

TERMS OF SERVICE AGREEMENT

TEXPO POWER, LP D/B/A TEXPO ENERGY - PUCT CERTIFICATE
#10126

“BUSINESS PARTNERS FIXED RATE PLAN” AND “NO LONG TERM
COMMITMENT SAVINGS PLAN” FOR TEXAS BUSINESSES WITH
PEAK DEMAND OF LESS THAN 50KW
VERSION NUMBER: BUSDUALTXP040110

1.1. **Introduction.** Texpo values the opportunity to serve you. The following is your Terms of Service Agreement (“Terms of Service”) with Texpo for the purchase of small commercial retail energy. These terms are conditioned upon Texpo accepting you as a customer. This version of Texpo’s Terms of Service (BUSDUALTXP040110) applies to all commercial customers who submitted applications (or signed up for electric services) under Texpo’s plan entitled “Business Partners Fixed Rate Plan for Texas Businesses with Peak Demand of Less than 50KW” (“Texpo’s Fixed Rate Plan”) or Texpo’s “No Long Term Commitment Savings Plan for Texas Businesses with Peak Demand of Less than 50KW” (“Texpo’s Variable Rate Plan”) on or after May 10, 2010. Please retain this document for your records.

If Texpo elects to become your electricity provider, this document (your “Terms of Service”) provides the terms and conditions of your purchase of electricity service from Texpo Power, L.P., d/b/a Texpo Energy (“Texpo”) for the meter(s) listed in (i) your REP Switch Authorization (“RSA”), (ii) Texpo’s written enrollment process, (iii) Completed Internet Enrollment Authorization, or (iv) Verified Telephonic Enrollment (“VTE”). These Terms of Service, the Electricity Facts Label (“EFL”), and your Documentation of Enrollment (as defined below) constitute your Agreement (“Agreement”). The term “Documentation of Enrollment” means, as applicable, your RSA if you signed up in person, or, if you signed up via the internet, your Completed Internet Enrollment Authorization, or, if you signed up via the telephone, your Verified Telephonic Enrollment (“VTE”). Texpo Energy is an authorized trade name of Texpo Power, LP and is certified as a Retail Electric Provider (“REP”) by the Public Utility Commission of Texas (“PUCT”), license number 10126.

1.2. **General.** As your REP, Texpo will arrange for the delivery of electricity from your Transmission and Distribution Service Provider (“TDSP”) (Local Energy Delivery Company) to your service location pursuant to these Terms of Service. You (the customer) agree to be bound by these Terms of Service by enrolling for service or by accepting electric service from Texpo.

1.3. **24 Hour Service Outage & Emergency Reporting:** If you have an electrical emergency or a power outage, please call the applicable telephone number below:

Oncor Electric Delivery Company (“Oncor”)	(888) 313-4747
CenterPoint Energy (“CenterPoint”)	(800) 332-7143
AEP Texas North Company (“AEP-North”)	(866) 223-8508
AEP Texas Central Company (“AEP-Central”)	(866) 223-8508
Texas New Mexico Power (“TNMP”)	(888) 866-7456
Sharyland Utilities, LP (“Sharyland”)	(956) 668-9551

1.4. **Texpo Contact Information.** You can contact us at:

INTERNET ADDRESS:	texpoenergy.com
EMAIL ADDRESS:	customer.care@texpoenergy.com
MAILING ADDRESS:	Texpo Energy Commercial Division 5773 Woodway Drive, #311 Houston, Texas 77057
TELEPHONE:	(713) 358-8510
TOLL-FREE NUMBER:	(877) TEXPOLP (839-7657)
FAX:	(713) 358-8508
OFFICE HOURS:	8:30am – 5:30pm CST M-F
CUSTOMER SERVICE HOURS:	8:30am – 5:30pm CST M-F

2.1. **Authorizations.** Texpo will act as your REP for all purposes with respect to the accounts/meter(s) served hereunder. You authorize Texpo to take such action(s) as Texpo deems necessary to serve as your REP, and designate Texpo as an authorized recipient of certain information that Texpo needs to provide you with electricity service, such as your address, phone number, account numbers, and historical billing and usage information. Texpo may research your credit history. Texpo shall have no responsibility for payment of any outstanding debts owed by you to previous REPs, and you may not withhold payments to Texpo pending any refunds or other settlements from your previous REPs.

2.2. **Service Characteristics.** During the term of this Agreement, Texpo shall sell and deliver, or cause to be delivered, to you, and you shall purchase and receive, or cause to be received, from Texpo, all of your electricity requirements in accordance with this Agreement. The term of this Agreement will commence on your Utility Transfer Date, which is set by your TDSP, and will continue thereafter for the number of months (as specified in your Documentation of Enrollment) after, unless continued hereunder. If you are doing a move-in (establishing new service) or a self-selected switch, your service will begin when your meter is activated. In which case, your meter activation date will be your Utility Transfer Date, which means the first day on which Texpo causes the delivery of electric energy and capacity to you at your meter(s). Texpo will cause electricity to be delivered to your meter(s) in accordance with your existing connection and service requirements unless you request a change by the TDSP and pay for the cost of that change.

