

## GEXA ENERGY, LP, RESIDENTIAL TERMS OF SERVICE

This document describes the Terms of Service for the purchase of residential electricity from Gexa Energy, LP ("Gexa Energy"), as well as certain provisions relating to non electric (non commodity) service products. Your contract governing your purchase of residential electricity consists of these Terms of Service, an Electricity Facts Label ("EFL") that contains additional terms and details for the particular retail electric product that you have selected, a Your Rights as a Customer document ("YRAAC") which states your general rights as an electric customer, and your enrollment or renewal documentation (collectively, the "Agreement"). Please refer to your Electricity Facts Label for further details about your active plan. As your retail electric provider ("REP"), Gexa Energy will arrange for the delivery of electricity from your Transmission and Distribution Utility ("TDU") to your service location pursuant to this Agreement. The words "we," "us," and "our" also refer to Gexa Energy, and the words "you" and "your" refer to the customer. By accepting electric service from Gexa Energy you agree to be bound by this Agreement.

**Esta información está disponible en Español. Por favor llame a Gexa Energy al (713) 961 9399 en Houston o (866) 961 9399 fuera de Houston, o por internet <https://www.gexaenergy.com>**

### Contact Information:

**REP Name:** Gexa Energy, LP

**Business Name:** Gexa Energy

**PUCT Certificate No.** 10027

**Internet address:** <https://www.gexaenergy.com>

**Email address:** [customercare@gexaenergy.com](mailto:customercare@gexaenergy.com)

**Mailing address:** 20455 State Highway 249, Suite 200, Houston, TX 77070

**Fax:** (713) 961 7997 or toll free (877) 961 9369 (outside Houston)

**Customer Service telephone number:** (713) 961 9399 or toll free (866) 961 9399 (outside Houston)

**Customer service hours:** 7:00 a.m. 8:00 p.m., Central Time, Monday Friday and 8:00 a.m. 2:00 p.m., Central Time, Saturday. Closed Sundays and holidays.

### 24 Hour Service Outage Reporting:

CENTERPOINT ENERGY: (800) 332 7143

TEXAS NEW MEXICO POWER: (888) 866 7456

ONCOR ELECTRIC DELIVERY: (888) 313 4747

ONCOR ELECTRIC DELIVERY (formerly Sharyland): (800) 545 4513

AEP TEXAS NORTH and AEP TEXAS CENTRAL: (866) 223 8508

**Rescission:** If you are switching your electric service to Gexa Energy from another REP, you have the right to rescind your Agreement with Gexa Energy without any fee or penalty of any kind within three (3) federal business days of receiving this Terms of Service document. To do so, you may call us at (713) 961 9399 or toll free at (866) 961 9399 (outside Houston), or you may fax us at (713) 961 7997 or toll free at (877) 961 9369 (outside Houston) during the customer service hours referenced above on or before the third federal business day. This right to rescind does not extend to service requests for establishing electric service at a new location (also known as a "move in").

**Eligibility:** This Agreement is for residential customers only. If you receive service under this Agreement and are not a residential customer, you will be charged the prevailing rate for our commercial variable price product customers and sent Gexa Energy's commercial terms of service which will become effective upon receipt.

**PUC Rules:** Certain "Substantive Rules" of the Public Utility Commission of Texas ("PUC") apply to the sale of retail electric products by Gexa Energy. We refer to some of those rules here. The text of all PUC rules referenced in this Agreement may be found at <http://www.puc.state.tx.us/agency/rulesnlaws/subrules/electric/Electric.aspx>

**Credit and Deposits:** Gexa Energy may use credit reporting agencies to document and evaluate your credit and/or payment history. If you do not meet our credit standards or cannot demonstrate satisfactory credit as defined in PUC Substantive Rule 25.478, Gexa Energy may require a deposit from you to establish service. You may demonstrate satisfactory credit as defined in PUC Substantive Rule 25.478 and qualify for deposit waiver by showing that you are 65 years of age or older and not currently delinquent in paying an electric account, by submitting a prescribed letter certifying that you have been a victim of family violence, or by demonstrating that you are medically indigent. Please call us for additional information about qualifying for deposit waivers. If a deposit is required, Gexa Energy's deposit amount will not exceed the greater of either the sum of your estimated billings for the next two months or one fifth of your estimated annual billing. Customers who qualify for a rate reduction program who are also required to pay a deposit over fifty dollars (\$50) may pay the deposit in two equal installments. Gexa Energy may agree to accept deposit payments in two installments from other customers as well. You may contact Gexa Energy to arrange for two installment payment set up and other payment assistance if needed.

Gexa Energy may require an additional deposit from an existing customer if a disconnection notice has been issued or your account has been disconnected in the previous twelve (12) months, and if your average actual billings over the previous twelve (12) months are at least twice the amount of the original average of your estimated annual billings. Your service may be disconnected if a deposit is not paid within ten (10) calendar days after the date of the request for deposit. Gexa Energy will apply any cash deposit held on your behalf plus any accrued outstanding balance on your final bill (with any excess amount refunded to you), or to your current balance(s) when you have paid bills for service for twelve (12) consecutive months without having any late payments.

