

GRAVITI POWER, LLC TERMS OF SERVICE

Business Terms of Service

This document explains the terms and conditions that apply to your purchase of electricity from GRAVITI POWER, LLC, (GRAVITI, we, our, us) for non-residential customers. Your contract with us includes the Terms of Service, your Offer Agreement, which is your enrollment authorization in writing, by telephone or internet, the Electricity Facts label (EFL), and the Your Rights as a Customer disclosure document, as they may be amended from time to time. **By accepting electric service from GRAVITI, you are entering into a contract with us and you will be bound by the provisions of the contract including the Terms of Service.**

Contact Information

You can contact us anytime from 7:00 AM until 7:00 PM, Central Time, Monday through Friday, except holidays at:

Local Houston area telephone: **713-207-7777**

Toll-free telephone: **1-866-660-4900**

Website: gravitipower.com

Email: sales@gravitipower.com

Fax: **1-888-773-9647**

REP Certificate Number **xxxxxx**

Or, write us at:

GRAVITI POWER LLC

9722 Gaston Rd, STE 150-275

Katy, TX 77494 Attention:

Contract Management or Email:

sales@gravitipower.com

Pricing

You agree to pay the price specified in your Offer Agreement and EFL and all amounts shown on the monthly invoice.

If you have a demand meter your price will include the demand charges specified in your Offer Agreement and EFL. The demand charge, if applicable, equals the amount per kW or kVA, times the kW or kVA recorded at each demand meter during the specified billing period.

You agree to pay non-recurring fees charged by the transmission and distribution service provider (TDSP) that are necessary to implement and/or maintain electric or outdoor lighting service for you. Non-recurring fees may include service connection, disconnection or reconnection fees, meter test fees, or special meter read fees. Non-recurring fees will appear as separate line items on your invoice.

You agree to pay all applicable Taxes (see *Taxes* section below) and any fees charged by any governmental entity. The price, non-recurring fees and Taxes will be reflected on your invoice as Current Charges.

We will charge \$25 for each payment transaction that is returned unpaid or not processed including: 1) returned checks, 2) returned electronic fund transfers, and 3) rejected credit card transactions. This charge will be reflected as Returned Payment Charge on your invoice, if applicable. We may also charge a \$20 Disconnect Notice Fee each time we send you a disconnection notice and a \$30 Disconnect Recovery charge if you fail to pay the past due amount before the expiration date of any disconnection notice issued by GRAVITI.

Optional Outdoor Lighting Service for Commercial Use

If you have outdoor lighting service, you will pay the price for your specific outdoor lighting type described in the Miscellaneous Lighting Service or Outdoor Lighting EFL under the contract.

Contract Term

Your contract term is specified in your Offer Agreement and EFL. We will begin delivery of your electricity beginning with the first available meter reading supplied to GRAVITI after ERCOT has confirmed GRAVITI as your retail electric provider (REP) if you are switching to GRAVITI or the first available meter reading following the date your new product enrollment is processed by GRAVITI.

Billing, Payment and Payment Arrangements

We will provide a monthly invoice that will include Current Charges and the Amount Due that will be due and payable 16 calendar days from the date shown on the invoice. We may issue your invoice on a less frequent basis or send your invoices electronically if you agree to accept alternative

arrangements. If you do not pay your invoice 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. Payments for state agencies will be subject to the provisions of the Prompt Payment Act Government Code, Chapter 2251. This Act can be viewed at:

<http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.2251.htm>.

Any Late Payment Penalty will not exceed the maximum amount permitted by Law. "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. Public Utility Commission (PUC) rules and guidelines can be viewed at:

<http://www.puc.texas.gov/agency/rulesnlaws/subrules/electric/Electric.aspx>.

If you receive a disconnection notice you will be charged a Disconnect Notice Fee each time we send you a disconnection notice. We may also charge you a Disconnect Recovery charge if you do not make a valid payment of the full past due amount before the date your service is subject to disconnection as stated in your disconnection notice. This charge will apply regardless of whether your electric service is actually disconnected.

We reserve the right to adjust your invoice. We may calculate your invoice based on estimated meter readings absent actual meter readings from the TDSP or ERCOT. Once actual meter readings are received, we will make adjustments on a subsequent invoice.

