

HORIZON POWER AND LIGHT LLC SMALL COMMERCIAL FIXED RATE PRODUCT Terms of Service

These Terms of Service ("TOS"), along with Business Authorization, and any documentation of your enrollment authorization collectively constitute the Agreement ("Agreement") set forth the terms and conditions under which a commercial customer ("Customer," "you" or "your") will receive electric service, from Horizon Power and Light LLC or ("we", "our" and "us") a certified Retail Electric Provider (REP). By entering into this Agreement, Customer hereby: 1) appoints us to arrange for purchase and delivery of electricity (including volume balancing and billing) from any source on Customer's behalf for the period of time defined in this Agreement; and 2) Customer hereby requests that all electric service associated with Customer's name and/or address(es) or electric service identifiers ("ESIDs") be transferred to us under the terms and conditions of this Agreement. Horizon Power and Light and Customer may be referred to herein individually as a "Party" or together as "Parties." Please retain the Contract Documents for your records. A copy of the Contract Documents are available to Customer upon written request.

Customer Information: By entering into this Agreement, Customer authorizes its local Transmission and Distribution Utility ("TDU") to release to us any information that is necessary or required to become the Retail electric provider for Customer, including, but not limited to: Customer's address, account numbers, and historical usage information.

- 1. Term & Renewal:** This Agreement shall commence on the date of the initial meter reading by the applicable TDU and continue for the period indicated in your Authorization ("Initial Term"). Customer acknowledges that we cannot guarantee a switch of Customer's account to us by a specific date and hereby holds harmless Horizon Power and Light LLC from any liability for, or arising out of, delays in this process. For term products (non-month to month products), a contract expiration notice will be sent at least thirty (30) days prior to the end of the Initial Term. If you fail to renew your agreement with us, your service will automatically continue on a month-to-month basis after the expiration of your Initial Term on a default renewal product, which is a variable price product whose price will be determined by current market conditions at the sole discretion of Horizon Power and Light until cancelled by either you or Horizon Power and Light.
- 2. Product Types: Fixed Rate Products:** Fixed Rate Products have a term of at least (three) 3 months. The price of a fixed rate product may only change during your Initial Term to reflect actual changes in TDSP charges, changes in state or independent service organization (ISO's) administrative fees charged to loads, or changes resulting from federal, state or local laws that impose new or modified fees or costs on us that are beyond our control. Price changes resulting from these limited circumstances do not require us to provide you with advanced notice.
- 3. Material Changes:** WE will provide Customer with at least thirty five (35) calendar days advance written notice of any Material Change in this Agreement, either in Customer's bill or in a separate mailing. The changes will become effective on the date stated in the written notice. Customer may cancel this Agreement before the effective date of the Material Change, as identified in the advance written notice provided to Customer, without any Early Termination Fee. A Material change is not a change in price due to end of term of initial contract.
- 4. Early Terminations:** In the event that we, or our activities hereunder, becomes subject to regulations of any kind whatsoever under any law, government body action or ISO action that has the effect of materially changing the circumstances from those that exist on the effective date of this Agreement then we may pass through the economic effects to Customer of such change or we may unilaterally terminate this Agreement without Customer's consent upon at least thirty (30) calendar days written notice to Customer without any obligation, payment or otherwise, to Customer or an Early Termination Fee.
- 5. Early Termination Fee:** If Customer terminates this Agreement or defaults as described in Section 12 and/or 13 of this Agreement, then, unless otherwise provided herein, an Early Termination Fee shall be immediately due and paid by Customer to us. If you cancel this Agreement for any other reason before the end of the initial term you will be assessed an Early Termination Fee ("ETF") that is equal to three (3) highest months billing in a 12 month period. If the 12 month usage is not available then the usage will be based on the three (3) highest months in the historical period available. The ETF is equal to 3 times the sum of the Energy Charge, Demand Charge if applicable, Base Charge if applicable, and TDSP Pass-Through charges on the invoice prior to the final invoice.
- 6. Right of Rescission:** For switch requests, Customer has the right to rescind Customer's request for Horizon Power and Light to become its REP without any Early Termination Fee within three (3) federal business days of the applicant's receipt of the TOS. To rescind this Agreement, Customer shall give notice to us in writing via regular mail at 800 Bering Drive Suite 250 Houston, Texas 77057 or by email at sales@hplco.com or by facsimile at 1 (866) 651-5534 or by calling 1 (866) 727-5658. Rescission requests received after three (3) federal business days are not guaranteed rescissions; however Customer has the

right to select another REP and Customer may do so by contacting that REP, but Customer remains responsible for any Early Termination Fees. Regardless of the method or reason for termination or cancellation of this Agreement, Customer is responsible for the payment of any and all services provided to Customer before or after the termination or cancellation of this Agreement. If Customer requests that the TDU read its meter before the normal meter read date Customer may be charged a fee as set by the respective TDU.