**Term and Termination:** The term under this Agreement will begin on the meter read date set by your TDU (unless you and we otherwise agree), and will continue for a period specified in your EFL but shall end on the contract end date of this Agreement specified by us; provided, that we may bill you under the EFL until the first meter read after the end date of the Agreement as authorized in PUC Substantive Rule 25.475. Your meter read date is set by your TDU; therefore, Gexa Energy is not liable for any resulting delay in commencement of Gexa Energy service. You may choose to change products or plans to a longer contractual period. No ETF is assessed if you choose to extend a contract period. Terminating a contractual extension period could result in a larger ETF fee. Please reference your most recent EFL document if you have chosen to extend the duration of your product or plan term for the ETF fee. If your termination requires an early meter read by your TDU, you will be charged a fee established by the TDU.

Regardless of the method or reason for termination of the Agreement, you are responsible for payment of all outstanding charges incurred through the date on which the termination is effected by the TDU. You

## GEXA ENERGY, LP, RESIDENTIAL TERMS OF SERVICE

may terminate electric service without penalty if you move to another premise and provide us with evidence confirming that you have moved and your forwarding address. To terminate this Agreement, you may call or fax us at the contact numbers provided above. After the rescission period described above expires, if you are on a term plan you will be assessed the early termination fee specified in your EFL if you terminate your service under this Agreement prior to the contract end date or if your service is terminated by Gexa Energy due to your breach of the terms of this Agreement. The early termination fee and all other termination charges will apply as provided in this Agreement.

**Pricing:** You agree to pay the pricing in your EFL. Your current price is set forth in the EFL you received during your enrollment or renewal, or with your contract expiration notice. Gexa Energy offers various product and plan structures, and different pricing elements are in effect on your account depending on the product and plan structure currently actively billing under contract. Your plan type is specified on your EFL. The following are the types of plans Gexa Energy may from time to time offer:

Fixed rate product (term): Fixed rate products have a contract term of three (3) months or more. If you terminate a fixed rate product prior to the end of the initial term, you will be charged the early termination fee specified in your EFL, except that no termination fee shall apply for a termination initiated by you or your authorized account user during the 14 days prior to the contract end date, or if you move out of your service address. Your price during the contract term can change only to reflect actual changes in TDU charges for the delivery of your electricity, changes to the ERCOT or Texas Regional Entity (TRE) administrative fees, or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs on Gexa Energy that are beyond Gexa Energy's control.

Except for the price and term length, we can make changes to provisions of your fixed rate contract at any time with 14 days' advance written notice. You will have the right to terminate your Agreement without penalty if you terminate within 14 days after the notice of change is sent. If you do not cancel your Agreement within that 14 day period, the change will become effective on the date stated in your notice. Notice is not required for a change that benefits you. A contract expiration notice will be sent to you at least thirty (30) days or one billing cycle prior to your contract end date, but not more than 60 days or two billing cycles in advance of contract expiration. If you take no action, after your contract end date you will continue to be served by Gexa Energy automatically on a month to month basis pursuant to a default renewal product, as described in an EFL that will be provided to you with the contract expiration notice.

Variable price product: Variable price products are month to month contracts with a term of 31 days or less for which the price may vary as determined by Gexa and as disclosed on the EFL. You may terminate a variable price product at any time without being charged a termination fee or penalty. The price may also change to reflect actual changes in TDU charges for the delivery of your electricity, changes to the ERCOT or TRE administrative fees, or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs on Gexa Energy that are beyond Gexa Energy's control.

Except for term length, we can make changes to provisions of your variable contract at any time with 14 days' advance written notice. If you do not cancel your Agreement within that 14 day period, the change will become effective on the date stated in your notice. Notice is not required for a change that benefits you.

Indexed product: Indexed products may be for a term of three (3) months or more, or may be month to month. If you terminate an indexed term product prior to the end of the initial term, you will be charged the early termination fee specified in your EFL, except that no termination fee shall apply for a termination initiated by you or your authorized account user during the 14 days prior to the contract end date, or if you move out of your service address. You may terminate a month to month indexed product at any time without being charged a termination fee or penalty. Your price will vary according to a pricing formula as set forth in your EFL and may also change to reflect actual changes in TDU charges for the delivery of your electricity, changes to the ERCOT or TRE administrative fees, or changes resulting from federal, state or local laws or regulatory actions that impose new or modified fees or costs on Gexa Energy that are beyond Gexa Energy's control. Some indexed plans may require a provisioned smart meter at your premise.

Except for the pricing formula and term length, we can make changes to provisions of your indexed product contract at any time with 14 days' advance written notice. You will have the right to terminate your Agreement without penalty if you terminate within 14 days after the notice of change is sent. If you do not cancel your Agreement within that 14 day period, the change will become effective on the date stated in your notice. Notice is not required for a change that benefits you. For a term indexed product, a contract expiration notice will be sent to you at least thirty (30) days or one billing cycle prior to expiration of this Agreement, but not more than 60 days or two billing cycles in advance of Agreement expiration. If you take no action, after your contract end date you will continue to be served by Gexa Energy automatically on a month to month basis pursuant to a default renewal product, as described in an EFL that will be provided to you with the contract expiration notice.

