

**Electricity Facts Label (EFL)**

Stream SPE, Ltd. (d/b/a "Stream Energy") PUCT License #10104

Issue Date: March 1, 2017

**Freedom to Use – 12 Month Plan**

**TDU Service Area: Oncor**

<b>Electricity Price</b>	<b>Average Monthly Usage:</b>	<b>500 kWh</b>	<b>1,000 kWh</b>	<b>2,000 kWh</b>																
	<b>Average price per kWh:</b>	<b>10.3</b>	<b>8.8</b>	<b>8.1</b>																
<p>This average price disclosure is an example based on the following description:</p> <table border="0"> <tr> <td><b>Energy Charge:</b></td> <td>\$</td> <td>0.040</td> <td>per kWh</td> </tr> <tr> <td><b>Monthly Base Charge:</b></td> <td>\$</td> <td>9.95</td> <td></td> </tr> <tr> <td><b>Oncor kWh Charge:</b></td> <td>\$</td> <td>0.03286</td> <td>per kWh</td> </tr> <tr> <td><b>Oncor Monthly Charge:</b></td> <td>\$</td> <td>5.25</td> <td></td> </tr> </table> <p>The price you pay each month will consist of the energy charge, a minimum usage fee (if applicable), a monthly base charge, and Oncor delivery charges. Oncor delivery charges include all recurring charges from Oncor without mark-up by Stream Energy.</p> <p>This average price disclosure is an example based on sample usage levels – your average price for electricity service will depend on your usage. The average price per kWh does not include state and local sales taxes, reimbursement for the State miscellaneous gross receipts tax, or non-recurring charges such as (for illustration purposes only) special meter read/test fees, collection fees, disconnect/reconnect fees, etc.</p> <p>Some customers in certain areas may be subject to an additional Oncor charge such as an underground service charge that is not included in the Average Price above. You may contact Stream Energy for additional information.</p>					<b>Energy Charge:</b>	\$	0.040	per kWh	<b>Monthly Base Charge:</b>	\$	9.95		<b>Oncor kWh Charge:</b>	\$	0.03286	per kWh	<b>Oncor Monthly Charge:</b>	\$	5.25	
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<b>Other Key Terms and Questions</b>	See Terms of Service document for a full listing of fees, deposit policy, and other important terms.
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<b>Disclosure Chart</b>	Type of Product	Fixed Rate
	Contract Term	12-Month
	Do I have a termination fee or any fee associated with terminating service?	Yes, \$250 (See Terms of Service.)
	Can my price change during contract period?	Yes
	If my price can change, how will it change and by how much?	Only changes that are outside Stream Energy's control such as TDSP charges, changes to the ERCOT or Texas Regional Entity administrative fees charged to loads, or changes resulting from federal, state or local laws that impose new or modified fees will be reflected.
	What other fees may I be charged?	See TOS Paragraphs 3,7,10,11,23 and 24.
	Is this a pre-pay or pay in advance product?	No
	Does Stream Energy purchase excess distributed renewable generation?	No
	Renewable Content	This product is 12.1% renewable.
	The statewide average for renewable content is:	The statewide average for renewable content is 12.1%.

P.O. Box 192746, Dallas, TX 75219, [www.mystream.com](http://www.mystream.com), [customerservice@streamenergy.net](mailto:customerservice@streamenergy.net)

Toll-free: 1-866-447-8732 (7 a.m. to 10 p.m. CT, Mon-Fri; 8 a.m. to 5 p.m. CT, Saturday)

**Freedom to Use – 12 Month Plan**

**Version: 12Free\_030117\_ONCOR**

**Stream SPE, Ltd. d/b/a "Stream" REP License #10104**  
**Terms of Service (TOS) Agreement (the "Agreement") for Residential Electric Service Version 72.0**

This document sets forth the terms and conditions that apply to your purchase of electricity from Stream for residential electric services. Your contract with Stream includes this Terms of Service, your enrollment authorization in writing, by telephone or internet, the Electricity Facts Label (EFL) and the "Your Rights as a Customer" disclosure document, as each may be amended from time to time. The terms "includes" or "including" shall mean "including without limitation." For purposes of this agreement, the term "Customer" shall mean the person whose name appears on the bill for service under this Agreement, or that person's spouse, or an authorized agent thereof.