- 7. Invoicing, Payment, Interest, and Credit Requirements:** You will receive a single bill from your local utility for its charges, as well as Horizon Power and Light's. Your local utility will set your payment due date and inform you of the payment billing address. Your bill is subject to adjustment for any computation errors, meter misreads or other errors. Horizon Power and Light reserves the right to assume the billing function for our services. Our charges include the costs for the electricity component, which is sold in kilowatt hours (kWh), and any fixed monthly charge for costs incurred in servicing your account as specified in your Business Authorization. Bills not paid in full by the due date will incur a late-payment fee at an interest rate of 1.5% per month on unpaid balances or otherwise in accordance with your local utility's policies and procedures. Horizon Power and Light and your local utility are each responsible for collecting any past-due amount owed on their respective bills. If you fail to pay a past-due amount owed to Horizon Power and Light, we may transfer your electric service back to the utility. We may perform a credit check prior to enrollment, and based on its results Horizon Power and Light may request a security deposit or elect not to enroll you as a customer and provide you notice of such action. If you do not pay your bill on time, we may cancel this agreement for non-payment immediately. If we cancel your service for non-payment, you must pay the balance owed plus any collection fees plus any applicable liquidated charges stated in the Business Authorization.

If the account is referred to a collection company, we reserve the right to bill Customer a fee not to exceed thirty-three percent (33%) of the amount being collected. If the account is referred for legal actions, any and all attorney fees and court costs will be billed to the Customer. Customer shall be responsible for any and all fees associated with or incurred by us in collecting any amounts owed to us, including, but not limited, to attorneys' fees, court costs and any fees charged by a collection agency.

- 8. Additional Charges & Fees:** We will charge: 1) a \$30 fee for any returned check, electronic fund transfer or credit card transaction not processed due to insufficient funds or credit availability; 2) a \$20 disconnection fee for processing an electric service disconnection transaction; 3) a \$20 reconnection fee in the event that we processes a reconnection transaction on your account, (such fees are in addition to any disconnect/reconnect fees that may be assessed by your TDU, and are assessed regardless of whether or not your electric service is actually disconnected by the TDU if the transaction orders are sent); and 4) any charges or fees that the TDU charges us including but not limited to fees to initiate or switch service, transport and distribute electricity to your service location, read your meter, and terminate or restore service. These charges are passed on to you by us, along with certain charges and fees assessed by the ISO.

- 9. Customer Acknowledgements:** Customer acknowledges that the TDU is solely responsible for reading Customer's meter or recorded data, as applicable, and that we cannot and do not read a Customer's meter or recorded data, but are bound by the readings and data provided by the TDU.

- 10. Credit Requirements & Deposit:** We may investigate the Customer's credit history at any time. We may refuse electric service at any time to anyone who does not meet our credit standards or if Customer cannot pay the requisite initial deposit or demonstrate satisfactory credit.

Deposits: If Customer fails to demonstrate satisfactory credit, as determined in the sole discretion of Horizon Power and Light, then Customer may be required to pay an initial deposit prior to service being provided, if at all. Such deposit shall not exceed an amount equal to the greater of one-fifth of the Customer's estimated annual billing or; the sum of the Customer's estimated billings for the next 2 (two) months. Deposits may be waived or refunded with a valid letter of credit for electric services received at the address and account name supplied on this application. Deposits held more than thirty (30) days will accrue interest from the date of receipt at the annual rate established by the Public utility commission. Accrued interest will be applied annually to Customer's account. Upon termination of service or after twelve (12) consecutive months of service with no late payments of any kind, We will apply the deposit plus accrued interest, if any, against Customer's account or outstanding balance on Customer's final bill. Any credit balance remaining on an inactive account after the final bill will be refunded in the form of a company check and will be mailed within thirty (30) calendar days.