You shall not resell the electricity furnished hereunder (or use it as an auxiliary and supplement to any other power-source). REPs do not fully control the date on which your meter(s) are switched to and from other REPs. Texpo shall use reasonable efforts to commence service on the Meter’s(s) meter read date in the start month stated in your RSA, Completed Internet Enrollment Authorization, or VTE. However, you acknowledge that the start of service depends on confirmation by your TDSP of the completion of, among other things, all required switching and enrollment processes. If such switching and enrollment process occurs after the Meter’s(s) meter read date in the start month set forth in your RSA, Completed Internet Enrollment Authorization, or VTE, your Meter(s) shall be enrolled at the next available meter read date. Accordingly, Texpo is not liable for, nor is it able to commit to, an exact date for the commencement and cessation of service with Texpo.

For all fixed rate products, service shall continue through the Meter’s(s) meter read date in the end month as stated in your RSA, or as may be stated in your Completed Internet Enrollment Authorization or VTE (the “Term”), unless terminated earlier as provided in this Terms of Service. When and if you or Texpo terminate this Agreement as may be permitted under these Terms of Service, Texpo will attempt to cause your meter(s) to be switched from Texpo on their next possible monthly meter-read date (within the meter-read cycle). In any event, without limitation to Section 14.5 of these Terms of Service, this Agreement shall therefore continue in effect until the time at which Texpo no longer serves your meter. At the

Term's end, if not terminated by either party, your Agreement shall automatically continue on a month to month basis as stated in your Terms of Service.

2.3. Pricing.

(A)(I) Charges: Pricing for service is indicated in your EFL, and the conditions for pricing and service are specified in these Terms of Service and your Documentation of Enrollment. For the applicable version of your EFL, please refer to the EFL given (or made available) on the day and at the time when you enrolled. If you enrolled online or via telephone, please see the applicable EFL (with the same name as your chosen plan) that was in effect on the day you submitted your request for enrollment, a copy of which EFL you were advised to print out and retain for your records. If you enrolled via written enrollment, please see the EFL given to you along with your RSA at the time of sign-up.

Your total price per kWh will be calculated as follows. The price you will be charged for your electric service will be equal to the "fixed base energy price" as set forth in the "Electricity Price" section of your EFL (or as indicated in your Web Enrollment, or during your VTE), plus an \$8.00 fixed monthly customer service charge for each meter or Electric Service Identifier ("ESI ID"), charges from the Electric Reliability Council of Texas ("ERCOT") and your TDSP (collectively, "Delivery Charges"), PUCT fees and assessments, and Taxes, as defined in Section 2.5 below, and any other charges permitted here under including, without limitation, late fees. Delivery Charges, PUCT fees and assessments, and Taxes are further defined below and will be passed through to you at no markup.

Your monthly bill will itemize the following charges for your convenience: Energy Charges, Delivery Charges (referred to on your invoice as "Utility Charges"), PUCT fees and assessments, Texpo's monthly metering fee(s), all applicable taxes, and any additional permitted fees and/or charges.

The "Fixed Base Energy Price" referenced in your EFL does not include Delivery Charges or applicable Taxes, which Delivery Charges and Taxes will be passed through to you at no mark-up. Delivery Charges include the charges, costs, surcharges and fees charged or levied on Texpo by the Utilities and the applicable independent system operator ("ISO") of the electricity grid in your region or State (your ISO is the NYISO if in New York, the CAISO if in California, and the ERCOT if in Texas). The term "Utility" means the TDSP owning and/or controlling and maintaining the system used for delivery of electricity to your meters/accounts. As Delivery Charges fluctuate and vary, your total price you pay will vary from the total average rate pricing examples per kWh shown in *the table* at the top of your EFL. The total price per kWh shown in your EFL may be higher than the total price you will actually be charged.

(A)(II) THE FOLLOWING SECTION IS ONLY APPLICABLE TO CUSTOMERS ON TEXPO'S NO LONG TERM COMMITMENT SAVINGS PLAN: Specific Month to Month terms. If you are enrolled in Texpo's No Long Term Commitment Savings Plan, Texpo may revise electricity pricing on a monthly basis to reflect electricity generation cost variances and Texpo's costs of serving you, but Texpo will always strive to provide you with low prices. As a form of low price assurance, and because we value your loyalty, if ever unsatisfied with your price, you have the right to terminate this Agreement and switch to another REP in accordance with the procedures for termination set forth in Section 3.1.

(B) Estimated Charges: Texpo may bill you for good faith estimates of charges for your electricity usage, Delivery Charges, and Taxes if actual meter readings and charges to Texpo for such are not available when Texpo prepares your invoice, except as limited by the PUCT applicable Customer Protection Rules ("Customer Rules") a complete copy of which may be found at (<http://www.puc.state.tx.us/rules/subrules/electric>). When estimated charges are included on your invoice, they shall be reconciled against actual charges as available information permits.

