Texas - BizLock 12
Terms of Service
Electric Power Service

We Are Committed To Your Satisfaction: If you are not completely satisfied with XOOM Energy Texas' program for any reason, please contact us. If we are unable to resolve your concern to your full satisfaction, you may terminate this Contract, in accordance with its terms.

Contact Information: You may contact XOOM directly by calling **1-888-997-8979** during our service hours: Monday – Friday 8 (eight) a.m. to 11 (eleven)p.m. EST, Saturday – 9 (nine) a.m. to 7 (seven)p.m. EST EST; by sending a letter to: XOOM Energy Texas, LLC, 1666 N. Hampton Street, Suite 103, DeSoto, Texas 75115 or by sending an email to customercare@xoomenergy.com. XOOM's REP Certificate Number is: 10203.

Service & Term: The purpose of this Contract is to switch your power provider to XOOM Energy Texas, LLC ("XOOM" or "Company") as your exclusive electric power supplier. Your Contract with XOOM includes these Terms of Service, your enrollment authorization in writing, by telephone or the internet, the Electricity Facts Label (EFL), and the "Your Rights as a Customer" disclosure document, as they may be amended from time to time ("Contract"). By accepting electric service from XOOM, you are entering into a contract with XOOM and will be bound by these Terms of Service. Your Contract term is stated in your EFL.

Price: You agree to pay the price indicated in the EFL and all amounts shown on your bill. Your variable rate may fluctuate and may be higher or lower than your local utility. Your rate is based upon a number of factors, which may include but not be limited to, the fluctuation of wholesale commodity costs or other components of wholesale prices (including but not limited to capacity related costs, fluctuations in energy supply and demand, and weather patterns) and XOOM's pricing strategies.

You agree to pay any Taxes and any fees charged by any governmental entity. The price, non-recurring fees and Taxes will be reflected on your monthly bill as Current Charges.

Right of Rescission: You may cancel your acceptance of this Contract with XOOM without penalty or fee by contacting XOOM before midnight, central time, of the third federal business day after the date of your enrollment authorization and receipt of the Contract documents ("Cancellation Period"). You may cancel your contract during the Cancellation Period by calling XOOM Energy Texas at 1-888-997-8979 or by sending an email to customercare@xoomenergy.com.

Termination: Your Contract term is stated in your EFL. At the end of your Contract term, you may terminate or cancel your Contract by switching to a new provider. Any Third Party Services that are included on your bill will automatically terminate when your electric service Contract with XOOM is cancelled. If you cancel or terminate 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.

XOOM's 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.

Moving: When moving to an address within your local utility's service territory, XOOM will make every effort to

transfer your services to your new address as long as you notify XOOM within 3 business days of your move. You also have the right to cancel without penalty if you move to another location and provide notice of your move within 3 business days of your move as long as you provide evidence of the move, such as a forwarding address and any other reasonable evidence that you no longer occupy the service location. Failure to notify XOOM of your move will be considered a cancellation of this Contract and you will remain responsible for payment of all outstanding balances and charges on your account until service is terminated.

XOOM does not have control over, and shall not be responsible for, any delay, failure or inability by the TDSP, ERCOT, or any other entity that is responsible for performing actions necessary to discontinue service in your name. If a transfer of service is not successful or you move to a location outside your local utility service territory, or a territory not serviced by XOOM, this Contract will automatically terminate at no cost to you. You may incur additional charges for anything other than non-standard moves.

Disconnection of Your Electric Services: **XOOM MAY REQUEST DISCONNECTION OF YOUR SERVICE IF YOU DO NOT PAY YOUR DEPOSIT OR THE PAST DUE AMOUNT OF YOUR ELECTRIC SERVICE BILL IN FULL BY THE DUE DATE ON THE DISCONNECTION NOTICE.** XOOM will notify you in writing at least 10 calendar days before disconnecting your electric service.

XOOM 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, Alternate Billing and Payment Options: If you have any questions, concerns, billing inquiries, or you are interested in applying for the following services we offer, please contact us.

> **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, XOOM reviews your usage history from the previous year for the same time period. XOOM then applies your price to this usage. These expected bills will be averaged to establish your balanced bill amount.
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> 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.
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> After nine months under this option, XOOM 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, XOOM will adjust your future balanced bill amount to better reflect your actual usage.
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> At each review, any difference between your payments and your actual charges will be included in the calculation of your monthly balance bill amount for the next year or you may pay in full or the difference will be credited to your account if the contract is cancelled or terminated, or your electric service is disconnected any credit or unpaid balance will appear on your final bill. The Balanced Billing option does not affect your obligations to pay for all actual usage.