**1. Contact Information. Stream:**

By Phone: Toll Free: 1-866-44-STREAM (78732) between 7 a.m. to 10 p.m. Monday to Friday, and 8 a.m. to 5 p.m. Saturday and Sunday, CT, excluding holidays

By Email: [customerservice@streamenergy.net](mailto:customerservice@streamenergy.net) (must indicate Account Number or ESI ID Number in subject line)

Website: [www.mystream.com](http://www.mystream.com)

For certified mail or any other notices requiring signature, only the following address shall apply: **1950 N. Stemmons Freeway, Suite 3000, Dallas, Texas 75207**. For informal notices to Stream, the following mailing address shall apply: **Stream, Attn: Retail Operations, P.O. Box 192746, Dallas, Texas 75219**. The Customer's contact information is provided by customer at the time of enrollment. It is Customer's sole responsibility at all times to provide to Stream --at the address listed in this paragraph--with a valid mailing address to receive invoice(s) and notices under this Agreement and as required by any applicable state or federal law. References to the full text of laws of the Public Utility Commission of Texas (PUCT) referenced in this Agreement are as those provisions exist at the time of this TOS, and may be found by Customer at <http://puc.state.tx.us/rules/subrules/electric/index.cfm>.

Customer has the right to provide Stream or its affiliates with customer's electronic contact information (e.g. cell number and/or email, etc.) to additionally receive notices, electronic communications, text messages, emails (including mass communication emails) at Customer's discretion. By providing said contact information, Customer agrees to accept notices and communications electronically.

**2. Purchase of Electric Service from Stream and Term.** Customer agrees to purchase electric service from Stream for the ESI ID(s) and Service Address(es) identified by Customer during enrollment. The Product Type (i.e., Fixed vs. Variable), and the term (i.e., length of the contract), shall be the type and term that was selected by Customer during enrollment. Following submission of a complete request for enrollment to Stream, Customer may be required to post a deposit, supply additional information, or complete a verification (or other confirmation) of intent to enroll before the Customer can be switched to Stream for service. In the event Customer fails to timely supply a deposit, additional information, or complete verification/confirmation on or before ten (10) days of the date of such request, Stream reserves the right to refuse to honor the terms of this Agreement, including pricing. Further, if Customer is completing a New Service (a/k/a Move-In) enrollment and fails to provide a deposit on or before ten (10) days after the date of such request for the deposit, Customer may additionally be subject to disconnection of electric service and all fees or charges associated with disconnection and reconnection of service thereafter, including any costs for collections as set forth herein.

In addition to other lawful reasons allowed by PUCT regulations to deny service, in the event there is a change in the terms of this agreement (including pricing) between the time that Customer requests enrollment for service and the time that Stream completes its internal processes to begin the initiation of service to Stream with the Transmission Distribution Utility (TDU) and/or Electric Reliability Council of Texas (ERCOT), Stream reserves the right to deny service under this Agreement.

**3. Moving/Relocation.** In the event that Customer moves from the Service Address(es) identified during enrollment, or no longer wishes to receive service in Customer's name (e.g., because of a new occupant) at said Service Address(es), Customer agrees to complete a Customer Account Transfer (CAT) form supplied by Stream to notify Stream in writing via U.S. mail at the mailing address set forth in Section 1. Customer agrees that failure to provide adequate notification to Stream in accordance with this paragraph will result in the Customer remaining liable for any and all charges related to electric service delivered to the Service Address(es). In addition, Customer agrees that Stream does not have control over, and shall not be responsible for, any delay, failure or inability by the TDU, ERCOT, or any other entity that is responsible for performing actions necessary to discontinue service in Customer's name. In such an instance, Customer agrees to remain responsible for all charges that accumulate until the TDU, ERCOT or other entity can perform actions necessary to discontinue service in Customer's name. Customer shall not resell electricity to any third party. Customer agrees to provide Stream with a valid forwarding address to receive Customer's remaining invoice(s).

