

RESOLUTION APPROVING ELECTRIC SERVICE AGREEMENT WITH DYNEGY ENERGY SERVICES EAST, LLC FOR SUPPLYING OF RETAIL POWER UNDER THE PROGRAM RELATED TO THE COUNTY COMMISSIONERS ASSOCIATION OF OHIO SERVICE CORPORATION AND CCAOSC ENERGY SOLUTIONS, A SUBSIDIARY OF PALMER ENERGY COMPANY, INC., COMMISSIONER'S OFFICE

WHEREAS, a participation agreement was previously approved regarding energy purchasing programs by and between Ashtabula County, the County Commissioners Association of Ohio Service Corporation (CCAOSC) and CCAOSC Energy Solutions, a subsidiary of Palmer Energy Company, Inc.; and

WHEREAS, an Electric Service Agreement has now been presented for the approval of the Board, to-wit:

Facilities Served: Ashtabula County Courthouse Complex
Ashtabula Co. Nursing & Rehabilitation Center
Western County Court
OSU Extension Office and Soil & Water
Ashtabula County Health Dept.
Ashtabula County DD
The Lodge and Conference Center at Geneva on the Lake
any other Ashtabula county office(s) deemed appropriate to participate; and

Provider: Dynegy Energy Services East, LLC, 312 Walnut St., Ste. 1500, Cincinnati, OH 45202

Cost: **Not to Exceed:** the Power Price of \$0.03401, total cost based upon utility usage

Term: delivery term begins June, 2021 and terminates May, 2023; now

THEREFORE, BE IT RESOLVED, By the Board of Commissioners of Ashtabula County, Ohio that the Agreement as noted above is approved in accordance with the copy now on file in this office.

**ASHTABULA COUNTY COMMISSIONERS
CERTIFICATION PAGE**

Resolution No. 2021-149

April 08, 2021

RESOLUTION APPROVING ELECTRIC SERVICE AGREEMENT WITH DYNEGY ENERGY SERVICES EAST, LLC FOR SUPPLYING OF RETAIL POWER UNDER THE PROGRAM RELATED TO THE COUNTY COMMISSIONERS ASSOCIATION OF OHIO SERVICE CORPORATION AND CCAOSC ENERGY SOLUTIONS, A SUBSIDIARY OF PALMER ENERGY COMPANY, INC., COMMISSIONER'S OFFICE

Upon the motion of Casey R. Kozlowski, seconded by J.P. Ducro IV.

VOTE:

Kathryn L. Whittington

Aye

J.P. Ducro IV


Aye

Casey R. Kozlowski

Aye

CERTIFICATE OF CLERK

IT IS HEREBY CERTIFIED that the foregoing is a true and correct transcript of a resolution acted upon and duly passed by the Board of County Commissioners of Ashtabula County, Ohio, on the date noted above.



Lisa Hawkins, Clerk of the Board
Board of County Commissioners
Ashtabula County, Ohio

ELECTRIC SERVICE AGREEMENT
EXHIBIT A – Standard Large Stable-Capacity
Issued: April 8, 2021

This offer is presented to ASHTABULA COUNTY (“Customer”) by DYNEGY ENERGY SERVICES EAST, LLC (“Supplier”) and represents a price for Customer’s full requirement retail power (“Retail Power”) needs at the service location(s) listed in Table 2, each service location referred to as an (“Account”). Upon acceptance, this offer will become Exhibit A of Supplier’s Electric Service Agreement Terms and Conditions (“Agreement”), a copy of which is attached. By signing this Exhibit A, Customer is authorizing Supplier to enroll each Account with the Utility (“Utility”) noted in Table 1.

Table 1					
Select Term:	Quote #:	Delivery Term Begins:	Delivery Term Ends:	Power Price (/kWh):	Voluntary REC Quantity (%):
KW	Q-01274149	May 2021	May 2023	\$0.03401	N/A
Capacity Charge:		Pass-Thru			
Utility:		First Energy			
Regional Transmission Organization (RTO):		PJM			
Broker/Consultant (if blank, N/A):		Palmer Energy			