**TDU Delivery Charges:** TDU Delivery Charges include monthly recurring charges that are passed through to you without mark up or may be bundled with your Energy Charge or Base Charge, depending on your plan. TDU non recurring fees include those arising from a move in or switch, such as self selected meter reads; service connection, disconnection, or reconnection fees; and fees such as meter tampering charges. Specific TDU charges will vary depending on the TDU providing your service; please reference your EFL to determine if your product or plan includes or excludes these TDU Delivery Charges from your monthly bills, and whether or not these charges are present in the average price calculation for your selected or active plan. Some locations may be subject to a TDU special charge or charges, such as "Underground Facilities and Cost Recovery" charge, these special charges can be authorized by towns and cities. Such charges are not included in the total average price shown on EFLs or other documentation because the TDU service area is larger, in most cases, than the locally authorized charges. Locally authorized charges may affect only a few zip codes in a TDU territory. Gexa Energy's EFL documents will reflect the overall TDU service area standard charges for pricing calculations, while local charges will not be reflected in the EFL document.

## GEXA ENERGY, LP, RESIDENTIAL TERMS OF SERVICE

For more information and details on these special charges, see your TDU service tariff for a listing of locations, towns, and/or cities and authorized charges. Gexa Energy has no control over these special authorized charges and will pass through any such charges in effect for your account based on your specific service location, until the special authorization has completed, expired or is otherwise removed. You agree that you are solely responsible for paying these TDU special authorized charges.

**Billing:** You will receive a monthly bill from Gexa Energy, unless otherwise agreed, displaying Current Charges and the Amount Due. Gexa Energy will send your bills via postal mail unless you opt in to electronic (paperless) billing. You may update your mailing preferences by online account or by phone. Some Gexa Energy plans may require at time of enrollment that you authorize us to issue bills, notices and other written communications to you electronically. If you do not consent to paperless communications at enrollment for such plans, we will not complete the enrollment. The line items on your monthly bills can include the Energy Charge(s), Base Charge, Monthly Service Fee, and TDU Delivery Charges as set forth on your EFL, as well as fees or credits including Residential Usage Credit, PUC Assessment fee, and other recurring or non recurring third party fees or credits, including taxes, gross receipts tax reimbursement, late fees, customer and metering charges assessed by Gexa Energy or your TDU, charges for non electric products or services you have requested be included on your Gexa Energy bill, and other additional charges, fees, or credits. The number of days in a billing cycle can vary; the full Base Charge will be applied to each billing cycle and not prorated regardless of the number of days or amount of energy consumption in the billing cycle. Refer to "Summary of Gexa Energy Non Recurring Charges" below for a list of Gexa non recurring charges.

There are no charges for recurring bank drafts or recurring credit / debit card transactions. Upon request, Gexa Energy will provide you with additional bill copies, duplicate bills, credit reference letters or summary billing, for which a \$2.00 service charge per bill or copy may be applied as a separate line item on your bill. In addition to the above, if you have signed up for other products or services from Gexa or third parties, including non commodity products, your monthly bill may also include one time or recurring line item charges for those products and services. You agree when enrolling for such services or products that they will appear on your electricity bill and that you will pay these charges with your bill. We will apply all payments you make on your bill first to the amounts you owe us for electric service. Gexa Energy will not disconnect your electricity service for non payment or delinquent charges for non electric products or services, but may discontinue the non electric service or product for such non payment.

We reserve the right to adjust your bill. You acknowledge that Gexa Energy's ability to invoice you is dependent upon the TDU's or the Electric Reliability Council of Texas' ("ERCOT's") ability to furnish Gexa Energy with all necessary information, including meter readings. Your bill may be based upon estimated usage and TDU pass through charges if your product or plan includes or is structured to pass through those charges and we are unable to bill you based upon actual meter read data due to the failure of the TDU to timely obtain or transmit a meter reading or an invoice for pass through charges. In those situations, consistent with the PUC's rules, Gexa Energy may include in a subsequent bill, adjustments related to previous billings, previous

billing errors, meter read errors, miscalculation of taxes or other errors or omissions.

**Payments:** You agree to pay your monthly bills on a timely basis. All bills are due and payable 16 calendar days after (i) the billing date on your invoice or the postmark date on the envelope, whichever is later, if you are billed by mail, or (ii) the billing date on your invoice or the date on which we notify you via electronic means that your invoice is ready and can be accessed through a website portal, whichever is later, if you have agreed to electronic delivery of your bill. Bill payments are deemed past due and delinquent if not received by the close of business on the day the bill is due. Late payments, delinquent or past due balances may result in a one time late fee equal to five percent (5%) of the month's past due amount. A \$25.00 insufficient funds fee per transaction will be assessed against any transaction not processed due to insufficient funds or credit availability for any method of payment including checks, bank drafts or credit /debit card transactions. If you are under a deferred payment plan with Gexa Energy, your account(s) may be placed on a "switch hold."

If a "switch hold" is placed on your account(s), you will not be able to switch your electric service to another retail electric provider until you have paid Gexa Energy in full your outstanding balance due.

**Bill Payment Programs:** Gexa Energy has a variety of bill payment options available. For more details, please visit <<http://www.gexaenergy.com/>> or call us at the numbers listed above. If you use a third party payment provider to pay your Gexa Energy electricity bill, you may be assessed a fee for payment transactions by that third party payment provider. If you select Gexa Energy's automatic bank draft option, please continue to remit payment until you receive written notification that your request has been accepted and it is scheduled to begin. If you select Gexa Energy's Auto Bill Pay program using bank draft or credit/debit card draft, and if funds are not available in your account when we attempt to process your draft, or if the payment is returned or dishonored, you will be responsible for paying your bill by the due date, or it will be subject to being charged a one time late payment penalty equal to five percent (5%) of your past due amount. Gexa Energy will not notify you if your funds were unavailable, and we are not responsible for any resulting fees, charges or costs incurred by you in connection therewith. Gexa Energy reserves the right to cancel your participation in our Auto Bill Pay program if your payment is returned or not honored.