**4. Price per Kilowatt Hour.** Customer agrees to pay the price indicated in the Electricity Facts Label (EFL) and all amounts invoiced. The Price per Kilowatt Hour ("kWh") provided by Stream for both Fixed and Variable plans is set forth on the EFL provided to Customer for that specific product. The Price includes the energy charge, a minimum usage fee (if applicable), a

monthly base charge (if applicable), and TDU delivery charges. The average price per kWh does not include state and local sales taxes, reimbursement for the state miscellaneous gross receipts tax, or non-recurring charges such as (for illustration purposes only) special meter read/test fees, collection fees, disconnect/reconnect fees, etc., charged by the TDU or by Stream, as applicable. A minimum usage charge of up to \$14.95 applies in billing months where monthly usage is 999 kWh or less. Please note that Stream will not charge a minimum usage fee for any invoice where the monthly billing period consists of less than twenty calendar days.

**5. Changes in Price. Fixed Rate Product.** The price for the Fixed Rate Product may be modified, or may vary from the EFL, solely to reflect actual changes in the TDU charges, changes to the ERCOT or Texas Regional Entity administrative fees charged to loads, or changes resulting from federal, state or local laws that impose new or modified fees or costs on Stream that are beyond Stream's control. **Variable Price Plan.** While this Agreement is in effect, the price for the Variable Price Plan -- including the price if your plan or product defaults to a month-to-month variable rate at the end of any fixed rate term -- may fluctuate and is subject to change at the sole discretion of Stream based upon the fluctuation of wholesale natural gas prices or other inputs to wholesale prices such as current and predicted weather patterns, competitive pricing, transmission and/or distribution constraints, wholesale commodity costs, fluctuations in energy supply and demand, and Stream's pricing strategies and anticipated margins. No limit is imposed on fluctuation of variable pricing.

**6. Changes in Terms of Conditions of Agreement.** Only as allowed by PUCT regulations, Stream may from time-to-time find it necessary to make changes to the terms and conditions of this Agreement. If the change benefits the Customer, no notice will be given. Otherwise, Stream will provide Customer with at least 14 days written notice in advance of the date the change will take effect. The change will become effective 15 days after the date stated in the notice. If the proposed new change(s) or term(s) are not acceptable to Customer, Customer may terminate the contract; otherwise Customer will be deemed to have accepted the new change(s) or term(s).

For Customers on a Fixed Rate Plan only: Changes in the length or duration of Customer's Fixed Rate Product may only be made by entering into a new contract with Stream. Customer will not be subject to any penalty for early termination so long as Customer terminates within the 14 day notice period provided to Customer. However, beginning on Day 15 after the date the notice is sent, if the Customer has not terminated Customer's existing contract in the 14-day window described herein, the Customer will be deemed to have accepted the new change(s) or term(s), and any subsequent termination by Customer will be subject to an early termination penalty.

**7. Early Termination Penalties: Variable Price Plan:** Customers on a Variable Price plan may terminate this Agreement at any time without penalty by written notice via U.S. mail at the address indicated in Section 1 of this Agreement. Upon Customer's termination of this Agreement, charges from Stream for electric service to the meter will end after the next meter reading by the TDU following the date of Stream's processing of the request to terminate. Customer's obligations under the Agreement will end when the outstanding balance on Customer's account is paid in full.

Fixed Rate Product: Customers on a Fixed Rate Product may terminate the Terms of Service Agreement at any time with written notice to Stream via U.S. mail at the address indicated in Section 1. Except as otherwise set forth below, in the event Customer terminates the Agreement at any time 31 or more days prior to the end of the term of the Agreement, Early Termination Fees (ETFs) shall apply, as follows: (a) **For any plan six (6) months or shorter** (i.e., 6 billing periods or less), the ETF shall be one-hundred fifty dollars (\$150.00). (b) **For any plan with a term longer than six (6) months** (i.e., 7 billing periods or more) the ETF shall be two-hundred fifty dollars (\$250.00).