2.4. Exclusivity. Throughout this Agreement's duration, you represent, warrant and covenant that there is (or will be) no other contract for the purchase of electricity by you at the delivery point(s); or, if such a contract exists, that it will terminate prior to the delivery of electricity to you under this Agreement.

2.5. Taxes and the Roles of your ISO and Utility. The Utilities (including the applicable ISO) are solely responsible for the electricity transmission and distribution grid and system along with all interruptions in the delivery of service. Texpo is not in any way liable or responsible for any interruption or disruption in electric service or related services caused wholly or partially by interruption, deterioration, or problems on the Utility's systems or on the ISO-controlled grid. You are responsible for all transmission, distribution and delivery charges due to the Utilities and your ISO, including, if any, costs of congestion, costs of ancillary services, estimated line losses, estimated unaccounted for energy ("UFE") (UFE charges will never be less than zero), uplifts from the ISO, and your ISO's administration fees as permitted by the Customer Rules (<http://www.puc.state.tx.us/rules/subrules/electric>). Texpo will have no liability and is not responsible for any of the Utilities' or ISO's acts or failures to act, and you agree that you shall be solely responsible for all amounts due to the Utilities or ISO for their services rendered in connection with electricity services provided to your meters. In addition, you are liable for and shall pay all taxes ("Taxes") applicable to the sale of electricity incurred by Texpo for your account. "Taxes" means all federal, state and local taxes, governmental charges, assessments, and charges presently or hereafter imposed on you, as purchaser (or on Texpo, as seller) of electricity under your Agreement, or on electricity sales transactions, including gross receipts, privilege, sales, use, special assessment, excise and other taxes, as applicable, municipal administrative fees and generation, utility, TDSP, regulatory, British Thermal Unit ("BTU"), city taxes, or electricity taxes and assessments. If you are tax exempt, it is your responsibility to provide Texpo with the documentation needed to prove your tax exempt status. Even if tax exempt, you will be responsible for gross receipts taxes and PUCT assessments and possibly other types of Taxes depending on the scope of your exemption.

2.6. Metering. The supply of electricity under this Agreement will be measured at the delivery point(s) by the applicable TDSP in accordance with the terms of the TDSP's applicable tariff. You and Texpo will be bound by the TDSP's measurements.

2.7 No Fees to Switch. Texpo will not charge you a fee to select, switch, or enroll with us unless you request a switch or enrollment that does not conform with the normal meter reading and billing cycle and, in such case, such fee shall not exceed the rate for such charged to Texpo by the TDSP, which rate is further described below.

3.1. Termination by Customer and Fees. The Term of your contract is as specified in Section 4 of your RSA (or on your Web Enrollment or during your VTE, as applicable).

(A) Permitted Early Termination. Texpo may terminate your Agreement immediately without further notice if you fail to make a payment in full when due (by the Past Due Date as defined below in Section 5.1 below) and such failure is not remedied within 10 days prior notice, and either party may also terminate this Agreement immediately upon written notice if the other party fails to perform an obligation under this Agreement, except in the case of *Force Majeure* (as defined in Section 9.1 below), and the failure is not remedied within 10 days of notice. Texpo may also terminate without further notice to you if it is determined that a series of late payments rises to the level of delinquency. Several factors may be considered by Texpo in making such determination at Texpo's sole discretion. Such termination may be enforced after the notices outlined above in this Section 3.1(A) and in the "Disconnection of Service" section

of the Your Rights as a Customer disclosure (“YRAC”) that you have been issued.

(B) Payments Due for Early Termination in Breach: Texpo’s Fixed Rate Plan applies for the fixed Term specified in your RSA (or on your Web Enrollment or during your VTE). If you enrolled in Texpo’s Business Partners Fixed Rate Plan, after three days from the date on which this Agreement is executed, your payment of damages to Texpo for termination of this Agreement in violation of this Agreement (or for any termination resulting from your breach of this Agreement) shall be equal to the total price of electricity paid by you hereunder in cents per kWh multiplied by your highest monthly kWhs usage (as may be reasonably forecasted by Texpo in any given month) and by the remaining months in the Term, not to exceed three (3) months if your remaining Term is 12 months or less, and not to exceed six (6) months if your remaining Term is 13 months or more; provided, however, that such early termination fee shall not be less than \$300.00. Texpo’s No Long Term Commitment Savings Plan is provided on a month-to-month basis until terminated either by Texpo or you upon no less than 30 days prior written notice to the other party. Please see Section 14.5 below for Texpo’s address to which to send such notices.