Credit, Payment and Collection: You will receive a monthly bill that will include Current Charges and the Amount Due that will be due and payable sixteen (16) calendar days from the date shown on the bill, except you agree that we may issue a bill less frequently if we do not receive meter readings or usage information from the TDSP or

ERCOT in time to prepare and send a monthly bill. We may also issue bills less frequently or send your bills electronically if you agree to accept alternate arrangements. If you do not pay your bill by the due date, we may charge you a Late Payment Penalty rate of 5%. The Late Payment Penalty will not apply to customers who are "LITE-UP qualified." If you are a customer who receives food stamps, Medicaid, AFDC or SSI from the Texas Department of Human Services (TDHS), then you are considered "LITE-UP qualified". You must provide evidence of enrollment in a TDHS program.

If you receive a disconnection notice XOOM may charge you a Disconnection Notice Fee and a Disconnect Recovery Charge if you do not pay the past due amount before the date your service is subject to disconnection as stated in the disconnection notice. XOOM may also pass thru any fees charged by any Third Party Service providers. These charges may apply regardless of whether your electric service is actually disconnected.

XOOM reserves the right to adjust your bill. XOOM may calculate a bill based on estimated meter readings absent actual meter readings from TDSP or ERCOT. Once actual meter reading are received, XOOM will issue a bill or make adjustments on a subsequent bill.

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

Please call XOOM if you anticipate having difficulty paying your bill by the due date. You may be eligible for a payment plan or a deferred payment plan option.

XOOM may charge a service processing fee of $4.95 for any payment processed by a XOOM Customer Care Specialist. XOOM will charge $35 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 monthly bill, if applicable. You may be charged a $10 Disconnection Notice Fee in the event that XOOM sends a disconnection notice. You may also be charged a $35 Disconnect Recovery Charge 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 assistance or a deferred payment plan. The Disconnect Recovery Charge of $35 will be assessed on your account if you do not pay the past due amount before the date your service is subject to disconnection. In all events, you shall remain obligated to pay for all electric power received by you and any interest, fees and penalties incurred by XOOM. You will also be responsible for all costs, including legal fees, associated with the collection of amounts owed to XOOM.

By entering into a payment plan or a deferred payment plan, XOOM may put a switch-hold on your account. A switch-hold means that you will not be able to buy electricity from other companies until you pay the past amount due or the total deferred balance, as applicable. If we put a switch-hold on your account, it will be removed after this payment or total deferred balance, as applicable, is paid and processed. While a switch-hold applies, if you are disconnected for not paying, you will need to pay XOOM to get your electricity turned back on.

Deposits: XOOM does not deny service based on your credit score. However, you may have to provide an initial deposit before receiving electricity service if you cannot demonstrate satisfactory credit. An initial deposit may also be required to continue to receive electricity service, if you have been late paying your bill more than once during

the last 12 months or your service has been disconnected for non-payment. You may be required to provide an additional deposit to continue to receive electric service if (1) your average annual electric service bill for the last 12 months is at least twice the amount of the original estimated annual bill, and (2) a notice for disconnection has been issued in the previous 12 months. If a deposit is required, the total amount of your 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 of the estimated annual billing.

If XOOM holds your cash deposit longer than 30 days, your deposit will accrue interest from the day we received it at the interest rate established annually by the Public Utility Commission of Texas (PUCT). XOOM will credit any accrued interest on your deposit to your account either on your January bill each year or on your final bill. This PUCT rule can be viewed at: http://www.puc.state.tx.us/agency/rulesnlaws/subrules/electric/25.478/25.478.pdf.

If you are LITE-UP qualified and are required to pay a deposit greater than $50, you will be eligible to pay your deposit in two installments. This PUCT rule can be viewed at: http://www.puc.state.tx.us/agency/rulesnlaws/subrules/electric/25.454/25.454.pdf.

You also may avoid paying a deposit if (1) you have a satisfactory credit rating through a consumer reporting agency, (2) you are at least 65 years of age and you do not have a delinquent balance with your current electric service provider, or (3) you have been a victim of family violence and can provide a certification letter by the Texas Council on Family Violence. Please contact XOOM for additional information if you believe you may be eligible for one of these options. You may send your letter to XOOM by fax using our toll-free fax number 1-855-611-8709. If you establish satisfactory credit with XOOM by making timely payments for 12 consecutive months, then we will apply the deposit plus accrued interest to your account. If you do not establish satisfactory credit with XOOM during the time you receive service from XOOM, then XOOM will apply the deposit plus accrued interest against the outstanding balance equal to the deposit. XOOM will bill you for any remaining balance and the bill will be due upon receipt. XOOM will refund any credit balance to you or transfer the credit balance to your new REP, at your request and with your new REP's consent.