In the event that Customer is terminating this Agreement because Customer is moving to a new premise, then Early Termination Fees shall NOT apply upon proper verification of such move provided to Stream and a valid forwarding address. Stream reserves the right to make a determination of "proper verification" under this provision in its sole discretion, and agrees to act in good faith in making said determination. Stream may terminate this Agreement at any time for non-payment, fraud or misrepresentation by Customer.

Right of Rescission. Except as set forth for New Service (a/k/a "Move-In") requests in which Customer requests service as soon as possible outside the parameters of the normal ERCOT switch process, Customer has the right to terminate this Agreement without any Early Termination Penalty within three federal (3) business days after receipt of this Terms of Service. Please include: a statement requesting cancellation; name, address and phone number(s); and account # or ESID #. Customer may contact Stream with this information to cancel by midnight of the 3rd federal business day: Phone at 1-866-44-STREAM (78732), Fax at 214- 800-4414 or email at customerservice@streamenergy.net.

**8. Notification of Expiration of Contract Term.** For Customers on a Fixed Rate Plan, Stream will provide Customer with a contract expiration notice sent at least 14 days prior to the end of the initial contract term specified in the EFL. If Customer does not take action to ensure continued receipt of service upon the expiration of the Fixed Rate Plan, Customer will continue to be served by Stream under a default renewal product on a month-to-month basis after the end of the initial contract term, until Customer switches to another provider, selects another Stream plan (if Customer has not already done so), or Stream terminates or disconnects Customer's electric service. The default renewal product is a month-to-month variable rate product which contains a rate that will vary and could be higher or lower than the Customer's fixed rate plan that has expired.

**9. Billing, Invoices and Payment.** Stream will send Customer a monthly bill that is due and payable sixteen (16) days from the

date of the bill. Customer agrees to pay, in a timely manner with this Agreement, all amounts invoiced by Stream. Customer agrees and understands that Stream relies upon Customer to supply a payment coupon or correct account number when making payment. Customer agrees to ask for a receipt verifying proof of payment when making payment at an authorized payment station. Customer further agrees it is Customer's sole responsibility to review said receipt to ensure that all information on the receipt is complete and accurate so that payment can be timely credited to Customer's account(s). Failure by Customer to ensure the accuracy of all information on the receipt of proof of payment could result in late payment or disconnection of service to Customer for which Customer shall hold Stream harmless for any damages resulting therefrom. Stream also reserves the right to calculate any Invoice based on estimated meter readings in the absence of actual meter readings from the TDU. Once actual meter readings are received, Stream will make adjustments on a subsequent invoice. You agree to pay the price as set forth in Customer's EFL and all amounts shown on your bill that are charged by Stream consistent with your Stream Agreement. By paying your bill you agree that the bill reflects proper charges for our services.

**10. Late Fees and Collections.** Except for a Customer whose name is on the bill and who is Texas Lite-Up qualified, if your entire bill amount is not paid by the due date, you will be charged a late fee of five percent (5%) of the original invoiced amount exclusive of any portion of your invoice to which a prior late fee has already been applied. If you are unable to pay your bill by the due date, please contact Stream at the number(s) listed in Section 1 of this Agreement. Stream encourages you to request and obtain additional information about the following payment alternatives offered by Stream: (i) Average Billing; (ii) Automated Bank Draft; (iii) Bill Payment Assistance; and (iv) Low Income Discount (if legislative funding available).

Stream will charge twenty-five dollars (\$25.00) for each transaction not processed due to insufficient funds including (i) returned checks, (ii) returned electronic fund transfers and (iii) rejected credit card transactions. Customer agrees that Stream, in its discretion, may transfer any balance owed by Customer from another account with Stream to customer's bill covered by this agreement, and that said amounts will be billed to customer under this account. Customer also understands and agrees that if the Customer has multiple accounts with Stream, that Stream may, at its sole discretion, issue separate bills and notices (including Disconnection Notices) to the Customer for each account the Customer holds with Stream.