(C) Survival of Charges and Other Fees: Notwithstanding any other provision to the contrary, regardless of the reason for this Agreement’s termination, until paid in full, you will continue to remain liable for (a) all energy services obtained up through the time at which Texpo no longer serves your meter(s), and (b) payment of all other fees and charges permitted hereunder. If you fail to make any payments due under this Agreement, and if this Agreement is placed in an attorney’s hands for collection, you agree to pay such reasonable attorney’s fees and court costs as may be incurred or awarded by any court or other dispute resolution forum, as applicable. Texpo’s termination of this Agreement shall be in addition to any and all other remedies available in this Agreement or under applicable rule, law or equity.

4.1. Credit and Deposits Required. Texpo may check your credit and require a deposit subject to applicable law and rules, in which you grant Texpo a first priority security interest to secure your payment of all amounts due hereunder. The total of your deposit may not exceed an amount equivalent to the greater of (i) the sum of the estimated billings for the two highest months (as may be reasonably forecasted by Texpo); (ii) one-fifth of the estimated annual billing; or (iii) the amount permitted by the Customer Rules (<http://www.puc.state.tx.us/rules/subrules/electric>.) Texpo reserves the right to refuse service if your credit is not acceptable to Texpo. Any deposit required from you hereunder shall be paid within 10 days notice. If you become unable to pay your debts when they are due, Texpo may require a deposit payment within only 10 business days notice, or Texpo may immediately terminate this Agreement.

You will earn a rate of interest at the rate established by law (0.34% per year as of December 2009 or as the rate may be adjusted by the PUCT as posted in the most recent December PUCT News Release found at <http://www.puc.state.tx.us/nrelease/index.cfm>) on any deposit retained by Texpo for longer than 30 days. Accrued interest will be applied to your account annually. Upon termination of your Agreement, Texpo will apply any deposit plus accrued interest against your outstanding balance on your final bill, and Texpo will then bill you for the remaining balance. If there is a credit, Texpo will refund the balance directly to you. If you make timely payments to Texpo during 24 consecutive months of billings then, to the extent required by law, Texpo will refund or apply any deposit plus accrued interest against your bill.

Your initial deposit requested during enrollment was based on our estimations and the usage and demand information that you provided during enrollment. Upon obtaining your more complete usage and demand history, if Texpo determines in its sole discretion that you inserted

inaccurate figures, or if the figures you inserted do not accurately reflect your historical, actual or projected usage and demand patterns, then Texpo, in Texpo’s sole discretion, shall have the right to reject your enrollment application or adjust your initially requested deposit upwards or downwards to reflect your historical, actual and projected usage profile, usage and demand; and if such an additional deposit is so required, then you will not become a customer of Texpo until you pay such additional deposit. See the YRAC that applies to this Agreement for more information on Texpo’s deposit policies.

If you fail to make any payments due under your Agreement: (i) you agree to pay a collections processing fee of \$20.00 if your indebtedness is referred to Texpo’s internal collections group; and (ii) in addition, you agree to pay reasonable fees and expenses (including attorney fees) incurred by Texpo in the collection of such indebtedness. Without limitation, if your indebtedness is placed with an attorney or collection agent for collection, or suit is brought on same, or the same is collected through probate, bankruptcy or other judicial proceedings, then you also agree to reimburse Texpo for its collection expenses in an amount equal to between 25% and 40% of the total amount due and unpaid to Texpo.

5.1. Billing, Due Date, Late Fees and Penalties.

(A) Due Date and Late Fee: You will receive a bill from Texpo monthly. All bills are due and payable when rendered and past due if not paid within 16 days from the date of issuance (the “Past Due Date”). A bill is considered issued on the later of the issuance date stated on the bill, or the envelope’s postmark date.

You may elect to authorize monthly payments of your invoices via automatic recurring payments to help ease in the administration of your business, to help the environment, and eliminate potential late fees from your budget. If you have elected to authorize monthly payment of your invoices via automatic recurring (i) withdrawals from your checking or savings accounts, or (ii) charges to your credit card, then Texpo may debit your bank account (or charge your credit card) 3 days after the date of the invoice’s issuance, and you irrevocably waive any right to have more time to pay your invoice upon successful completion of the automatic payment form.

For any method of payment including checks, bank drafts or debit/credit card transactions, you will incur a \$75.00 insufficient funds fee per transaction for any transaction not processed due to insufficient funds or credit availability. A one time service charge of \$3.50 will be charged for additional copies (including email and electronic copies) of your bill, duplicate bills, credit reference letters, and disconnect notices. If you fail to pay the full amount of any invoice by its Past Due Date, you shall pay Texpo late charges (“Late Charges”) in the amount of the sum of (1) a fee equal to 5% on the unpaid balance; plus (2) interest on the unpaid balance that shall accrue on each calendar day from the Past Due Date at a rate equal to 1.5% a month or the highest rate allowed by law, whichever is less. This interest shall be compounded monthly.

(B) Payment Programs: Please call us if you would like to obtain additional information about whether you qualify for any of our payment plans such as our automated bank draft arrangements.

