



## **Texas TERMS OF SERVICE Pre-Pay 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 **1-888-387-0932** 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; by sending a letter to: XOOM Energy Texas, LLC, P.O. Box 650411, Dallas, TX 75265-0411 or by sending an email to [customercare@xoomenergy.com](mailto: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), the Prepay Disclosure Statement (PDS), 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:** Your prepaid service will begin on the first meter reading date set by your TDU. You agree to pay the initial price indicated in the EFL. All future electricity usage will be invoiced at the price in effect at the time of the billing. Charges for the electricity you consume, as well as any other applicable charges will be deducted daily from your account balance. Your electric service will continue until your account balance has been depleted or until service is terminated. You agree to pay any Taxes and any fees charged by any governmental entity.

**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"). The right of rescission does not apply if you are requesting a move-in. You may cancel your contract during the Cancellation Period by calling XOOM Energy Texas at 1-888-387-0932 or by sending an email to [customercare@xoomenergy.com](mailto: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.

**Preferred Method of Electronic Communications:** You understand that XOOM will communicate with you via email and/or text messages, depending on the nature of the communication. Additionally, XOOM will send important notifications via US mail as required. XOOM will send you brief, time sensitive notifications via text message but will send longer communications to you via email. Time sensitive notifications may include but are not limited to, low balance alerts, payment confirmations and other important account activities or required contract notices. Longer, less time sensitive communications may include but are not limited to order confirmation, enrollment confirmation, contract documents and monthly account summaries. You are solely responsible for all charges, fees and taxes that may be imposed by the carrier of your home phone, cell phone, email or internet service you use to receive XOOM's notifications.

It is your obligation to ensure that your designated electronic communications devices are in working order and information related to such device (cellular number and email address) is kept up to date with XOOM and you are responsible for contacting XOOM's Customer Service to provide us with updated and/or corrected contact information if it has changed. XOOM is not obligated to resend notifications to you, even if the notice could not be delivered for any reason.

**Disconnection of Your Electric Services:** If you fail to remit payment in accordance with this Contract, XOOM may order the TDSP to disconnect electric service to you. As discussed above, XOOM will provide you with warning notices via email, and/or text message as indicated on upon your enrollment at least one (1) day and not more than seven (7) days prior to your balance dropping to \$10.00.

Even if you are disconnected for nonpayment, you remain liable to XOOM for all billed amounts and any charges associated with disconnection of service for nonpayment and reconnection. XOOM reserves the right to pursue all legal remedies available to us to collect any amounts lawfully owed. In the event you fail to pay your bill in accordance with this Contract, you agree to pay reasonable collection costs and expenses (including attorney's fees and third party collection fees) XOOM incurs as a result of XOOM's attempt to collect any amounts you owe.

**Initial Balance:** As a prepay customer, XOOM requires you to establish an initial balance which will be depleted as you use electricity. XOOM therefore requires customers to deposit a minimum of seventy-five dollars (\$75.00) as an initial balance. We may also charge a five dollar (\$5.00) connection fee.

**Eligibility:** To qualify for pre-paid service, you must have a Smart Meter installed in your home, provide XOOM with an active email address and text-enabled cell phone to receive important notifications from us about your account. You do not qualify if you are on a Critical Care or Chronic Condition plan as described below.

**Disconnection Balance:** After termination of this Contract, if your account balance is positive by more than five



dollars (\$5.00) XOOM will either credit the funds back to the credit or debit card used to make the payment, or mail a check in the name on the account to the current billing address that is listed on the account at the time of cancellation.

**Credit, Payment and Collection:** You will not receive an invoice from us. In order to maintain electric service, you must make a payment before your account balance is exhausted. XOOM accepts online payments, payments by telephone, and payments made from authorized pre-paid centers. Other payment methods are not accepted and will not prevent a service disconnection. All payments will be credited to your current account to replenish any negative balance, and/or increase any positive balance. XOOM may charge an Online Payment Convenience Fee of up to \$3.99 for each non-recurring payment made online. The fee will not be assessed to automated recurring payments.

If you receive a disconnection notice XOOM may also charge you a Disconnect Recovery Charge of \$15.00 if you fail to maintain the minimum account balance as required 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. This charge will apply regardless of whether your electric service is actually disconnected.

If your account balance ends up in deficit of more than \$50 during moratorium, you will be responsible for making deferred payments, where 50% of deposits go to deficit, and 50% go to current charges.

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 XOOM puts 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.

XOOM reserves the right to adjust your charges. XOOM may calculate charges based on estimated meter readings absent actual meter readings from TDSP or ERCOT. Once actual meter reading(s) are received, XOOM will make adjustments on your account balance.

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 charges on your XOOM account may include the charges for those products and services. XOOM will apply all payments you make first to the amounts you owe XOOM for electric services.

XOOM will charge \$35.00 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 statement, if applicable. We may also charge a \$15.00 Disconnect Recovery Charge if you fail to pay the past due amount before the expiration date of any disconnection notice issued by XOOM. 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.

XOOM will charge a Document Processing Fee of \$1.99 for each request for a paper copy of your Summary of Usage and Payment Document or other account documentation.

**Anti-Discrimination:** XOOM cannot deny service 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:** XOOM is not able to provide prepaid electricity service to customers that are qualified as critical care or chronic condition. A critical care customer is a residential customer who has a person permanently residing in his or her home who has been diagnosed by a physician as being dependent upon an electric powered medical device to sustain life. Accordingly, If you have such a critical care and chronic condition customer residing in your premise, you are not eligible to sign up on XOOM's prepay plan.

**Power Outages and Emergencies:** In the event of an electrical emergency or power outage, please contact your Transmission and Distribution Service Provider (TDSP):

- ONCOR – 888-313-4747
- Centerpoint - 800-332-7143
- AEP Central - 877-373-4858
- AEP North - 877-373-4858
- Texas-New Mexico Power - 888-866-7456
- Sharyland - 800-545-4513
- Sharyland McAllen - 800-545-4513

**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 statement. 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 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 VARIETY 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 ELECTRICITY 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:** There are no documents that are part of this Contract other than the items identified in the definition of “Contract.” There are no prior contemporaneous agreements or representations affecting this Contract other than those expressed herein. You do not have the right to add, delete or change any of the terms of this Contract. XOOM can only make changes in accordance with this Contract.

## PRODUCT TYPE SECTION

### Variable-Rate Products

#### *(Pre-Pay)*

**Changes 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.