



RESPONSIBLE BY NATURE®

## Energy Assistance Portal – Terms and Conditions

THESE TERMS AND CONDITIONS SET FORTH THE BASIC TERMS AND CONDITIONS GOVERNING YOUR ACCESS TO THE ENERGY ASSISTANCE PORTAL WEBSITE ("PORTAL"). PLEASE NOTE THAT YOUR RIGHTS AND OBLIGATIONS WITH RESPECT TO THE ENERGY ASSISTANCE PROGRAM ARE GOVERNED BY THE RELEVANT AGREEMENTS BETWEEN THE ENERGY ASSISTANCE AGENCY YOU REPRESENT AND XCEL ENERGY ("AGREEMENTS").

BY USING THIS PORTAL, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS.

The Portal is a proprietary Xcel Energy Internet application that is designed to enable Energy Assistance Agencies to perform certain operations in connection with the Energy Assistance Program.

### Using the Portal

You may view and download displayed materials, provided that you do not remove any copyright, trademark and other proprietary notices shown on the materials.

Xcel Energy reserves the right to revoke this license at any time for any reason. Xcel Energy grants similar licenses to other Energy Assistance Agencies.

### Information Submitted Through the Portal

As part of the registration process and your use of the Portal, you will be asked to provide certain information to Xcel Energy. You agree that you will not supply false contact information, impersonate any person or entity, or otherwise mislead as to the origin of the information provided by you. You agree to keep the contact information associated with your account accurate and complete. The information provided by you may be used to determine eligibility for access to the Portal. If the information you have supplied is incorrect or is not up to date, Xcel Energy reserves the right to revoke your access to the Portal. You agree that you will not attempt to use the Portal by providing false information or accessing an account for which you have no actual authority to access. Actual or attempted unauthorized use of the Portal may result in criminal and/or civil prosecution.

### Accessing the Portal

You agree not to give or make available your Portal login credentials or allow other means of access to your account by any unauthorized individuals or entities. You are responsible for safeguarding your login credentials and agree to indemnify and hold Xcel Energy harmless from any claims resulting from improper use of the credentials. You shall not use or allow others to access the Portal for any purpose not expressly permitted by relevant Agreements, which includes using or exploiting the Portal to provide service bureau, applications services or any other similar or related services.

### Intellectual Property Rights

All text, images, graphics, photographs, video clips, designs, icons, sounds, information, data, software, and other materials not generated by you (the "Content") on the Portal are copyrights, trademarks, service marks, trade secrets or other intellectual property or proprietary rights owned or licensed by Xcel Energy, Xcel Energy Inc., its agents, service providers and/or licensors. The marks "Xcel Energy" and the red "swirl" logo are the exclusive property of Xcel Energy Inc. You may not remove, modify or

obscure any proprietary rights notices that Xcel Energy or its licensors and service providers place on the Portal.

(b) You may not distribute, publish, transmit, modify, create derivative works from, or in any way exploit, any of the Content or the Portal for any purpose. Under no circumstances will you obtain any rights, or license, in processes, information or technology described in the Content or in the Portal.

### **Restrictions on Your Use of the Portal**

(a) You may use the Portal for lawful purposes only. You are prohibited from using the Portal in a manner that would constitute a civil or criminal offense. You are prohibited from using the Portal in a manner that unlawfully invades the privacy of another or without their consent, or that involves the use of Xcel Energy's customized data, data reports, customized data feeds, or any other product for commercial use or mass distribution. You are prohibited from using or infringing on the intellectual property of Xcel Energy or any third party. You are prohibited from installing or attempting to install or upload software viruses, mass mailings, chain letters or any form of spam or disruptive technological artifice. You only may exercise the rights granted to you in these Terms and Conditions within the United States.

(b) Because the Portal is a software device that may be adversely affected by other computer applications and software programs, you agree to maintain reasonable security including antivirus, Internet firewall, or other software and/or systems in place to reduce the risk of unauthorized access to your account while you retrieve or post information. If you fail to implement reasonable security measures or allow someone else to access your account(s) without your authorization, you are responsible for any transactions they initiate. Xcel Energy is not required to seek damages from a third party due to your failure to maintain security from your computer or your computer's Internet connection which has resulted in transactions under your account that you maintain were not authorized.

(c) While using the Portal, you may not alter, interfere or disrupt the content or functioning of the Service, including but not limited to uploading, posting or transmitting any material that (i) contains viruses, Trojan horses, worms, time bombs, cancelbots or other computer programming routines that damage, interfere with, capture, intercept or expropriate any data relating to the Portal; or (ii) disproportionately burdens the delivery of the Portal.