(C) Level/Balanced Billing: Texpo hereby offers you a level or average payment plan, referred to as “Balanced Billing” (unless you are currently delinquent in payment). Upon requesting the Balanced Billing plan, Texpo may require up to twelve (12) months historical usage at your property or premises. Your Balanced Billing plan amount will be calculated based upon your historical usage, to the extent available, or a forward projection of annual usage. The resulting amount is your fixed payment for the next 12 months. Your budget amount will be recalculated at least annually. However, review of under or over-collection can occur at any time. Texpo will collect from you any under-recovered amounts or refund to you any over-collected amounts annually, or upon termination of your service.

Texpo may initiate our normal collection activity if you fail to make a timely payment according to this plan. Call your account representative for details.

(D) Other Payment Plans: Texpo hereby offers you a deferred payment plan if (i) a bill becomes due during an extreme weather emergency pursuant to Section 25.483(i) of the Customer Rules (<http://www.puc.state.tx.us/rules/subrules/electric>), (ii) you are invoiced for services for which you were previously under-billed (if your charges are found to be lower than authorized by this Agreement, or if you have not been billed for service), or (iii) as otherwise required by the Customer Rules (<http://www.puc.state.tx.us/rules/subrules/electric>). Texpo must confirm any such plan in writing, a copy of which you may request. You may also be eligible upon the occurrence of certain other events. Please call your account representative and see your YRAC for more information.

(E) Acknowledgement of Delivery Charges: By entering into this agreement, you hereby acknowledge and agree that Delivery Charges as defined above in Section 2.3(A)(I) will appear on your invoice under a section entitled "Utility Charges."

6.1. Nondiscrimination. Texpo proudly discloses that it does not discriminate, deny service, or require a prepayment or deposit of service 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 in an economically distressed geographic area, or qualification for low income or energy efficiency services. Additionally, Texpo does not use credit scores, credit history, or utility payment history as the basis for determining price for electricity customers.

7.1. Disputes, Complaints, and Partial Payments. Please contact us toll-free if you have comments, questions, complaints or billing questions. Texpo's friendly, knowledgeable representatives are trained to research and resolve your customer inquiries. Texpo will work hard to make sure your problem is handled and you are pleased with Texpo's service. Please see the applicable YRAC at www.texpoenergy.com for more information on disputes.

Each party agrees that it has a duty to mitigate damages that may result out of the other party's performance or non-performance of this Agreement. *You agree that you will irrevocably waive all disputes relating to invoices and charges unless they are presented to Texpo in writing within 60 days after the date of your invoice (or deposit-request) to be disputed.* Texpo's acceptance of any partial payment from you will not relieve you of your obligation to pay the full amount owed by you, and all purported settlements must be expressly approved by Texpo in writing.

8.1. Disconnection of Service. WE MAY DISCONNECT YOUR ELECTRICITY SERVICE IF YOU DO NOT PAY YOUR INVOICES OR DEPOSITS IN FULL BY THE DESIGNATED DUE DATE, but we will provide you with at least 10 calendar days prior notice of our intent to do so. Service may also be disconnected as permitted by the Customer Rules (available at: <http://www.puc.state.tx.us/rules/subrules/electric>) (during emergencies, for instance). Please see the applicable YRAC for more information about disconnection(s). Texpo may charge a fee of \$20.00 per meter for each disconnect request sent to the TDSP in addition to any disconnect fees charged by the TDSP.

Texpo reserves the right to include (in any subsequent bill) adjustments to previous billings, previous billing errors, meter read errors, miscalculation of taxes and other errors, except as limited by the Customer Rules (<http://www.puc.state.tx.us/rules/subrules/electric>). Disconnection of your electric service and/or termination of your Agreement will not excuse you from paying any outstanding amounts owed to Texpo and are in addition to all other remedies available under your Agreement and by law. If you satisfactorily correct the reason for disconnection, you may be permitted to reinstate electric service with Texpo and will be charged a \$20.00 reconnect fee per meter by Texpo in addition to any reconnect fees

charged by the TDSP. You may also choose to sign up for our "Paperless Billing" program to help do your part for the environment. Call Texpo for details, or go online to www.texpoenergy.com for more information.

9.1. Force Majeure. Texpo will endeavor to provide service in a commercially reasonable manner, but REPs do not guarantee a continuous supply of electricity. Events outside Texpo's control, called "force majeure" events, may result in interruptions in service, for which Texpo will not be liable. REPs do not generate your electricity, nor do REPs transport it from the generation point to you. Therefore, notwithstanding any representation or any other provision in any Terms of Service or document to the contrary, you agree that Texpo is not responsible for damages or liability caused wholly or in part by *force majeure* events, which include, without limitation, acts of God, acts of any governmental authority, including the PUCT, acts of the ERCOT, accidents, strikes, labor trouble, required maintenance work, problems with or acts of the TDSPs, problems with (or acts of) suppliers, qualified scheduling entities ("QSE(s)"), unlawful or negligent actions of other REPs, delay of deregulation or changes in laws, rules, regulations, and practices or procedures of any governmental entity or ERCOT, or any other cause beyond Texpo's control. You acknowledge that Texpo does not have care, control or custody of your property or premises, or of any electrical facilities, including, but not limited to, lines, wires, or the meter, located on or next to your property or premises. You further acknowledge that you are in exclusive control (and responsible for any damages or injury caused thereby) of electricity at and from such meter.