Customer agrees to remit separate payment for each account in lieu of a single payment covering multiple accounts and understands that failure to render separate payment(s) for each invoiced account could result in delays in the receipt and/or processing of the Customer's payment thereby further resulting in late fee(s) and/or Disconnection of Service. In the event of the assessment of a late fee or disconnection or disruption of service, or any other harm (whether actual, financial, incidental or otherwise) resulting from Customer's failure to issue separate payment, Customer agrees to hold Stream harmless from any and all liability and damages. As a Stream customer, you agree that Stream may email important information to you such as notifications of the pending expiration of your contract, rate offers, etc. Stream will not share your email address or allow third parties to send information to you using any information gathered from your relationship with Stream as a customer.

In the event that Customer defaults in the prompt payment of amounts due under this Agreement and such indebtedness is placed in the hands of 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 Customer agrees to pay reasonable fees and expenses (including attorney fees) incurred by Stream or the attorney/collection agent in the collection of such indebtedness.

**11. Disconnection of Service.** Stream will provide Customer with at least ten (10) calendar days written notice of disconnection of service for non-payment. If payment is not received on or before the due date stated in the disconnect notice, Stream has authority to order disconnection of electric service for non-payment which will, in turn, also terminate Stream's obligations under this Agreement. In addition, there are circumstances under which electric service, and hence, this Agreement, may be terminated by Stream immediately without any advanced notice, as allowed by PUCT regulations (See § 25.483). Termination of this Agreement under this paragraph or any other provision of the Agreement shall not excuse Customer's obligation to pay all outstanding invoice amounts. For Fixed Rate Plan Customers: disconnection could be deemed an early termination of Customer's contractual obligations triggering an Early Termination Penalty. A reconnection fee and/or deposit may thereafter be required for reconnection of service following disconnection.

**12. Customer Assistance Programs.** Stream will offer the opportunity to voluntarily contribute to a bill payment assistance program for qualified residential customers who have financial hardships and need assistance paying their bill(s). Further, Stream will have an average billing plan available. Except for a Customer whose name is on the bill and who is Texas Lite-Up qualified, only a Customer who is not delinquent with Stream may request average billing. The amount is calculated by adding the current invoice amount to the previous eleven months' billed amounts for the service address. That total amount is divided by either twelve or by the number of months' billed amounts available for the service address. Finally, 10% of any unpaid difference carried over from previous months is added or subtracted based on whether Customer has under or overpaid. If Customer's account becomes delinquent, Stream reserves the right to remove Customer's account from average billing and to require payment of actual invoiced charges on a go-forward basis. Upon termination of average billing or service altogether, Stream reserves the right to true-up any over- or under- payment. For customers expressing an inability to pay, they may qualify for a payment arrangement plan or a Deferred Payment Plan. Customer is urged to contact Customer Care for details and assistance.

**13. Deposit Requirements.** This section not applicable if Customer, at Stream's sole discretion, is eligible for and selects a product not requiring a deposit. Customer may be deemed as having established satisfactory credit if: (a) the customer was not late in paying an electric bill more than once in the last twelve (12) consecutive months; (b) possesses a satisfactory credit

rating with a credit reporting agency; (c) is sixty-five (65) or older and is not currently delinquent in payment of any electric service acct. Customers qualifying for a rate reduction program may pay a deposit that exceeds \$50 in two equal installments. Customers that are the victim of family violence and can provide a certification letter by the Texas Council on Family Violence may not be required to pay a deposit. Customers without established satisfactory credit may be required to pay a deposit. Please contact Stream for more information about deposit requirements and establishment of satisfactory credit.