Please notify Gexa Energy in writing to discontinue your participation in our Auto Bill Pay program or if there are any changes in your bank account or credit card affecting such participation. If you are changing the bank account from which funds will be drawn, please include a voided check with your letter. Written notice of such a change in your bank account or credit card information must be received by Gexa Energy at least 45 days before your payment due date, or the change may not be implemented until your next payment due date. Please send written notices to the mailing address noted above.

**Bill Payment or Other Assistance:** Bill payment assistance and rate reduction programs are available to customers who have severe financial hardships and temporarily may be unable to pay their bills. The energy assistance program is funded in part by contributions from Gexa Energy customers. If you need assistance in paying a bill by the due date or if you are ill and unable to pay, you may be eligible for a deferred payment plan or be able to make alternative payment



## GEXA ENERGY, LP, RESIDENTIAL TERMS OF SERVICE

arrangements. Please call for additional payment arrangement information. Beginning September 1, 2017, low income customers may be eligible for payment assistance benefits. To be eligible you must be in the supplemental nutrition assistance program (SNAP) or on Medicaid and the name of the program participant must be the same name on your electric bill. To apply for SNAP or Medicaid contact your local Texas Department of Health and Human Services office or <https://hhs.texas.gov>.

Please call 1 866 454 8387 for additional information. Information on additional bill payment assistance programs is available from the Texas Department of Housing and Community Affairs website under Energy Assistance at <http://www.tdhca.state.tx.us/ea/index.htm>. Please call us if you need special assistance.

**Critical Care Residential Customer and Chronic Condition Residential Customer:** You have the right to apply for Critical Care Residential Customer or Chronic Condition Residential Customer designation in accordance with PUC Substantive Rule 25.497. A Critical Care Residential 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.” A Chronic Condition Residential Customer is a “residential customer who has a person permanently residing in his or her home 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 person’s medical condition.” In order to be designated as a Critical Care Residential Customer or Chronic Condition Residential Customer, you must have a physician submit the completed PUC approved application form to the TDU. The TDU will determine and notify you whether you are designated a Critical Care Residential Customer or a Chronic Condition Residential Customer and will inform you of your right to file a complaint with the PUC. If approved, the designation of a Critical Care Residential Customer is effective for two years.

For a Chronic Condition Residential Customer, if the serious medical condition is diagnosed or re diagnosed by a physician as a life long condition, the designation is effective under this section for the shorter of one year or until such time as the person with the medical condition no longer resides in the home. Otherwise, the designation or re designation of a Chronic Condition Residential Customer is effective for 90 days. Designation or re designation as a Critical Care Residential Customer or a Chronic Condition Residential Customer does not relieve you of the obligation to pay us or the TDU for services rendered. However, a Critical Care Residential Customer or Chronic Condition Residential Customer who needs payment assistance should contact Gexa Energy immediately regarding possible deferred payment options or other assistance that may be offered.

**Budget Billing Program:** Gexa Energy offers a budget billing program (the “Program”) that allows qualified customers to pay an equal budget bill amount each month subject to the following terms. To qualify for the Program, you cannot currently be delinquent in payments to Gexa Energy. The budget bill amount is calculated using the last twelve (12) months’ usage history at the service address, if available, scaled by a representative annual growth factor of four percent (4%) or more, as determined by Gexa Energy for the initial 12

month term on the Program, multiplied by your current price per kWh, added to the anticipated pass through charges for the upcoming twelve (12) months, plus the Gexa Energy customer monthly base charge for the upcoming twelve (12) months, plus any applicable taxes or fees, all divided by twelve (12). You will pay this amount each month for the next twelve (12) months. If less than twelve (12) months’ usage history is available for the service address, Gexa Energy will project the budget bill amount. You are also responsible for paying any non recurring charges from your TDU in addition to your budget bill amount. You will receive a statement with your calculated budget bill amount after you are accepted into the Program. You are responsible for paying the budget bill amount each billing cycle by your bill due date, even if your bill shows a credit balance.

The balance on your invoice is the total amount you owe Gexa Energy, and must be paid in full if you opt out of the Program or if you fail to remit your full budget bill payment by the bill’s due date, or if your service is terminated. If you fail to remit your full budget bill amount by your bill’s due date, your account(s) may be placed on a “switch hold” and subject to disconnection (including all associated charges). If a “switch hold” is placed on your account(s), you will not be able to switch your electric service to another retail electric provider until you have paid in full your outstanding balance due to Gexa Energy. Gexa Energy may recalculate your budget bill amount as frequently as every billing period at any time to reflect changes in your usage or for other authorized reasons. At least every twelve (12) months on the Program, Gexa Energy may reconcile your account and send you an invoice for any under payments associated with the Program and require you to bring your account balance to zero. At least every twelve (12) months on the Program, and if you opt out of the Program or if your service is terminated Gexa Energy shall credit or refund to you any over payments associated with the Program.