Anti-Discrimination: XOOM cannot deny service or require a prepayment or deposit for services 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.

XOOM also cannot use a credit score, a credit history, or utility payment data as the basis for determining the price for electric service for products with a contract term of 12 months or less.

Critical Care and Chronic Condition Customer: If you have a person permanently residing in your premise who has been diagnosed by a physician as being dependent upon an electric-powered medical device to sustain life, you may apply for designation as a Critical Care Residential Customer. If you have a person permanently residing in your premise who has been diagnosed by a physician as having a serious medical condition that requires an electric-powered medical device or electric heating or cooling to prevent the impairment of a major life function through a significant deterioration or exacerbation of the condition, you may apply for designation as a Chronic Condition Residential Customer. To be considered for such designation, the PUC-approved form must be submitted by facsimile or other electronic means to the TDSP by a physician. The TDSP will notify you of the final status of your designation as a Critical Care or Chronic Condition Residential Customer, and will notify you when such designation will expire and whether you will receive a renewal notice. The TDSP will also notify us about your

status. This PUCT rule can be viewed at: http://www.puc.state.tx.us/agency/rulesnlaws/subrules/electric/25.497/25.497.pdf. Designation as a Critical Care or Chronic Condition Residential Customer does not relieve you of your obligation to pay for electric service that you receive from XOOM.

Power Outages and Emergencies: Please call the number you have on your bill if you have an electrical emergency or power outage.

Dispute Resolution: In the unlikely event XOOM cannot immediately respond to your question or complaint, XOOM will promptly investigate the matter and report its findings to you. During this time, you will not be required to pay the disputed portion of your bill. If for any reason you are not satisfied with XOOM's response you may contact the PUCT at 1-888-782-8477 or if in Austin 1-512-936-7120.

Assignment: You may not assign your contract with XOOM, in whole or in part, or any of your rights or obligations under the contract without XOOM's prior consent. XOOM may, without your consent, (i) as part of any financing or other financial arrangement, assign, sell or pledge this contractor its accounts, revenues, or proceeds, or (ii) assign this contract to an affiliate of XOOM or to any other person or entity succeeding to all or a substantial portion of the assets of XOOM.

Net Metering: Net metering refers to customers who sell electricity they produce, typically through a rooftop solar panel, back to the utility for credit. If you are a net metering customer, you should not enroll with XOOM because your net metering agreement will not transfer to XOOM once you enroll. Failure to notify XOOM that your account is subject to net metering may result in immediate return to Default Service of your account.

Authorization/Representation/Letter of Agency: By entering into this Contract, you authorize XOOM to act on your behalf under your local utility's tariffs in accordance with the rules and regulations of the Public Utility Commission of Texas (PUCT). You acknowledge that you are the end-use customer, or a person legally authorized to execute this Contract on behalf of the end-use customer for electric power service and are at least eighteen (18) years of age. You agree to authorize XOOM to obtain your credit information and you agree to authorize your prior retail electric provider and/or TDSP to release all information relating to your historical and current electric power usage, billing and payment history to XOOM or its authorized representatives. You acknowledge that XOOM has full authority to make all rates and tariff selections necessary to meet its obligations under this Contract.

Limitation of Liability: **XOOM WILL NOT BE RESPONSIBLE FOR GENERATING YOUR ELECTRICITY OR FOR TRANSMITTING AND DISTRIBUTING ELECTRICITY TO YOUR SERVICE ADDRESS. XOOM WILL NOT BE LIABLE WITH RESPECT TO ANY THIRD PARTY SERVICES. XOOM'S LIABILITY, NOT EXCUSED BY A REASON OF FORCE MAJEURE (AS IDENTIFIED BELOW) OR OTHERWISE WILL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, AND EXEMPLARY OR INDIRECT, OR PUNITIVE DAMAGES WHATSOEVER. 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 THIS CONTRACT.**

REPRESENTATIONS AND WARRANTIES: **THE ELECTRICITY SOLD UNDER THIS CONTRACT WILL BE SUPPLIED FROM A VARIEITY OF GENERATING SOURCES. IF YOU ELECT TO PURCHASE A RENEWABLE ENERGY PRODUCT, XOOM WILL ENSURE THAT THE APPROPRIATE RENEWABLE ENERGY CREDITS**