We will not require an initial deposit from an existing customer unless the customer was late paying a bill more than once during the last 12 months of service or had service disconnected for nonpayment during the last 12 months of service. You may be required to pay this initial deposit within ten days after the issuance of a written disconnection notice that requests such deposit. We may request an additional deposit from an existing customer if the average of the customer's actual billings for the last 12 months are at least twice the amount of the

original average of the estimated billings and a disconnection notice has been issued (or the account disconnected) within the previous 12 months. We may require that you pay this additional deposit within 10 days of the request for such deposit.

11. Default and Disconnection: A Default means:

- a. Failure of Customer to pay any amounts due under this Agreement within the time strictly provided herein; or
- b. Failure of Customer to perform any material term of this Agreement; or
- c. Determination that any representation upon which this Agreement is based is false; or
- d. Immediately after Customer files for or is otherwise placed in bankruptcy; or
- e. Determination by the TDU that any tampering has occurred at the Customer's meters.

Default of this Agreement, including without limitation, non-payment of Customer's bill may result in an order for the TDU to disconnect the Customer's electric service at the Customer's meters; and the termination of this Agreement at the sole discretion of us.

12. Remedies upon Default: If Customer defaults then, in addition to any rights and/or remedies available to us in this Agreement, in law or in equity, we may unilaterally terminate this Agreement and issue a "move out" transaction, and Customer shall be subject to and responsible for payment of any applicable Early Termination Fee. Thereafter, we may calculate all amounts due under this Agreement and Customer shall pay those amounts within five (5) calendar days from the date of invoice. Customer shall be liable for payment of any and all fees related to and/or arising out of Customer's default, including without limitation, attorneys' fees, court costs, collection fees, and demands for payment. If Customer defaults, then Customer may be required to reapply for electric service and pay a deposit in order to again become a Customer.

13. Representations and Warranties: As a material inducement to entering into this Agreement, Customer hereby represents and warrants to us as follows:

- a. This Agreement constitutes a legal, valid, and binding obligation of Customer, enforceable against Customer in accordance with its terms, subject to bankruptcy, insolvency, reorganization, and other laws affecting creditor's rights generally, and with regard to equitable remedies, subject to the discretion of the court before which proceedings to obtain same may be pending; and
- b. Customer has knowledge, understanding and experience that enable Customer to evaluate the merits and risks of entering into this Agreement;

14. Forward Contract: Horizon Power and Light and Customer acknowledge and agree that the transactions contemplated by this Agreement constitute "forward contracts" within the meaning of the United States Bankruptcy Code, and further acknowledge and agree that Horizon Power and Light is a "forward contract merchant."

15. Assignment: Customer shall not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of Horizon Power and Light, which consent may not be unreasonably withheld. Notwithstanding the foregoing, we may, without the consent of Customer:

- a. Transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements; and
- b. Transfer or assign this Agreement to its affiliate; and
- c. Transfer or assign this Agreement to any person or entity succeeding to all or substantially all of its assets; and Customer hereby acknowledges and consents to our pledge and contingent assignment or subrogation of all rights and obligations hereunder. In the event any other provision of this Agreement shall be deemed to prohibit or otherwise restrict our assignment, subrogation or pledge of its rights hereunder, this provision shall control.

16. Binding Effect: This Agreement shall inure to the benefit of, and be binding upon, Horizon Power and Light and Customer and their respective successors and permitted assigns.

17. Force Majeure: WE shall not be liable in damages for any act or event that is beyond its control and which could not be reasonably anticipated and prevented through the use of reasonable measures, including, but not limited to, an act of God, act of the public enemy, war, terrorism, insurrection, riot, fire, explosion, labor disturbance or strike, wildlife, unavoidable accident, equipment or material shortage, breakdown or accident to machinery or equipment, or good faith compliance with a then valid curtailment, order, regulation or restriction imposed by governmental, military, or lawfully established civilian authorities, including any order or directive of the ISO.

18. Excuse: If an event occurs which makes it impossible for us to perform this Agreement, including without limitation, any of the foregoing force majeure events, then our performance under this Agreement shall be excused for the duration of such event. This could be an event affecting Customer's TDU, such as a facility outage on their electric distribution lines.