### **Xcel Energy's Waiver of Warranties and Limitation of its Liability**

(a) XCEL ENERGY MAKES REASONABLE EFFORTS TO PROVIDE MATERIAL AND CONTENT THROUGH THE PORTAL THAT IS CORRECT. HOWEVER, XCEL ENERGY CANNOT GUARANTEE THEIR ACCURACY. TO THE EXTENT ALLOWED BY APPLICABLE LAW, YOUR EXCLUSIVE REMEDY FOR INACCURATE CONTENT IS THAT, UPON NOTIFICATION BY YOU THAT SOME CONTENT IS INACCURATE, WE WILL TAKE REASONABLE STEPS TO INVESTIGATE THE REPORTED INACCURACY TO THE EXTENT REQUIRED BY APPLICABLE LAW, TARIFF, RULE OR REGULATION. BASED ON THE RESULTS OF THE INVESTIGATION WE WILL CORRECT ANY INACCURACY THAT WE DETERMINE EXISTS.

(b) OTHER THAN AS REQUIRED UNDER APPLICABLE LAW REGULATION OR AN EXPRESS AGREEMENT, XCEL ENERGY DOES NOT GUARANTEE THE AVAILABILITY OF THE PORTAL. FOR THOSE REASONS, TO THE EXTENT PERMITTED BY APPLICABLE LAW, XCEL ENERGY, ON BEHALF OF ITSELF, ITS AGENTS, SERVICE PROVIDERS AND LICENSORS, ITS AND THEIR RESPECTIVE AFFILIATES, DISCLAIMS ANY LIABILITY FOR ANY INACCURACIES OR ERRORS ON THE PORTAL, THE CONTENT, OR EQUIPMENT PROVIDED RELATED TO THE PORTAL. THE PORTAL AND ALL CONTENT IS PROVIDED "AS IS", AND "WITH ALL FAULTS", WITHOUT WARRANTIES OF ANY KIND EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. XCEL ENERGY, ITS AGENTS, SERVICE PROVIDERS AND LICENSORS AND THEIR RESPECTIVE AFFILIATES DO NOT WARRANT NOR MAKE ANY REPRESENTATIONS AS TO THE SUITABILITY OF THE PORTAL OR THE CONTENT FOR ANY PURPOSE. FOR EXAMPLE, XCEL

ENERGY DOES NOT WARRANT THAT ANY CONTENT PROVIDED ON THE PORTAL WILL BE UNINTERRUPTED OR ERROR-FREE. XCEL ENERGY WILL NOT BE RESPONSIBLE FOR ANY ERRORS OR DELAYS IN THE OPERATION OF THE PORTAL OR THE TRANSMISSION OF THE CONTENT.

(c) OTHER THAN AS REQUIRED UNDER APPLICABLE LAW, REGULATION OR AN EXPRESS AGREEMENT, IN NO EVENT WILL XCEL ENERGY, ITS AGENTS, SERVICE PROVIDERS OR LICENSORS BE LIABLE TO YOU OR TO ANY OTHER PERSON FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE PORTAL, THE CONTENT OR EQUIPMENT RELATED TO YOUR USE OF THE PORTAL, OR FOR ANY LOSS OF USE, INTERRUPTION OF BUSINESS, LOST PROFITS, LOST DATA, UNAUTHORIZED ACCESS OR ACQUISITION OF YOUR DATA, OR OTHER LOSSES, EVEN IF XCEL ENERGY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN THE EVENT THAT THIS LIMITATION OF LIABILITY IS UNENFORCEABLE, IN NO EVENT WILL THE LIABILITY OF XCEL ENERGY, ITS AFFILIATES OR SUBSIDIARIES, OR THEIR OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS OR ASSIGNS, IN CONNECTION WITH THIS AGREEMENT OR THE CONTENT UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EXCEED \$250.00 IN THE AGGREGATE, REGARDLESS OF WHETHER SUCH PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(d) YOU INDEMNIFY AND HOLD XCEL ENERGY, ITS AGENTS, SERVICE PROVIDERS AND LICENSORS AND THEIR RESPECTIVE AFFILIATES HARMLESS AGAINST ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ANY DAMAGES FOR LOSS OF REVENUE; LOSS OF USE OF THE WEBSITE, LOSS OF USE OR DAMAGE TO YOUR COMPUTER EQUIPMENT OR PRODUCTS OR PROGRAMS, BUSINESS INTERRUPTION, LOSS OF USE OF DATA, PROGRAMS OR EQUIPMENT) ARISING OUT OF YOUR ACCESSING, BROWSING OR USING, OR YOUR INABILITY TO ACCESS, BROWSE OR USE, THE PORTAL, OR THE CONTENT PROVIDED THROUGH THE PORTAL.