If you have enrolled in the Budget Billing program, you will be automatically re enrolled after your initial term. At the time of re enrollment, you will receive a credit towards your account, if you have paid us more than you owe. If you have paid us less than you owe, you must pay us the difference; but that difference will be amortized over the next 12 month period and added to your monthly program payment. You will be automatically re enrolled every 12 months, unless you notify Gexa Energy. If you choose to cancel and you have paid us less than you owe, you must pay us the difference at that time. You may opt out of the Program at any time by paying your full balance due as shown on your invoice and providing written notification of your desire to be removed from the Program to the following address: Gexa Energy; 20455 State Highway 249, Suite 200; Houston, TX 77070; Attention: Budget Billing, or contact <<mailto:customercare@gexaenergy.com>>. You may also contact customer service at: (713) 961 9399 or toll free (866) 961 9399 (outside Houston).

**Disconnection for Non Payment, Service Suspension, and Related Fees:** We may order disconnection of your electric service for non payment as provided in this Agreement. Non payment of your Gexa Energy bill may result in the assessment of a one time five percent (5%) late payment penalty and ultimately, disconnection of your electric service. Gexa Energy will notify you ten (10) calendar days prior to disconnection of your electric service and termination of this Agreement for non payment. Your account may be charged a disconnect notice fee of up to \$10.00 for each disconnection notice we

## GEXA ENERGY, LP, RESIDENTIAL TERMS OF SERVICE

send to you. If payment of your past due balance is not received by the earliest disconnection date stated in the disconnection notice or within ten (10) days of the postmark date (if applicable), whichever is later, and an electric service disconnection transaction has been processed by Gexa Energy, your account may be charged a service suspension/disconnection fee of up to \$25.00. This fee will be assessed regardless of whether your electric service is actually disconnected. In addition, your account may be charged a reconnection fee of up to \$25.00 in the event that we process a reconnection transaction for your account. If you do not pay your past due balance within 10 days of your service being disconnected, your account may be deactivated, and in addition to being responsible for paying any outstanding fees and charges, you may be required to reapply for service and pay a new deposit. These fees are in addition to those disconnection and reconnection fees that may be assessed by your TDU. We may also order disconnection of your electric service on any other grounds permitted by PUC Substantive Rule 25.483.

We may order immediate disconnection of your electric service, without notice to you, in certain specific situations, including the existence of a dangerous condition at your service address or evidence of theft of service or tampering with TDU equipment. Disconnection of your electric service from Gexa Energy will not excuse you from paying any outstanding amounts owed to Gexa Energy. Your electric service will not be disconnected for non payment of non electric services.

**Dispute or Complaints:** Please contact us if you have specific comments, questions, complaints, bill questions, or if you feel your bill is incorrect, by calling a Gexa Energy Customer Care Representative, or email <mailto:customer@gexaenergy.com>. If you are not satisfied with our attempt to resolve the problem, you may file a complaint with our company and request a Gexa Energy supervisory review. If we fail to resolve your dispute, it is your right to file a complaint with the PUC. The PUC contact information is as follows: Public Utility Commission of Texas, Customer Protection Division P.O. Box 13326, Austin, Texas, 78711 3326; telephone (512) 936 7120 or (888) 782 8477; fax (512) 936 7003; Email: customer@puc.state.tx.us; website: www.puc.state.tx.us; TTY (512) 936 7136. Please see your YRAAC document for more information.

**Nondiscrimination:** Gexa Energy does not deny service, require a prepayment or deposit for service or otherwise discriminate based on a 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. Gexa Energy does not deny residential electric service based on credit history, utility payment data or credit score, nor is eligibility for the price quoted determined by credit history, utility payment data or credit score. Gexa Energy may refuse service to anyone according to PUC Substantive Rule 25.477, although it will not refuse service on any of the grounds stated in this paragraph.

**Contract Changes:** Gexa Energy may make non price related changes to this Agreement by providing you with advance notice, with the exception that we cannot change the duration (term) of your Agreement. We will notify you at least 14 days before the change is applied to your bill or otherwise takes effect. You will have the right to terminate your Agreement without penalty if you terminate within 14 days after the notice of change is sent. If you do not cancel your

Agreement within that 14 day period, the change will become effective on the date stated in your notice. Notice is not required for a change that benefits you.

**Third-Party Program Change:** Gexa Energy reserves the right to change or cancel at any time without notice any benefits, rewards, or bonuses provided to customers that may be provided by a third party.

**Customer Information:** By entering into this Agreement, you agree that your TDU may release to us certain information that we need to provide you with service, including, but not limited to, your address, phone number, account numbers, and historical usage information. By providing telephone numbers, including wireless and work numbers to Gexa Energy, you are expressly consenting to being contacted at those numbers by Gexa or a party calling on behalf of Gexa for any purpose related to your account, or future possible goods or services, including debt-collection, by a live person, prerecorded voice, and/or automated dialing. If you utilized the services of a broker, aggregator or agent in establishing your account or other services, you agree that Gexa may, but is not required to, share account information with such individual or entity.

**Change in Law or Regulation:** In the event that there is a change (including changes in interpretation) in law, regulation, rule, ordinance, order, directive, filed tariff, decision, writ, judgment, or decree by a governmental authority (including ERCOT), or in the event any of the foregoing which is existing as of the date of this Agreement is implemented or differently administered, including, without limitation, changes in TDU tariffs and ERCOT Protocols (including, without limitation, those affecting any fees, costs, or charges imposed by ERCOT), changes in market rules, changes in load profiles, changes in nodal and zonal definitions, or implementation of a nodal congestion management system (including based upon nodal protocols as currently constituted and documented), and such change results in Gexa Energy incurring additional costs and expenses in providing the services contemplated herein, these additional costs and expenses shall be your responsibility and they will be assessed in your monthly bills for service as additional pass-through charges, to the extent permitted by law.