If at any time during the duration of this Agreement Customer does not maintain satisfactory credit, Stream may require Customer to post a security deposit in the amount of no greater than two (2) months of estimated billing, based on Customer's historical usage information. Customer may be required to provide a deposit if late in paying an invoice more than once during the last twelve (12) months of service or if Customer's service has been disconnected for non-payment. Customer may also be required to provide an additional deposit if: (i) Customer's average annual Invoice for the last twelve (12) months is at least twice the amount of the original estimated annual Invoice, and (ii) a notice for termination has been issued in the previous twelve (12) months. In either or all scenarios combined, the total amount of your deposit will not exceed an amount equivalent to the greater of either: (a) the sum of the next two (2) months estimated billings or (b) one-fifth (1/5) of the estimated annual billing.

Interest will accrue on cash deposits retained for longer than thirty (30) days at an interest rate established annually by the PUCT. Interest shall accrue from the date the deposit is received. Any accrued interest upon Customer's deposit will be credited as required by PUCT regulations (see § 25.478). A deposit shall be refunded after Customer has paid invoices for twelve (12) consecutive months without any late payments or upon termination of service. Refunds of a deposit will be given after offsetting the deposit against any amounts owed.

**14. Discrimination.** Stream does not discriminate, deny service, or require prepayment or a deposit for 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 of customer in an economically distressed geographic area or qualification for low income or energy efficiency services. Stream cannot use a credit score, credit history, or utility payment data to determine price for service product with a term of twelve (12) months or less.

**15. Disputes or Complaints.** Please contact Stream promptly if you have specific comments, questions, complaints or billing questions using the contact information set forth in Section 1. In the event that the Customer Service Department of Stream cannot properly assist you or you are not satisfied that the issue at hand has not been resolved, you may also contact the PUCT and/or refer to the Your Rights as a Customer pamphlet for additional information.

**16. Limitations of Liability.** STREAM WILL ENDEAVOR TO PROVIDE SERVICE IN A COMMERCIALY REASONABLE MANNER: HOWEVER WE DO NOT GUARANTEE A CONTINUOUS SUPPLY OF ELECTRICAL ENERGY. EVENTS THAT ARE OUTSIDE OF OUR CONTROL, REFERRED TO AS FORCE MAJEURE EVENTS, MAY RESULT IN SERVICE INTERRUPTIONS. STREAM WILL NOT BE LIABLE FOR SERVICE INTERRUPTIONS CAUSED BY FORCE MAJEURE EVENTS. STREAM DOES NOT GENERATE ELECTRICITY, NOR DOES IT TRANSPORT IT FROM THE GENERATION POINT TO CUSTOMER'S SERVICE ADDRESS, NOR DOES STREAM OWN OR OPERATE SERVICES RELATED TO THE CUSTOMER'S METER.

CUSTOMER SPECIFICALLY AGREES THAT STREAM HAS NO LIABILITY OR RESPONSIBILITY FOR THE OPERATIONS OF THE LOCAL DISTRIBUTION UTILITY OR INDEPENDENT OPERATOR AND MAINTENANCE OF ITS SYSTEM OR THE ELECTRICAL GRID SYSTEM, AS APPLICABLE, OR FOR INTERRUPTIONS, TERMINATION, REPAIR OR RECONSTRUCTION, TIMELY SERVICING, OR DETERIORATION OF THAT SERVICE. IF THE LOCAL DISTRIBUTION UTILITY OR OTHER THIRD PARTY EXPERIENCES AN EVENT OF FORCE MAJEURE, THAT, DIRECTLY OR INDIRECTLY, AFFECTS THE DELIVERY AND CUSTOMER'S RECEIPT OF ELECTRICITY, STREAM IS LIKEWISE ENTITLED TO CLAIM AN EVENT OF FORCE MAJEURE UNDER THE TERMS OF SERVICE. LIABILITIES NOT EXCUSED BY REASON OF FORCE MAJEURE OR OTHERWISE SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY AND SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES AT LAW OR IN EQUITY ARE WAIVED. NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES. THESE LIMITATIONS APPLY WITHOUT REGARD TO THE CAUSE OF ANY LIABILITY OR DAMAGE. THERE ARE NO THIRD PARTY BENEFICIARIES TO THE TERMS OF SERVICE. CUSTOMER AGREES, CONSENTS TO, AND UNDERSTANDS THAT STREAM IS NOT LIABLE FOR DAMAGES CAUSED BY EVENTS OF NEGLIGENCE, INCLUDING GROSS NEGLIGENCE OR FAILURE TO ACT (INCLUDING IN A TIMELY MANNER), BY ANY EMPLOYEE, AFFILIATE, VENDOR OR CONTRACTOR OF STREAM, OR OF FORCE MAJEURE, INCLUDING ACTS OF GOD, ACTS OF ANY GOVERNMENTAL AUTHORITY, ACCIDENTS, STRIKES, LABOR TROUBLE, EVENTS OF FORCE MAJEURE OCCURRING WITH RESPECT TO THIRD PARTY SYSTEMS OR ASSETS, OR ANY CAUSE BEYOND OUR CONTROL.

