P.O. Box 133326, Austin, TX 78711-3326; telephone 888.782.8477; email: [customer@puc.state.tx.us](mailto:customer@puc.state.tx.us). Your YRAC document contains more information on this process.

**Entire Agreement:** The Terms of Service (TOS), Your Rights as a Customer (YRAC), Electricity Facts Label (EFL), Prepaid Disclosure Statement (PDS) and your proof of authorization, together constitute the Agreement between you and Octopus Energy, and therefore the entire agreement between the parties. This Agreement supersedes all previous discussions, communications, writings, and agreements related to the service provided pursuant to this Agreement, and except to the extent otherwise provided for herein, this Agreement may not be amended, modified or supplemented except in a writing signed by both parties. The TOS are subject to all applicable laws and regulations of the United States and the State of Texas, and the venue for any legal proceedings other than PUCT proceedings shall be proper in Dallas County; and any provision which is deemed contrary to any such applicable laws and regulations shall be deemed substituted or modified so as to comply with such law and regulations for the purposes of this Agreement. Nothing in this Agreement shall create, or be construed as creating, any express or implied rights in any person or entity other than you and us.

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT. THIS SECTION SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT FOR ANY REASON.

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**APPENDIX A**

**Other Fees and Charges:** The following table contains typical fees and charges that may be assessed by either the TDSP or Octopus Energy. You may be obligated to pay nonrecurring fees as required or allowed by PUCT rules, including, but not limited to, fees and charges for establishing, switching, or maintaining electric service. Charges for required, nonrecurring fees will be automatically applied to your Prepaid Balance when assessed.

**Itemization of fees charged for service (Octopus Energy):** This list does not represent all TDSP or Octopus Energy fees and charges. To confirm if a fee or charge applies to your plan, please see your PDS. For questions about these or any other fees and charges, please contact Customer Service at the toll-free number: (844) 386-5832.

Schedule of Fees	Amount
Monthly Octopus Energy Subscription Fee	\$ 10.00
Disconnect Fee	\$ 10.00
Credit Card Processing Fee Mastercard, Visa, Discover and American Express	2.9% + 30 Cents per Transaction
Check by Phone / ACH Payment	Free
Insufficient Funds & Returned Payments Fee	\$ 35.00
Mail Additional Billing Summary (1 Free per Year)	\$ 5.00
Mail Closeout Balance Refund Check Print and Postal Fee	\$ 5.00
Post Pay Late Fee	5% of Unpaid Balance

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