10.1. Liability Limitations. Except as is set forth in Section 3.1B of these Terms of Service, *liabilities and obligations not excused by reason of force majeure or otherwise (including, with respect to this Agreement) shall be limited to direct actual damages only, and such direct actual damages shall be the sole and exclusive remedy regardless of the cause of action or theory of recovery. All other remedies at law or in equity are waived. Without limitation to the foregoing, neither party will be liable to the other or any other party for consequential, incidental, punitive, special, exemplary or indirect damages, including without limitation, lost profits or other business interruptions, without regard to cause. These limitations apply without regard to the cause of any liability or damage for any reason.*

There are no third party beneficiaries to this Agreement. If any provision of your Agreement is held unenforceable, the remaining provisions shall remain valid. Texpo shall have no responsibility for payment of any outstanding debts owed by you to previous suppliers of electricity, and you may not withhold payments to Texpo pending any refunds or other settlement of billing from any other REP.

11.1. Representations and Warranties. THE ELECTRICITY SOLD UNDER THIS AGREEMENT WILL BE SUPPLIED FROM A VARIETY OF GENERATING SOURCES. EXCEPT AS SET FORTH IN THIS SECTION 11.1, TEXPO MAKES NO OTHER WARRANTIES OR REPRESENTATIONS WITH REGARD TO THE PROVISION OF ELECTRICITY AND DISCLAIMS ANY AND ALL WARRANTIES, EXPRESSED, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, CONFORMITY TO MODELS OR SAMPLES, OR FITNESS FOR A PARTICULAR PURPOSE OR USE.

12.1. Assignments. Without Texpo's prior written consent, you shall not assign this Agreement, in whole or in part, or any of your rights and obligations hereunder. Texpo may, and you hereby agree and grant your express written consent permitting Texpo to, assign, sell, pledge, or transfer this Agreement or any related accounts, revenues or proceeds to: (i) any banks, investors or any other person or entity in connection with any debt or equity financing or other financial arrangement; (ii) any past, present or future affiliate of Texpo or a party who supplies (or seeks to

provide) wholesale power or QSE services to Texpo; (iii) any person or entity succeeding to all or a portion of the assets or control of Texpo; and/or (iv) a certified REP. In the case of (ii), (iii) or (iv), any such assignee shall agree in writing to be bound by the terms and conditions hereof. If you authorized the monthly payment of your invoices via automatic recurring (A) withdrawals from your checking or savings accounts, or (B) charges to your credit card, you also hereby agree and grant your consent permitting Texpo to transfer or assign such consent and authorization to any assignee under any assignment permitted under this paragraph. Upon any such assignment, Texpo shall have no further obligations to you. In the case of (i-iv), you also hereby forever and irrevocably waive all present and future claims arising out of (or related to) the theory that you have been slammed (or switched to another REP) in an unauthorized or prohibited manner.

13.1. Title and Risk of Loss. You acknowledge that Texpo does not have care, control or custody of your property or premises, or of any electrical facilities, including, but not limited to, lines, wires, or the meter, located on or near your property or premises. You shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of the electricity at and after receipt at the meter(s). Title to electricity and risk of loss and liability related to electricity shall transfer from Texpo to you at such meter(s).

14.1. Governing Law. THIS AGREEMENT WAS EXECUTED IN TEXAS AND SHALL IN ALL RESPECTS BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO PRINCIPALS OF CONFLICTS OF LAWS. VENUE SHALL BE IN HARRIS COUNTY, TEXAS. The provisions of the Uniform Commercial Code ("UCC") shall apply to your Agreement, and electricity shall be a "good" for purposes of the UCC (<http://www.law.cornell.edu/ucc/ucc.table.html>).

14.2. Change of Law. If there is a change in law, or if the PUCT, ERCOT, or other state or federal agency adopts any regulation, rule, tariff, protocol, or law, or when a nodal market design is implemented in your service area, and such changes, adoption, and/or implantation result in a fee or other charge (or an increase in a fee, cost or charge) that modifies the cost of delivering or providing electricity or capacity to you, then to the fullest extent permitted by law, Texpo may adjust your price or any component of the price and/or fees charged under your Agreement, whether up or down, *only* to the extent necessary to reimburse and cover Texpo for such change in the costs of providing or delivering electricity and/or capacity to you, and you agree to pay the resulting adjusted price(s) and/or fee(s). You also agree that any action taken under this Change of Law section will not be deemed a material change to your Terms of Service under Section 14.4 below.