**17. Representations and Warranties.** THE ELECTRICITY SOLD UNDER THE TERMS OF SERVICE WILL BE SUPPLIED FROM A VARIETY OF GENERATING SOURCES. THE LOCAL DISTRIBUTION UTILITY OR ISO SYSTEM WILL NOT FACILITATE THE DELIVERY OF ELECTRICITY FROM A SPECIFIC GENERATING SOURCE TO CUSTOMER'S SERVICE ADDRESS. STREAM MAKES NO REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN THE TERMS OF SERVICE AND EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING MERCHANTABILITY, CONFORMITY TO MODELS OR SAMPLES AND FITNESS FOR A PARTICULAR PURPOSE.

**18. Assignment.** Customer may not assign this Agreement, in whole or in part, or any of its rights or obligations hereunder without the prior written consent of Stream. Stream may, without Customer's consent: (i) transfer, sell, pledge, encumber or

assign this Agreement to the successors, assigns, revenues or proceeds hereof in connection with any financing or other financial arrangement; (ii) transfer or assign this Agreement to an affiliate of Stream; (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of Stream; and/or (iv) transfer or assign this Agreement to a certified retail electric provider. In the case of (ii), (iii) or (iv), any such assignee shall agree in writing to be bound by the terms and conditions hereof. Upon any such assignment, Customer agrees that Stream shall have no further obligations.

**19. Title, Risk of Loss and Indemnity.** Customer acknowledges that Stream does not have care, control or custody of Customer's property or premises, or of any electrical facilities, including, but not limited to, lines, wires, or the meter, located on or near Customer's property or premises. Customer further acknowledges that Customer is in exclusive control (and responsible for any damages or injury caused thereby) of electricity at and from such meter. Title to electricity and risk of loss related to electricity shall transfer from Stream to Customer at respective meter/or Service Address. **CUSTOMER SHALL INDEMNIFY, DEFEND, AND HOLD STREAM HARMLESS FROM ANY CLAIMS, INCLUDING CLAIMS FOR PERSONAL INJURY, DEATH, PROPERTY DAMAGE AND ATTORNEY'S FEES, ARISING FROM ANY ACT OR INCIDENT OCCURRING WHEN TITLE TO ELECTRIC SERVICE IS DEEMED TO BE IN THE EXCLUSIVE CONTROL OF THE CUSTOMER, DESPITE OUR NEGLIGENCE OR STRICT LIABILITY.**

**20. Waiver.** No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. Failure of either party to exercise any right hereunder shall not constitute a waiver hereunder and shall not impair the exercise of such rights at any later time.

**21. Governing Law; Venue; Jurisdiction.** THE TERMS OF SERVICE ARE MADE UNDER AND SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, EXCLUSIVE OF ANY CONFLICT OF LAWS PROVISIONS THEREOF THAT WOULD APPLY THE LAWS OF ANOTHER JURISDICTION. EXCEPT AS OTHERWISE PROVIDED IN THE TERMS OF SERVICE, THE TEXAS UNIFORM COMMERCIAL CODE ("UCC") SHALL APPLY TO THE TERMS OF SERVICE AND ELECTRICITY SHALL BE CONSIDERED A "GOOD" (AND NOT A "SERVICE") FOR PURPOSES OF THE UCC. (See <http://www.statutes.legis.state.tx.us/Docs/BC/htm/BC.9.htm>).