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

Please call us if you anticipate having difficulty paying your invoice by the due date. You may be eligible for payment arrangements or a deferred payment plan. The Disconnect Recovery charge will be assessed on your account if you do not pay the past due amount before the date your service is subject to disconnection as stated on your disconnection notice, regardless of an extension on your account for any reason, including your eligibility for payment arrangements or a deferred payment plan.

If you fail to timely pay the 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 bankruptcy or other judicial proceedings, then you agree to pay reasonable fees and expenses (including attorney fees) that we incur in the collection process.

Deposits

This contract is conditioned upon you demonstrating to us your creditworthiness and is subject to the ongoing review and approval of your creditworthiness during the contract term.

You will be required to provide an initial deposit if you cannot demonstrate or maintain satisfactory credit, or an additional deposit if you cannot maintain such credit, each as determined by GRAVITI. If you transfer your service with us to a new address, your existing deposit may be transferred to your new address. The maximum amount of the deposit will not exceed an amount equal to the greater of either (1) the sum of the next two months estimated billings or (2) one-fifth (1/5th) of your estimated or actual annual billing.

We will accrue interest on deposits retained for longer than 30 calendar days. The interest rate is established annually by the PUC. The interest shall accrue from the date the deposit is received. Any accrued interest on your deposit will be credited to your account on the January Invoice of each year. This PUC rule can be viewed at <http://www.puc.texas.gov/agency/rulesnlaws/subrules/electric/25.478/25.478.pdf>.

If you subsequently establish satisfactory credit with GRAVITI by making timely payments for 24 consecutive months, then we will apply the amount of the deposit plus accrued interest to your account. If you do not maintain satisfactory credit during the Term, the deposit plus accrued interest will be applied against the

GRAVITI POWER, LLC TERMS OF SERVICE

outstanding balance amount at the time of your final Invoice. Any remaining balance will be invoiced and shall be due upon receipt. We will refund any credit balance directly to you or transfer the credit balance to your new REP, at your request and with the consent of GRAVITI and your new REP.

Right of Rescission

If you are switching to GRAVITI from another REP, you can cancel your acceptance of the contract without penalty or fee by calling 1-866-660-4900, e-mailing to sales@gravitipower.com, or faxing to 1-888-773-9647 before midnight of the third federal business day after the date of your enrollment authorization and receipt of the contract documents. Please include the following:

- 1) request to cancel the contract
- 2) name, address, phone number
- 3) Account Number or ESI ID number.

Canceling Your Contract

Your contract term is stated in the Offer Agreement and the EFL. At the end of your contract term, you may cancel or terminate your contract by switching to a new provider. If you cancel the contract before the end of your contract term, you agree to pay the penalty or fee for early cancellation indicated in the EFL, if any, and you must select another REP to continue to receive electric service. You may continue to receive a monthly invoice for any Third Party Services that are included on your invoice until the Third Party Services are cancelled or terminated. You will not continue to receive an invoice if the Third Party Services are scheduled to cancel automatically when your electric service contract with us is cancelled or terminated.

If you move from your existing premise during the contract term and provide a forwarding address to us, you will not be responsible for the cancellation fee stated in the EFL. We may also request that you provide reasonable evidence that you no longer occupy the location covered by the contract. In order to ensure timely processing, you should notify us at least 3 business days before the requested termination date.

Our obligations will end after the meter read date where we are no longer designated as your REP or when your electric service is disconnected by the TDSP. Your obligations under the contract will end when your account balance is paid in full.

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 INVOICE IN FULL BY THE DUE DATE ON THE DISCONNECT NOTICE. We will notify you in writing at least 10 calendar days before we disconnect electric service.

We may request disconnection of your electric service without prior notice immediately under specific situations, including the existence of a dangerous condition at your service address or theft of service.

Customer Care, Billing and Payment Options

If you have questions, concerns, billing inquiries, or are interested in other services, please (1) call 1-866-660-4900, (2) fax to 1-888-773-9647, (3) email to service@GRAVITI.com, (4) mail to GRAVITI, P.O. Box 3765, Houston, Texas 77253-3765, or (5) log on to GRAVITI.com/business.