(e) CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE DISCLAIMERS, EXCLUSIONS, OR LIMITATIONS IN THIS SECTION MAY NOT APPLY TO YOU, AND YOU MIGHT HAVE ADDITIONAL RIGHTS.

### **Applicable Law and Venue**

The state commission having jurisdiction and venue regarding this agreement will depend on the state your Energy Assistance Agency operates. In the event that you or Xcel Energy claim a breach of the terms of these Terms and Conditions or a misuse of the Portal, you and Xcel Energy consent to the jurisdiction of any court or utility commission sitting within the state where your Energy Assistance Agency is headquartered, and any such claim or other dispute related to these Terms and Conditions or the Portal shall be resolved pursuant to the laws of such state, without reference to its principles on conflicts of laws.

### **General Terms**

These Terms and Conditions constitute the entire agreement between you and Xcel Energy with respect to your access to the Portal. All prior and contemporaneous agreements and understandings relating to the subject matter hereof are superseded by and merged into these Terms and Conditions. All rights and remedies, whether conferred hereunder or by any other instrument or by law, will be cumulative and may be exercised singularly or concurrently. Xcel Energy's failure to exercise or enforce any right or provision of these Terms and Conditions shall not operate as a waiver of such right or provision. If any provision(s) of these terms is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby. Section headings are for

reference purposes only and shall not affect in any way the meaning or interpretation of these Terms and Conditions. No oral explanation or information by either party shall alter the meaning or interpretation of the terms of these Terms and Conditions.

Please note that your rights and obligations with respect to the Energy Assistance Program are governed by the relevant Agreements.

Additional Terms if you are a Governmental User.

The Portal and related documentation are "Commercial Items", as that term is defined at 48 C.F.R. 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are used in 48 C.F.R. 12.212 or 48 C.F.R. 227.7202, as applicable. If you are a U.S. Government end user then consistent with 48 C.F.R. 12.212 or 48 C.F.R. 227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are licensed to you (i) only as Commercial Items and (ii) with only those rights as are granted to all other end users pursuant to the terms and conditions herein. Unpublished rights are reserved under the copyright laws of the United States. Any breaches of this Section will be a material breach of these Terms and Conditions.

### **Force Majeure**

Except to the extent otherwise required under applicable law, delay in or failure to provide access to the Portal shall be excused if such delay or failure is caused by strike, fire, flood, earthquake, acts of nature, governmental action, failure of suppliers, communications lines failures, power failures, or for any other cause or event beyond Xcel Energy's reasonable control. In such instances, Xcel Energy agrees to resume availability of the Portal as soon as commercially feasible to do so.

### **Systems Requirements**

#### **(a) Installation, Maintenance and Operation of Equipment**

You are responsible for obtaining, installing, maintaining and operating all computer equipment, in accordance with such requirements as may be provided by (i) the equipment manufacturers and (ii) any other documentation provided to you in connection with the Portal.

#### **(b) Browser Access and Internet Services**

You are responsible for obtaining a browser capable of a sufficiently high level of encryption to meet the systems requirements established by Xcel Energy from time to time. Your use of any browser may also be subject to the license agreements of the browser manufacturer, in addition to these Terms and Conditions.

You are responsible for obtaining Internet services via the service provider of your choice, for any and all fees imposed by such Internet service provider and any associated communications service provider charges. You acknowledge that there are certain security, corruption, transmission error, and access availability risks associated with using open networks such as the Internet and you hereby expressly assume such risks (to the extent the law allows you to do so). You acknowledge that you are using the Portal at your convenience, have made your own independent assessment of the adequacy of the Internet as a delivery mechanism for accessing information and initiating instructions and that you are satisfied with that assessment.

In order to view these Terms and Conditions and receive electronic communications from Xcel Energy, you must have a valid e-mail address and a computer equipped as described below. If your e-mail address changes, you will need to update it.

Hardware/Software\*:

Windows

Intel Pentium II 450MHz, AMD Athlon 600MHz or faster processor (or equivalent)  
128MB of RAM

Macintosh

PowerPC G3 500MHz or faster processor  
Intel Core Duo 1.33GHz or faster processor  
128MB of RAM

Internet connection: recommend broadband

Screen size: recommend minimum resolution 1024x768

Web browser: supports 128-bit encryption  
(e.g., Internet Explorer 7+, Firefox 3+, Safari, Google Chrome)