The parties hereto agree that all civil actions or proceedings (including any action/proceeding in small claims court) arising out of or relating to this Agreement or relating in any way to the provision or cessation of service(s) provided hereunder (including, but not limited to, rate or billing disputes, disconnection of service, reconnection of service, and negligence) shall be tried and litigated exclusively in the state and federal courts located in Dallas County, Texas. The aforementioned choice of venue is intended by the parties to be mandatory and not permissive in nature. Each party further waives any right it may have to assert the doctrine of forum non conveniens or to object to venue with respect to any proceeding subject to this paragraph.

Each party hereby consents and waives all objection to personal jurisdiction in the state and federal courts of Dallas County, Texas. Each party hereby authorizes and accepts service of process sufficient for personal jurisdiction in any action against it as contemplated by this paragraph by registered or certified mail, return receipt requested, postage prepaid, to its address for the giving of notices as set forth in this Agreement. This section does not abrogate the parties' right to file a complaint with the PUCT.

**22. Complete Agreement.** Customer's contract with Stream (as defined herein) contains the complete understanding between Stream and the Customer and supersedes all other written or oral communications and representations. Any modifications made to this Agreement following negotiations between Customer and Stream may only take effect if reduced to a separate **type-written agreement** approved by Stream's Contract Administrator, including this provision. No sales agent or any other representative has any binding authority to modify this Agreement and any such changes shall not be binding on Stream. Customer agrees not to make any changes to this Agreement, the TOS, EFL, YRAC, or any enrollment authorization in writing, and agrees that any of the aforementioned unapproved modifications shall not be binding on Stream even if Stream receives any of the aforementioned modifications and processes same. In that instance, the sole and exclusive remedy available to customer shall be to terminate the Agreement without penalty and Customer shall remain responsible for all charges incurred prior to termination; provide, however, the charges and terms that shall apply shall be those that would have applied had the Agreement not been modified.

**23. Miscellaneous Fees.** A convenience fee in an amount up to \$4.95 may apply for payment via alternate payment channels (e.g., via telephone or online). Customer agrees to pay non-recurring fees charged by the TDU that include, but are not limited to, service connection, disconnection/reconnection, move-in, meter testing or special out-of-cycle meter reads. These TDU fees may also be passed through to Customer for "trip charges" wherein the TDU must make a trip to perform a service request, but is unable to do so. Except as otherwise prohibited by law, in addition to those fees charged by your TDU, you agree to pay Stream a thirty-five dollars (\$35) Disconnect Transaction Processing Fee for Stream to process a request to the TDU to disconnect a premise for non-payment. Regardless of whether the premise's service has been disconnected or not, this service fee may be assessed. In addition, you agree to pay a thirty-five dollars (\$35) Reconnect Transaction Processing Fee for Stream to process a request to the TDU to reconnect a premise or cancel a disconnect in process. Finally, Customer agrees to pay a Disconnection Notice Fee of up to ten dollars (\$10) in the event a Disconnection Notice is generated and sent to Customer.

**24. No Class Actions.** As part of the consideration exchanged pursuant to this Agreement, all parties expressly waive and disclaim any right to bring any claim against each other in any and all forums, including, but not limited to, court and arbitration, as a class action or as a private Attorney General. No party may serve as a class representative or a member of a class action in litigation adverse to another party.

**24. Waiver of Prior Claims.** In the case of a customer for whom this Agreement is a renewal of services previously provided by Stream pursuant to a prior Terms of Service Agreement, customer agrees that, as part of the consideration exchanged pursuant to the instant Agreement, customer intentionally waives and releases any and all prior claims against Stream, its affiliates, officers, directors, employees, agents, and representatives that customer may have had, whether known or unknown, latent or obvious, arising out of or related to such prior services or prior Terms of Service Agreement. Customer acknowledges and understands that this waiver and release is a material term of this Agreement and an express condition of Stream's willingness to enter into this further Agreement with customer.