**Attorney Fees and Expenses:** If you fail to timely pay the amounts due under this Agreement and we refer your outstanding balance to an attorney or collection agent for collection, or if we file a lawsuit, or collect your outstanding balance through probate, bankruptcy or other judicial proceedings, then you agree to pay reasonable fees and expenses (including attorney's fees and expenses) that we incur in the collection process.

**Force Majeure:** We will endeavor in a commercially reasonable manner to provide service, but we do not guaranty a continuous supply of electrical energy. Events that are out of our control ("Force Majeure Events") may result in interruptions in service. We will not be liable for any such interruptions. We do not generate your electricity, nor do we transmit or distribute electricity to you. Therefore, you agree that we are not liable for damages caused by Force Majeure Events, including, but not limited to, acts of God, acts of any governmental authority, including the PUC or ERCOT, accidents, strikes, labor trouble, required maintenance work, inability to access the TDU or ERCOT system, nonperformance of the TDU or ERCOT, delay of deregulation or changes in laws, rules, regulations, practices or procedures of any

## GEXA ENERGY, LP, RESIDENTIAL TERMS OF SERVICE

governmental authority or ERCOT, or any cause beyond our control. If a Force Majeure Event occurs which renders Gexa Energy unable to perform in whole or in part under this Agreement, our performance under this Agreement shall be excused for the duration of such event.

**Limitations of Liability:** EXCEPT AS PROVIDED UNDER THE SECTION BELOW ENTITLED "TITLE, RISK OF LOSS AND INDEMNITY," ANY LIABILITY UNDER THIS AGREEMENT WILL BE LIMITED TO DIRECT ACTUAL DAMAGES AS THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED AND NEITHER PARTY WILL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, INCLUDING LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, WHETHER IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISIONS OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT. THE LIMITATIONS IMPOSED ON REMEDIES AND DAMAGE MEASUREMENT WILL BE WITHOUT REGARD TO CAUSE, INCLUDING NEGLIGENCE OF ANY PARTY, WHETHER SOLE, JOINT, CONCURRENT, ACTIVE OR PASSIVE; PROVIDED NO SUCH LIMITATION SHALL APPLY TO DAMAGES RESULTING FROM THE WILLFUL MISCONDUCT OF ANY PARTY.

**Representations and Warranties Relating to Electric Service:** The electricity sold under this Agreement will meet the applicable TDU's quality standards and will be supplied from a variety of sources. **GEXA ENERGY MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO RESIDENTIAL ELECTRICITY OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT, AND GEXA ENERGY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES WITH RESPECT TO RESIDENTIAL ELECTRICITY, WHETHER WRITTEN OR VERBAL, EXPRESS OR IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

**Assignment:** You may not assign this Agreement, in whole or in part, or any of your rights or obligations hereunder, without the prior written consent of Gexa Energy. Gexa Energy may, without your consent: (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial agreement; (ii) transfer or assign this Agreement to an affiliate of Gexa Energy; (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of Gexa Energy; and/or (iv) transfer or assign this Agreement to a certified REP. In the case of (i), (ii) or (iv), any such assignee shall agree in writing to be bound by the terms and conditions hereof. Upon any such assignment, Customer agrees that Gexa Energy shall have no further obligations hereunder.

**Governing Law:** This Agreement shall be governed by and construed, enforced and performed in accordance with the laws of the State of Texas, and to the extent consistent with applicable law, venue shall be proper in Harris County, Texas.

**Forward Contract:** This Agreement and the transactions hereunder will constitute "forward contracts" as defined in section 101(25) of title 11 of the United States Code (the "Bankruptcy Code"). You and Gexa Energy agree that (i) Gexa Energy is a "forward contract merchant" as

defined in section 101(26) of the Bankruptcy Code, (ii) the termination rights of the parties will constitute contractual rights to liquidate transactions that will not be abridged by any filing of any petition as set forth in section 556 of the Bankruptcy Code, (iii) any payment related hereto or made hereunder will constitute a "settlement payment" as defined in section 101 (51A) of the Bankruptcy Code, and (iv) the exceptions to the applicability of sections of the Bankruptcy Code as set forth in sections 362(b) (6), 546(e), 553(a)(2)(B)(ii), 553(a)(3)(C), and 553(b)(1) shall apply. The text of these referenced Bankruptcy Code provisions may be found at <http://uscode.house.gov/browse/prelim@title11&edition=prelim>].

**Title, Risk of Loss and Indemnity:** You shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of the electricity after it reaches your electric meter. We shall cease to have title to and risk of loss related to the electricity at the point where a third-party transmission or delivery system connects with the TDU transmission or delivery system. You shall indemnify, defend and hold harmless Gexa Energy from any and all claims for any loss, damage, or injury to persons or property, including without limitation, all consequential, exemplary, or punitive damages arising from or related to any act or incident occurring after the interconnection of the TDU transmission or delivery system with your meter.