Balanced Billing: For customers currently enrolled on Balanced Billing, this option gives you the convenience of a stable bill amount so that you can plan your monthly budget. First, we review your usage history from the previous year for the same time period. We then apply your price to this usage. These expected bills will be averaged to establish your balanced bill amount.

Your monthly bills will show both your actual usage and actual bill amounts, but you pay only the balanced bill amount. The cumulative difference between your balanced bill payments and your actual cost will be reflected each month.

After six months under this option, we will review your account to determine if this balanced bill amount is still appropriate. If this review determines that your actual bills were more than 10% over or under your original average, we will adjust your future balanced bill amount to better reflect your current usage.

At the end of 12 months, any difference between your payments and your actual charges will be included in the calculation of your monthly balanced bill amount for the next year or you may pay the difference in full or the difference will be credited to your account if the contract is

canceled or terminated.

If your electric service is disconnected any credit or unpaid balance will appear on your final bill. The Balanced Billing option does not affect your obligation to pay for all actual usage.

If your participation in Balanced Billing is canceled or terminated for any reason or your electric service is disconnected, you will not be eligible to re-enroll on Balanced Billing, however, you may choose the new Average Billing option.

Average Billing: Average Billing option helps you manage your electricity budget by allowing you to pay an averaged amount every month.

To calculate the amount that you will pay each month, we add your current invoice amount to your previous 11 invoice amounts for your service address, if available. We then take the total and divide the amount by 12 or by the total months available for your service address. If you do not have previous bills in your name at the service address or if you do not have 11 monthly bills at the service address, we take the previous usage that is available for the service address and apply your current price to calculate your average monthly payment amount. Finally, we add or subtract 1/12th of any Deferred Balance that you have accumulated. The Deferred Balance is any difference between your average monthly payment amount and your actual invoice amounts or if you are a former Balanced Billing customer, the Deferred Balance can be found on your GRAVITI monthly invoice.

In the event the contract is canceled or terminated or your electric service is disconnected, the Average Billing option does not affect your obligation to pay for all actual usage.

Automatic Bank Draft: You may pay your monthly invoice through an automatic bank draft by completing our Bank Draft Authorization Form, which is available upon request.

Power Outages and Emergencies

Please call the telephone number listed on your invoice if you have an electrical emergency or a power outage.

Dispute or Complaints

If you have any questions, concerns, or complaints, please contact us. 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 invoice. If for any reason you are not satisfied with our response, you may contact the PUC.

Antidiscrimination

We cannot deny service or require a prepayment or deposit for service based on your race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, level of income, disability, familial status, location in an economically distressed geographic area, or qualification for low income or energy efficiency services.

Confidentiality

The terms of the contract may not be disclosed to a third party (other than either party's and its affiliates' employees, lenders, counsel, consultants, or accountants who have agreed to keep such terms confidential), except in order to comply with the Law.

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 TDSP, 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

GRAVITI POWER, LLC TERMS OF SERVICE

DAMAGES ONLY; AND NEITHER OF US ARE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, SPECIAL, 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

As a customer under this contract, you represent that (i) you are a commercial user of electricity and intend to use the electricity at its Service Address(es), (ii) you have experience in business matters that enable you to enter into and perform under the contract, and (iii) you will not resell any of the electricity purchased from GRAVITI.

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 TDSP 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.

Taxes

You will be responsible and indemnify 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, TDSP, regulatory, BTU or electricity taxes and assessments. Sales tax exemptions will be recognized only upon timely receipt of certificates of exemption or other satisfactory evidence of exemption as GRAVITI reasonably requests. We cannot recognize any sales tax exemption until proper documentation is provided. Any lawful sales tax exemption will only be recognized on a prospective basis from the date the proper documentation has been provided to us. In the event you are due a sales tax refund due to GRAVITI's failure to timely recognize valid exemption documentation that has been submitted, you agree and consent to have the overpaid sales tax credited by GRAVITI to your account(s). You have the responsibility to petition the taxing authority for all other sales tax refunds.

Provisions that Survive

Obligations regarding indemnity, payment of Taxes, limitations of liability, unenforceability and severability, and waivers will survive the termination of the contract indefinitely.