(RECS) ARE RETIRED TO AUTHENTICATE THE RENEWABLE ENERGY CONTAINED IN THE PRODUCT. THE TDSP OR ERCOT SYSTEM WILL NOT DELIVER ELECTRICTY FROM A SPECIFIC GENERATION SOURCE TO YOUR SERVICE ADDRESS. IF YOU PURCHASE RENEWABLE ENERGY FROM XOOM, YOU ARE PROVIDING FINANCIAL SUPPORT FOR RENEWABLE ENERGY GENERATION SOURCES AND NOT RECEIVING THE PRECISE ENERGY GENERATED FROM THAT SOURCE. XOOM MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, AND TO THE FULL EXTENT OF THE LAW, DISCLAIMS ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR CONFORMITY TO MODELS OR SAMPLES.

Force Majeure/Uncontrollable Circumstances: XOOM will not be responsible for supplying electric power in the event of circumstances beyond its control such as events of Force Majeure, including but not limited to, acts of terrorism, sabotage, or acts of God. XOOM may cancel this Contract if there is any change in regulation, law, pricing structure, tariff, substantial change in volume or usage, or change in procedure required by any third party that results in XOOM being prevented, prohibited, or frustrated from carrying out the terms of this Contract or if you file bankruptcy.

Taxes: You will be responsible and indemnify XOOM 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 XOOM 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.

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

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

GOVERNING LAW: YOUR CONTRACT WITH XOOM IS GOVERNED BY THE LAWS OF THE STATE OF TEXAS. THE TEXAS UNIFORM COMMERCIAL CODE APPLIES TO THE TERMS OF SERVICE AND ELECTRICITY IS DEEMED A "GOOD". The Uniform Commercial Code can be viewed at the following website: http://www.statutes.legis.state.tx.us/?link=BC.

Consumer Protection Rules: Buyer and Seller acknowledge and agree that, to the extent permitted by law, Buyer waives the Customer Protection Rules enacted by the Public Utility Commission of Texas (PUCT) (Section 25. Subchapter R) to protect residential and small commercial consumers. If there is any conflict between the Customer Protection Rules and this Contract, the Parties acknowledge that this Contract will control.

Waiver: If either party waives any one or more defaults by the other in the performance of any of the provisions of the contract, then such waiver will not be construed as a waiver of any other default or defaults whether of a like kind or of a different nature.

The Parties acknowledge and agree that this Contract and the transaction(s) contemplated under this Contract constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code. Accordingly, to the fullest extent possible, Buyer waives the provisions afforded by Section 366

of the United States Bankruptcy Code and acknowledges that for purposes of the application of principles afforded "forward contracts" and "forward contract merchants" the provisions of Section 366 shall not apply to Buyer or to this Contract.

Entire Contract: These Terms of Service along with the Electricity Facts Label, Enrollment Form, and/or Welcome Letter, the "Your Rights as Customer" disclosure statement and other contract documents constitutes the entire contract and understanding between you and XOOM with respect to its subject matter and superseding all prior written and oral Contracts and representations made with respect to the subject matter.

PRODUCT TYPE SECTION

XOOM Energy 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: XOOM can make changes to the provisions of the contract with appropriate notice except for changes to your price, other than stated in this section, or the length of your contract term. XOOM 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 bill or take effect. If you do not cancel the contract before the effective date of the change, the change will become effective on the date stated in the notice. Notice is not required for a change that is beneficial to you.

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 that impose new or modified fees or costs on REPs, including XOOM, that are beyond the control of the REPs.

Contract Expiration Notice: A contract expiration notice will be sent out to you at least 14 days before the end of your initial contract term specified in your EFL. The notice will describe any renewal offers and additional service plans for your consideration. If you decide not to choose a new service plan upon the expiration of the term, the price for electric power provided under this contract will become a basic rate plan described in your renewal notice which will continue month-to-month until you select another XOOM electric service plan, switch to another provider, or we terminate or disconnect your electric service.

Variable-Rate Products (Month to Month)

Change to Contract Provisions: XOOM can make changes to the provisions of the contract at any time with the appropriate notice except for changes to the length of your contract term. XOOM 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 bill or take effect. If you do not cancel the contract before the effective date of the change, the change will become effective on the date stated in the notice. Notice is not required for a change that is beneficial to you.

Your price will vary according to a method determined by XOOM as set forth in your EFL without additional notice.