**Renewable Energy and Renewable Energy Credits:** If you have selected a renewable energy product from Gexa Energy, the following provision applies: Gexa Energy will, either directly and/or through its affiliate(s), retire, on your behalf, Renewable Energy Credits ("RECs") resulting from electricity generated from renewable energy sources, which may include solar, wind, geothermal, biomass, biogas, or low-impact hydro, in an amount matching your load in a calendar year. Such energy sources will be located in or connected to the ERCOT control area of the State of Texas. Each REC represents 1,000 kilowatt hours.

You will not have electricity from a specific generation facility delivered directly to your meters; but, through this product, you can support generators of renewable energy that provide electricity to the ERCOT electricity control area. Renewable energy source availability and generation varies hour-to-hour and from season-to-season, as does all customer electricity usage. Gexa Energy relies on regional system power from the grid to serve its customers' minute-by-minute consumption. But, through retirement of RECs by Gexa Energy, and/or its affiliate, on behalf of customers, Gexa Energy will cause enough renewable energy to be delivered to the ERCOT electricity control area to match your usage. Gexa Energy may take up to three (3) months after the end of a calendar year to retire RECs needed to fulfill this product. Neither Gexa Energy nor any of its affiliates will be liable to you or any other party for any advertising assertions made by you related to this product including, without limitation, any claim or liability arising from a representation made as to the "green" or "carbon free" nature of the electricity or this product.

**Non-Waiver:** Any failure on the part of Gexa Energy to enforce any of the terms of this Agreement 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 these terms and conditions.



## GEXA ENERGY, LP, RESIDENTIAL TERMS OF SERVICE

**Summary of Gexa Energy Non-Recurring Charges:** Gexa Energy non-recurring charges set forth above are summarized below. These do not include any non-recurring charges which may be imposed by the TDU (which will be included in your bills for payment by you), including those arising from a move-in or switch, such as self-selected meter reads, service connection, disconnection, or reconnection fees, and fees such as meter tampering charges.

**Additional bill copies, duplicate bills, credit references, summary billing:** \$2.00 per bill or copy (“Billing” section)

**Late Payment Penalty:** 5% of past-due balance (“Payments” and “Disconnection for Non-Payment, Service Suspension and Related Fees” sections)

**Disconnect Notice:** up to \$10.00 per notice sent (“Disconnection For Non-Payment, Service Suspension and Related Fees” section)

**Insufficient Funds:** up to \$25.00 per transaction (“Payments” section)

**Service/Suspension Disconnection:** up to \$25.00 (“Disconnection For Non-Payment, Service Suspension and Related Fees” section)

**Reconnection:** up to \$25.00 (“Disconnection for Non-Payment, Service Suspension and Related Fees” section)

**Survival:** The “Limitations of Liability” Section, the “Non-Commodity Product Disclaimer of Warranty” Section, the “Jury Trial Waiver” Section and the “Arbitration. Class Action Waiver” Section shall survive termination of this Agreement.

**Complete Agreement:** This Agreement contains all terms, conditions, and agreements in any way related to, or arising out of, the sale and purchase of electricity. This Agreement supersedes all prior agreements, whether written or oral.

### NON-COMMODITY PRODUCTS

These provisions concern use of customer data and apply if you purchased, subscribed to or are using any non-commodity equipment, services, or programs offered through Gexa Energy, including those provided by a third party. “Non-commodity products” are products or services other than electricity service and may include the following:

- Connected, networked, or “smart” services such as smart thermostats; smart appliances; home security devices, motion sensors, alarms, and cameras; lighting; and other sensing, connected, digital and/or smart-home automation devices and the platforms, gateways, routers, or apps used with them;
- Non-connected, non-digital home protection products including warranties, extended warranties, and surge protection for your home and contents; and
- Such other non-commodity products, services, or programs as may be offered through Gexa Energy, unless otherwise stated in connection with enrollment on such services.

**Customer Consent:** By signing up for and using Non-Commodity Products, you acknowledge and agree as follows in connection with such products regarding collection and sharing of non-personal, aggregated information that does not identify you as well as collection and sharing of your personally identifiable information (“PII”):

- You agree to the applicable terms of use and privacy policy for the service or product you are using that describes how Gexa Energy

may collect, use, and share with affiliates and third parties non-personal and PII information relating your use of the Non-Commodity Product.

- You agree that affiliates or third parties participating in the provision of the Non-Commodity Products you are using (for example, the provider of any hardware or device, and/or provider of any related software, app, services platform or connectivity) may share with Gexa Energy non-personal and PII obtained from your use of the Non-Commodity Products, in accordance with their terms and policies.
- If your Non-Commodity Product includes connected, networked or smart products or devices, then you agree to install and enroll your devices with Gexa Energy’s demand response and/or optimization services using the instructions provided as a condition of receiving such services and in order to help you obtain the maximum benefit of such products. You also agree to allow Gexa Energy or its affiliates and/or third-party partners to make real-time adjustments to your smart devices, as detailed in your enrollment, in order to help you optimize your energy efficiency and take advantage of potential savings through Gexa Energy’s programs, and as a condition of participating in such programs. You may manually override these adjustments to your devices at any time.
- There may be a separate contract (“Contract”) and term commitment (“Initial Term”) associated with your Non-Commodity Product. Upon expiration of such Initial Term, the Non-Commodity Product Contract and applicable fees will automatically renew on a month-to-month basis (“Renewal Term”) while you remain a Gexa Energy electricity customer until such time as either you or Gexa Energy terminates the Contract.
- There may be an initial and/or recurring monthly fee for the duration of your Non-Commodity Product Contract Initial Term and Renewal Term associated with your Non-Commodity Product(s) in addition to the charges for your energy.
- If you cancel a standalone Non-Commodity Product, or an energy plan that includes a Non-Commodity Product, before an applicable contract term expires, you may be assessed a Device Cost Recovery Fee for your Non-Commodity Product, which may be in addition to any Early Termination Fee associated with the energy plan. Please view the Electricity Facts Label and plan documents for more details.