14.3. Additional Rights. In addition to Texpo's rights and privileges set forth in this Agreement, Texpo has rights and privileges granted by applicable law, including without limitation the Customer Rules (<http://www.puc.state.tx.us/rules/subrules/electric>); accordingly, notwithstanding any provision herein to the contrary, failure to set forth any of our rights and privileges granted by any Customer Rules (<http://www.puc.state.tx.us/rules/subrules/electric>) or other applicable law shall not be construed as any sort of waiver of such.

14.4. Changes to Agreement. Any changes to your terms referenced in this Section will not include changes to your fixed price, which shall remain fixed throughout the entire Term except in the event of re-regulation or another type of "change in law" occurs, as is further described above. Texpo will provide you with 14 calendar days advance written notice of any adverse change to this Agreement (which will not include a change to your fixed price), either in your bill or in a separate mailing. The changes will take effect on the date stated in the notice unless you cancel your Agreement. If you find the new terms unacceptable, so long as you elect to

terminate your Agreement within fourteen calendar days from when Texpo's notice of the change in your Agreement was sent to you, you may terminate with no penalty. This provision does not apply to, and notice is not required to be given for, changes that benefit you or that are mandated by a regulatory agency or to any other provision in this Agreement that does not require Texpo to give notice. Nor does this provision apply to (and nor is notice required for) any adjustments to your fixed price to account for any PUCT-approved increases (if any) in the amount of Delivery Charges. If you enrolled in Texpo's No Long Term Commitment Savings Plan, any change in price is not deemed a change to your Agreement.

14.5. Miscellaneous. This Agreement (together with your EFL, RSA and any Exhibits) sets forth all understandings between you and Texpo, and any prior or contemporaneous representations, understandings, price quotes, and inducements are fully merged into and superseded by this Agreement. The terms of this Agreement shall survive any termination or expiration of this Agreement at least until all of such meters are either switched from Texpo or disconnected. All terms of the Agreement which must, in order to give full force and effect to the parties' rights and obligations, survive the termination or expiration of this Agreement, shall so survive, including without limitation your payment obligations. No waiver by any party of any default by the other in the performance of any of this Agreement's terms will be construed as a waiver of any other default. Any changes to the Agreement must be set forth in a signed writing. All notices or consents required hereunder must be in writing (including fax) and sent to Texpo, Attn: Commercial Division, 5773 Woodway Drive, # 311, Houston, Texas 77057 (fax: 713.358.8508). If any provision of this Agreement is held to be invalid by a court or a regulatory body, such provision shall be construed, as nearly as possible, to reflect the parties' intentions with the other provisions remaining in full force and effect.

14.6. Forward Contract. You and Texpo acknowledge and agree that the transactions contemplated by this Agreement constitute "forward contracts" within the meaning of the United States Bankruptcy Code.

14.7. Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, Texpo and your respective successors and permitted assigns.

14.8. Confidentiality. You may not disclose this Agreement's price, terms, or provisions to any third parties except as required by law.

14.9. Terms of Service Subject to Change Upon Information Verification. This Agreement is intended solely for small commercial customers with demand of less than 50KW. If it is determined that your demand is greater than or equal to 50KW, at Texpo's sole discretion, Texpo may upon ten days prior notice require you to sign a new and different form of contract for large commercial customers before accepting you as a customer or continuing to serve as your REP.

14.10. Facts Label and Your Rights as a Customer Disclosure. For more important information and details regarding the disclosures and terms herein, please see your EFL and the YRAC disclosure, available at www.texpoenergy.com. Please ensure you refer to the applicable document: the applicable YRAC and EFL each denote the entitled plan "Business Partners Fixed Rate Plan for Texas Businesses with Peak Demand of Less than 50KW" or "No Long Term Commitment Savings Plan for Texas Businesses with Peak Demand of Less than 50KW."

14.11. Pricing After Term's End and Automatic Continuance. After the expiration of this Agreement's Term, unless you have elected to disconnect or switch your electricity service to a new REP, Texpo may continue to provide electricity service to you, in which case your service will continue automatically on a monthly basis during which time (i) you or Texpo may cancel the Agreement upon 30 days advanced written notice, and (ii) Texpo's monthly default pricing will apply, which pricing will vary

from month to month based on the costs of procuring or producing electricity as would be specified in the Default EFL attached to your Contract Expiration and Renewal Notice (“Expiration Notice”). During this period after the Term’s expiration, pricing will vary from month to month without prior notice, and changes to such pricing will not be subject to the provisions of Section 14.4 above. Additionally, default rates may be higher or lower than the variable rate(s) shown in the EFL for Texpo’s No Long Term Commitment Savings Plan for Texas Businesses with Peak Demand of Less than 50KW. Texpo will send you an Expiration Notice at least fourteen days prior to the end of your Term.

