

## GEXA ENERGY, LP, RESIDENTIAL TERMS OF SERVICE FIXED RATE PRODUCT

The following are the Terms of Service for the purchase of residential electricity from Gexa Energy, LP ("Gexa Energy") under a fixed rate product. Your contract governing this 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 documentation (collectively, the "Agreement"). 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.

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 [www.gexaenergy.com](http://www.gexaenergy.com).

### Contact Information:

REP Name: Gexa Energy, LP

Business Name: Gexa Energy

Certificate No. 10027

Internet address: [www.gexaenergy.com](http://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**

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

**SHARYLAND: (800) 545-4513 (West and North Texas)**

**SHARYLAND MCALLEN: (956) 668-9551 (Mission and McAllen Texas)**

**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. You may demonstrate satisfactory credit as defined in PUC Substantive Rule 25.478 by showing that you are 65 years of age or older and are not currently delinquent in paying an electric account or submitting a prescribed letter certifying that you have been a victim of family violence. If a deposit is required, the amount shall 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.

If you are 65 years of age or older and are not currently delinquent in paying your electric service account or if you are a victim of domestic family violence you may be entitled to have your deposit waived. Please call us for additional information.

Gexa Energy may require an additional deposit from you once you are 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 interest (calculated at the PUC-approved rate) to the 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 & Renewal:** 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 end date of this Agreement specified by us; provided, that we may bill you the fixed retail rate described below 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's service. Following the date through which we bill you the fixed retail rate, your service will continue on a month-to-month basis until terminated either by you or Gexa Energy. A contract expiration notice will be sent to you at least thirty (30) days or one billing cycle prior to expiration of this Agreement in accordance with PUC Substantive Rule 25.475. If you fail to take action to ensure the continued receipt of electric service, 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).

**Termination:** To terminate this Agreement, you may call or fax us at the contact numbers provided above. After the rescission period described above expires, you will be assessed the early termination fee specified in your EFL if you terminate your service under this Agreement prior to the end date of this Agreement, except as provided in this Agreement, 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. 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 processed by the TDU. You 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. No termination fee shall apply for a termination by you during the 14 days prior to the end date of this Agreement, consistent with PUC Substantive Rule 25.475.

**Pricing:** Your current price is set forth in the EFL. Your price includes Gexa Energy's retail rate for the supply of electricity, the monthly customer base charge, all recurring TDU charges for the delivery of electricity (all of which are passed through to you), and the Electric Reliability Council of Texas (ERCOT) or Texas Regional Entity (TRE) administrative fees and any other recurring third-party fees (all of which are passed through to you). Gexa Energy's retail rate for the supply of electricity and the monthly customer base charge will remain fixed until the end date of this Agreement; provided that we may bill you the fixed retail rate until the first meter read after the end date of this Agreement. Your price may vary solely 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 (see also the "Change in Law or Regulation" section below).

**Billing:** You will receive a bill monthly from Gexa Energy. The electricity supply charge, Monthly customer Base Charge, TDU charges, the PUC Assessment fee and other third-party fees, taxes (including the gross receipts tax), late fees, customer and metering charges, non-recurring fees or credits assessed by the TDU or Gexa Energy, and any additional charges, fees, or credits will appear on your bill. Examples of non-recurring TDU charges 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. There are no charges for recurring bank drafts or recurring credit/debit card transactions. Specific TDU charges will vary depending on the TDU providing your service. 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, 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 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 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 any subsequent bill, adjustments related to previous billings, previous billing errors, meter read errors, miscalculation of taxes or other errors or omissions.

**Payments:** All bills are due and payable 16 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 at 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. Finally, 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 in full your outstanding balance due.

**Bill Payment Programs:** Gexa Energy has a variety of bill payment options available. For more details, please visit [www.gexaenergy.com](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 fee 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 dishonored.

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 arrangements. You must contact Gexa Energy before the earliest disconnection date in order to enroll in a deferred payment plan or to get additional payment arrangement information. Gexa Energy also offers assistance through LITE-UP, a low income electric discount program available for the summer months. Low-income customers eligible for the LITE-UP Texas discount should apply at <http://www.puc.state.tx.us/ocp/assist/liteup/index.cfm> or call 1-866-454-8387 toll-free. Information on additional

bill payment assistance programs is available from the Texas Department of Housing and Community Affairs website under Energy Assistance located 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. 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 you may opt out via email by sending notice

to [budget.billing@gexaenergy.com](mailto:budget.billing@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 fee 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. 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 will be charged a \$15 service suspension/disconnection fee. This fee will be assessed regardless of whether your electric service is actually disconnected. In addition, your account will be charged a \$15 reconnection fee 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.

**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 emailing [customer@care@gexaenergy.com](mailto:customer@care@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](mailto:customer@puc.state.tx.us); website: [www.puc.state.tx.us](http://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.

**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 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:** 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 OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT, AND GEXA ENERGY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, 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: (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial agreement; (b) transfer or assign this Agreement to an affiliate of Gexa Energy; (c) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of Gexa Energy; and/or (d) transfer or assign this Agreement to a certified REP. In the case of (b), (c) or (d), 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/download/title\\_11.shtml](http://uscode.house.gov/download/title_11.shtml).

**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:** No waiver by any party hereto of any one or more defaults, by the other party in the performance of any of the provisions

**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 Fee:** 5% of past-due balance ("Payments" and "Disconnection for Non-Payment, Service Suspension and Related Fees sections)

**Auto Bill Pay Late Fee:** 5% of past-due amount ("Bill Payment Programs" section)

**Insufficient Funds:** \$25 per transaction ("Payments" section)

**Service/Suspension Disconnection:** \$15 ("Disconnection For Non-Payment, Service Suspension and Related Fees" section)

**Reconnection:** \$15 ("Disconnection For Non-Payment, Service Suspension and Related Fees" section)

**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.