Please refer to the documentation provided or presented to you at time of enrollment for your Non-Commodity Product for additional information. Specific privacy policies and terms of use for Non-Commodity Products being offered by or through Gexa Energy may be accessed via [gexaenergy.com](http://gexaenergy.com).

**Non-Commodity Products Information That May Be Collected and Shared:** Please refer to the applicable privacy policy/terms of use for your Non-Commodity Product for details. In general, the following information may be collected automatically in connection with your use of the products and shared with third parties, subject to the specific terms of use and privacy policy for the product:

## GEXA ENERGY, LP, RESIDENTIAL TERMS OF SERVICE

- Set-up and activation information
- Information from any app, widget or other interface you use to access, control, or operate your product
- Environmental and ambient household data from in-home sensing devices, including but not limited to thermostats, motion devices, security cameras, and lighting
- Information and usage data about connected appliances and devices, including home and individual appliance/device energy usage, adjustments to settings, temperature, run-time, heating and cooling, and other usage information
- Information about your location to adjust device settings
- Technical information from your device or hardware

**How Gexa Energy May Use the Non-Commodity Products Information It Collects:** We use information collected by or shared with us to provide or facilitate provision of the Non-Commodity Products and to develop and improve those and other products and services, including making assessments and recommendations about products, safety, or energy use as well as, if applicable, to bill you for the services. We may use your contact details to send you related information, alerts, or updates or to ask you to participate in surveys about your product use, and to send you other marketing or informational communications from Gexa.

We may also use and share with third parties this information in an aggregated, non-identified form for research purposes and to help us make sales, marketing, and business decisions.

Gexa Energy will not share PII for any commercial or marketing purposes unrelated to the activation, delivery and usage of products and services you have requested without your consent. We do not rent or sell our customer lists or other personally identifiable information or data. Please see the Gexa Energy privacy policy for additional details.

**Non-Commodity Product Disclaimer of Warranty:** A NON-COMMODITY PRODUCT IS SOLD “AS IS”, “WHERE IS.” GEXA ENERGY IS NOT THE PRODUCT MANUFACTURER AND HAS NO ROLE IN THE DESIGN, CREATION, MANUFACTURE, PRODUCTION OR INSTALLATION OF A NON-COMMODITY PRODUCT. GEXA ENERGY HAS NO CONTROL OVER THE CONTENT OF ANY WARNING OR INSTRUCTION THAT ACCOMPANIES A NON-COMMODITY PRODUCT. ANY WARRANTY ASSOCIATED WITH A NON-COMMODITY PRODUCT IS PROVIDED BY THE MANUFACTURER ONLY. GEXA ENERGY MAKES NO WARRANTIES REGARDING A NON-COMMODITY PRODUCT AND EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**Jury Trial Waiver:** TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO HEREBY KNOWINGLY,

VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LAWSUIT OR LITIGATION RELATING TO, OR ARISING FROM, THE USE OF A NON-COMMODITY PRODUCT, OR IN CONNECTION WITH A NON-COMMODITY PRODUCT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.

**Arbitration. Class Action Waiver:** THE PARTIES HERETO HEREBY AGREE TO RESOLVE ANY DISPUTE, CLAIM, CONTROVERSY, LAWSUIT OR LITIGATION RELATING TO, OR ARISING FROM, THE USE OF A NON-COMMODITY PRODUCT, OR IN CONNECTION WITH A NON-COMMODITY PRODUCT, THROUGH BINDING ARBITRATION IN ACCORDANCE WITH THE PROCEDURAL RULES FOR COMMERCIAL DISPUTES OF THE AMERICAN ARBITRATION ASSOCIATION (“AAA”). THE SITE OF SUCH ARBITRATION SHALL BE HOUSTON, TEXAS. THE NUMBER OF ARBITRATORS SHALL BE THREE (3). EACH PARTY SHALL APPOINT ONE ARBITRATOR AND THE TWO ARBITRATORS APPOINTED BY THE PARTIES SHALL APPOINT THE THIRD ONE. IF THE ARBITRATORS CANNOT AGREE ON WHICH ARBITRATOR TO APPOINT, THEN THE THIRD ONE SHALL BE APPOINTED BY AAA. THE ARBITRATORS SHALL APPLY TEXAS LAW. THE ARBITRATION OF DISPUTES DESCRIBED IN THIS PARAGRAPH SHALL BE IN CUSTOMER’S INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. THE ARBITRATOR(S) MAY NOT CONSOLIDATE OR JOIN THE CLAIMS OF OTHER PERSONS OR PARTIES WHO MAY BE SIMILARLY SITUATED. CLASS ARBITRATIONS AND CLASS ACTIONS ARE NOT PERMITTED AND EACH PARTY HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO PARTICIPATE IN A CLASS ACTION OR CLASS ARBITRATION.