Unenforceability and Severability

If any provision of this contract is deemed invalid, illegal or otherwise unenforceable, you and we agree that it shall be modified to the minimum extent necessary to render it valid, legal and enforceable. If a provision cannot be modified in a manner that would make it valid, legal and enforceable, the provision shall be severed from the contract, and all other provisions shall remain in full force and effect.

Governing Law

YOUR CONTRACT WITH GRAVITI IS GOVERNED BY, CONSTRUED, ENFORCED, AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS (WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAWS). THE TEXAS UNIFORM COMMERCIAL CODE APPLIES TO THE CONTRACT 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>

Assignment

You may not assign the contract, in whole or in part, or any of your rights or obligations under the contract without our prior written

consent. GRAVITI 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 GRAVITI or to any other person or entity succeeding to all or a substantial portion of the assets of GRAVITI.

Waiver

Any failure on our part to enforce any of the terms of this contract or to exercise any right under these terms and conditions shall not be considered a waiver of our right to enforce each and every such term or exercise such right or any other right under the contract.

Complete Agreement

Your contract with GRAVITI contains the complete understanding between GRAVITI and you and supersedes all other written or oral communications and representations. No sales agent or any other representative has any binding authority to modify this contract and any such changes shall not be binding on GRAVITI. You agree not to make any changes to this contract and agree that any such modifications shall not be binding on GRAVITI even if GRAVITI receives them.

SUPPLEMENTAL AGREEMENT TERMS FOR CUSTOMERS WITH A PEAK DEMAND EQUAL TO OR GREATER THAN 50 kW

During the contract term, if your annual peak demand at any time during the preceding 12-month period equals or is greater than 50 kW or 50 kVA, then to the extent allowed by Law, you acknowledge and agree that the customer protection rights are set forth in the contract and that the Customer Protection Rules (PUC Substantive Rules §25.471, et seq.) do not apply and this contract will govern any conflict between it and the Customer Protection Rules. The rules may be found in Subsection R at the following website:

<http://www.puc.texas.gov/agency/rulesnlaws/subrules/electric/Electric.aspx>.

PRODUCT TYPE SECTION

GRAVITI 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)

Changes to Contract Provisions

We 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 in this section or the length of your contract term. We will notify you of any material change to the contract in writing at least 14 days before any change to the contract will be applied to your invoice or take effect. If you do not cancel the contract before the effective date of the change, the change will become effective on the date stated in the notice. Notice is not required for a change that is beneficial to you.

Your price during the contract term is only subject to change to reflect changes in the TDSP charges, changes to the ERCOT or Texas Regional Entity administrative fees charged to load or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs on REPs, including GRAVITI, that are beyond the control of REPs.

Contract Expiration Notice

We will send you three contract expiration notices, with the final one sent at least 14 days before the end of your initial contract term specified in your EFL. 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

GRAVITI POWER, LLC TERMS OF SERVICE

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 GRAVITI electric service plan, or we terminate or disconnect your electric service. The EFL for the default renewal product, which will contain the product's pricing terms, will be included in your final contract expiration notice from us. The default renewal product will have a variable price, which can change from month to month.

Variable Price Products

Variable Products (Term)

Changes to Contract Provisions

Your price during the contract term will vary as set forth in your EFL. We can make changes to the provisions of the contract at any time during the contract term with appropriate notice except for changes to the pricing method set forth in your EFL or the length of your contract term. We will notify you of any material change to the contract in writing at least 14 days before any change to the contract will be applied to your invoice 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 14 days before the end of your initial contract term specified in your EFL. 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 GRAVITI electric service plan, or we terminate or disconnect your electric service. The EFL for the default renewal product, which will contain the product's pricing terms, will be included in your final contract expiration notice from us. The default renewal product will have a variable price, which can change from month to month.

Variable Price Products (Month to Month)

Changes to Contract Provisions

We can make changes to the provisions of the contract at any time with appropriate notice except for changes to the length of your contract term. We will notify you of any material change to the contract in writing at least 14 days before any change to the contract will be applied to your invoice or take effect. If you do not cancel the contract before the effective date of the change, the change will become effective on the date stated in the notice. Notice is not required for a change that is beneficial to you.

Your price will vary as set forth in your EFL.