- 19. LIMITATION OF REMEDIES, LIABILITY AND DAMAGES:** Horizon Power and Light AND CUSTOMER CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF, FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNDER NO CIRCUMSTANCE SHALL HORIZON POWER AND LIGHT BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF HORIZON POWER AND LIGHT AND THE CUSTOMER THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, HORIZON POWER AND LIGHT AND CUSTOMER ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.
- 20. Dispute Resolution:** Horizon Power and Light and Customer agree in good faith to attempt to resolve any disputes within twenty-one (21) calendar days of notice of the dispute from either party. Any written communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to the attention of the "Legal Department" at 800 Bering Drive Suite 250 Houston, Texas 77057
- 21. UCC:** Except as otherwise provided for in this Agreement, the provisions of the Uniform Commercial Code ("UCC") shall govern this Agreement and Energy shall be deemed a "good" for purposes of the UCC.
- 22. Warranty Disclaimer:** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT HORIZON POWER AND LIGHT NOT MAKE AND EXPRESSLY NEGATES ANY OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATION OR WARRANTY WITH RESPECT TO CONFORMITY TO MODELS OR SAMPLES, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE.
- 23. Notices:** Notices to and from Customer shall be furnished in writing and shall be delivered by electronic mail, United States Postal Service standard mail, certified mail, overnight carrier, or hand delivery. Notice to and from Customer by hand delivery shall be deemed to be received by the close of the business day on which it was hand delivered (unless hand delivered after the close of business in which case it shall be deemed received at the close of the next business day). Notice to and from Customer by overnight mail or courier shall be deemed to have been received 2 (two) business days after it was sent. FOR PURPOSES OF PROVIDING NOTICE OF BANKRUPTCY TO HORIZON POWER AND LIGHT, SUCH NOTICE SHALL ONLY BE EFFECTIVE IF DELIVERED TO THE FOLLOWING ADDRESS: PO BOX 460485, Houston, TX 77056.
- 24. Governing Law:** THIS AGREEMENT AND THE RIGHTS AND DUTIES OF HORIZON POWER AND LIGHT AND CUSTOMER HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAW OF THE STATE OF IN WHICH THE ELECTRICITY IS PROVIDED, WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAWS.
- 25. 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 of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature.
- 26. Severability:** Except as otherwise stated herein, any provision or article declared or rendered unlawful by a court of law or regulatory agency with jurisdiction over us or Customer, or deemed unlawful because of a statutory change, will not otherwise affect the lawful obligations that arise under this Agreement.
- 27. No Third Party Beneficiaries:** Subject to the provisions above under "Assignment," nothing in this Agreement shall provide any benefit to any third party nor shall it provide any third party any claim, cause of action, remedy or right of any kind.

- 28. Discrimination:** WE do not discriminate, deny service, or require a prepayment or deposit for service based on a customer's race, creed, color, national origin, ancestry, sex, religion, 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.
- 29. Entirety of Agreement:** It is the intention of the Parties that the Agreement shall contain all terms, conditions, and protections in any way related to, or arising out of, the sale and purchase of electricity, and supersedes any and all prior such agreements between the Parties hereto, whether written or oral, as to the provision of electric service to any of Customer's meter identification number. Both Parties have agreed to the wording of the Agreement and any ambiguities therein shall not be interpreted to the detriment of either party merely by the fact that such party is the author of the Agreement.
- 30. Counterparts.** This Agreement may be executed simultaneously in multiple originals or counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument, and each of which shall be sufficient for all purposes without producing or accounting for the other counterparts hereof.
- 31. No Oral Modification or Waivers.** This Agreement shall not be modified or waived orally, but only by an instrument in writing signed by the Party against which enforcement of the modification or waiver is sought.
- 32. Own Judgment.** It is understood and agreed that the Parties hereto have carefully reviewed this this Agreement, that they fully understand its terms, that they sought and obtained, or had the opportunity to obtain, independent legal advice with respect to the negotiation and preparation of this Agreement, and that this Agreement has been negotiated and prepared by the joint efforts of the Parties.

HORIZON POWER AND LIGHT, LLC
CUSTOMER RIGHTS AND CONTACT INFORMATION

Contact Info: Horizon Power and Light, LLC
 800 Bering Drive, Suite 250
 Houston, Texas 77057
 Tel Number: 713-554-4300
 Toll Free: 1-866-727-5658
 Toll Free Fax: 1-866-651-5534

Hours of Operation: Monday-Friday 8:00 am to 5:00 pm CST