14.12. Usage Profiles. Upon obtaining your more complete usage and demand history, if Texpo determines in its sole discretion that you misrepresented your usage history, demand profile, or forecasted usage and profiles when enrolling or applying for service, or if the figures you inserted do not otherwise accurately reflect your historical, actual or projected usage and demand patterns for any other reason, then Texpo, in Texpo’s sole discretion, shall have the right to reject your enrollment application or, upon at least 10 days prior notice, adjust your price upwards or downwards to reflect your actual historical and projected usage patterns. If you object to any such adjustments to pricing, you will have the right to terminate this Agreement upon 10 days prior notice to Texpo. Please see your RSA for Texpo’s contact information and other pertinent information.

14.13. Non-Recurring Fee Schedule of the TDSPs. The table below itemizes the standard non-recurring fees as charged by your TDSP for standard, non-demand meters, as of May 18, 2010. These fees are passed through to you at no mark-up and are the same no matter what REP you choose. The following abbreviations and corresponding definitions are used for the one-time fees in the table below: MVI – Move In; Install - New Meter Installation; PMVI – Priority Move-In (less than 24-48 hrs of notice on average, please contact a Texpo representative about your exact moving date); Reread – TDSP makes a meter reading to verify usage by request; Self Selected Switch – TDSP makes your switch outside of their normal meter reading schedule; DNP – Disconnection Fee; RNP – Reconnection Fee; PRNP – Priority Reconnection Fee (in addition to the standard RNP fee, if the Reconnection is needed in less than 24 hours);

W/E RNP – Weekend Reconnection Fee (also in addition to the standard RNP fee, when RNP is needed on a weekend); Meter Test (4 yrs) – TDSPs allow for one free meter test every four years (specific to the ESIID), and any additional meter tests would subject the owner of the ESIID at that time to pay the fee; Svc Calls (Bus Hrs) – service call by a TDSP employee to your premises to investigate an outage or other service problem that, upon investigation, is determined not to be a problem with TDSP equipment. We intend that all non-recurring fees will be disclosed prior to submitting any transactions that would generate such non-recurring fees. Please call for additional information if your premises has a CT Meter (See Non-Recurring Fee Schedule – Attachment A).

BEFORE SIGNING UP, PLEASE REVIEW AND RETAIN FOR YOUR RECORDS A COPY OF THE REP SWITCH AUTHORIZATION, THESE TERMS OF SERVICE, THE ELECTRICITY FACTS LABEL, AND THE “YOUR RIGHTS AS A CUSTOMER” DISCLOSURE. TEXPO WILL SEND YOU AN ADDITIONAL COPY BY MAIL UPON REQUEST. No changes or edits to your Agreement will be valid unless duly approved in a signed writing by Texpo.

IF YOU ARE SWITCHING TO TEXPO FROM ANOTHER REP, YOU HAVE THE RIGHT TO RESCIND THIS AGREEMENT FOR A PERIOD OF THREE FEDERAL BUSINESS DAYS AFTER YOU HAVE SIGNED THE “REP SWITCH AUTHORIZATION” AND RECEIVED THESE TERMS OF SERVICE. To rescind the Agreement within the three business day period, please call our toll-free number listed in Section 2 of the RSA, and provide the information requested by our service representative, or you may send an e-mail to customer.care@texpoenergy.com, or a fax to 713.358.8508. Please be sure to include your name, phone number, service address, and account number (if applicable) in any request. Please see your RSA or go to www.texpoenergy.com for Texpo’s contact information and other pertinent information.

ATTACHMENT A

Non-Recurring Fee Schedule (for each TDSP)

TDSP	CenterPoint	Oncor	AEP-Central	AEP-North	TNMP	Sharyland
MVI	\$16.00	\$ 8.55	\$ 37.00	\$ 42.00	\$ 53.94	\$21.00
Install	\$92.00	\$16.70	\$ 47.00	\$ 51.00	\$ 61.56	\$21.00
PMVI	\$42.00	\$17.10	\$ 54.00	\$ 61.00	\$ 68.93	\$51.00
Reread	\$ 6.00	\$ 5.00	\$ 17.00	\$ 17.00	\$ 26.96	\$ 7.00
Self Selected Switch	\$ 6.00	\$ 5.00	\$ 16.00	\$ 16.00	\$ 26.96	\$ 7.00
DNP	\$ 9.00	\$ 7.35	\$ 20.00	\$ 21.00	\$ 27.50	\$21.00
RNP	\$10.00	\$ 8.50	\$ 20.00	\$ 11.00	\$ 27.50	\$21.00
PRNP	\$35.00	\$12.05	\$ 38.00	\$ 39.00	\$ 42.50	\$21.00
W/E RNP	\$35.00	\$69.90	\$ 48.00	\$ 53.00	\$145.87	\$51.00
Meter Test (4 yrs)	\$45.00	\$33.60	\$111.00	\$112.00	\$125.99	\$18.00
Svc Call (Bus Hrs)	\$45.00	None	\$ 70.00	\$ 72.00	\$ 65.00	\$61.00