Power Price: Supplier will arrange for delivery of Customer’s Retail Power. The Power Price noted in Table 1 includes charges for energy, applicable Regional Transmission Operator, ancillary services and other market settlement charges, distribution and transmission energy losses, charges associated with the purchase, acquisition and delivery of renewable energy certificates (RECs) in accordance with the state-mandated Renewable Portfolio Standards (“RPS”) requirements, if applicable, the charge for additional voluntary RECs, and scheduling and load forecasting associated with the delivery of Customer’s Retail Power. **THE POWER PRICE IN TABLE 1 DOES NOT INCLUDE CHARGES FOR CAPACITY.**

Capacity Charge: Supplier will secure capacity relative to the supply of all electricity during the Term of this Agreement in accordance with the RTO business practices, policies, rules, regulations, or tariffs. Charges for capacity will appear as a separate line item on Customer’s monthly invoice and shall be billed as follows:

The monthly charge will be dependent upon 1) Customer’s then current capacity obligation or Capacity Peak Load Contribution (“PLC”) as determined by the Utility, including any applicable Utility zoning factors, 2) the Final Zonal Capacity Prices (the “Current Capacity Rate”) as determined by RTO, and 3) the number of days in the billing period.

Voluntary REC Quantity: If applicable in Table 1, the Power Price in Table 1 will include a charge associated with the Voluntary REC Quantity requested by Customer. Retail Power shall be associated with the generation of electricity from a renewable energy resource such that the percentage required, when added to Customer’s obligation under the RPS of this Agreement, shall equal the Voluntary REC Quantity (%) selected in Table 1.

The Parties agree and understand a REC is separate from the Retail Power being delivered but, nonetheless, constitutes value associated with the provision of Retail Power. It is understood and agreed that any RECs purchased and retired in accordance with the aforesaid state mandate is not the property of Customer, and Customer has no claim, interest, or right to said RECs, or any value derived therefrom.

Customer will incur additional service and delivery charges from the EDU, and Customer is solely responsible for payments of all charges related to the delivery of electricity from the EDU.

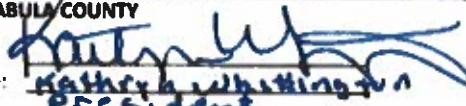
NET METERING. Customer must enroll, and be accepted in, as applicable by state law, Utility’s net metering program in order to participate in net metering with Supplier.

The validity, interpretation and performance of this Agreement shall be governed by and performed in accordance with the laws of the State of Ohio. Notwithstanding any language in this Agreement to the contrary, the electricity sold by Supplier to Customer is deemed to be “a good” for purposes of the Uniform Commercial Code of Ohio, and the parties agree that the provisions of the Uniform Commercial Code of Ohio shall apply to this Agreement.

This offer is contingent on acceptance by the Utility of the enrollment of Customer with Supplier. By signing below, you certify that 1) you are authorized on behalf of Customer to enter into this Agreement with Supplier, 2) Customer has read

the Terms & Conditions of this Agreement and agrees to be bound by them, and 3) Customer authorizes Supplier to enroll the Account(s) listed in Table 2 with the Utility which will allow Supplier to provide retail electricity.

IN WITNESS WHEREOF, subject to any of the foregoing execution conditions, the Parties have executed and delivered this Agreement on the date last signed by the Parties.

DYNEGY ENERGY SERVICES EAST, LLC <u>Lauren Matson</u> By: <u>Lauren Matson (Apr 8, 2021 2:19 EDT)</u> Name: <u>Lauren Matson</u> Title: <u>Manager, Third Party Sales</u> Date: <u>Apr 8, 2021</u>	ASHTABULA COUNTY  By: <u>Kathryn Whittington</u> Name: <u>President</u> Title: <u>4/8/2021</u> Date: <u>4/8/2021</u> **Signatory certifies authorization to enter in to this Agreement
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BILLING AND NOTICE INFORMATION	
FEIN or DUNS#: <u>926038696</u>	
<input type="checkbox"/> Check here if you are a local government entity subject to the Ohio Prompt Payment Requirements Act as defined by ORC 126.30/OAC 126-3-01	
If applicable, see Section 4 of the Terms & Conditions for below:	
<input type="checkbox"/> Check here to receive one master invoice that includes detailed usage by Account. If blank, an individual invoice for each Account will be issued	
<input checked="" type="checkbox"/> Check here if you want invoices mailed to the Service Location, Attn: Accounts Payable. Otherwise, please complete Invoice information below.	
Invoices Attn: <u>Billing Contact</u> Address: _____ E-mail: _____ Phone: _____	Notices Attn: <u>Jamie Arcaro</u> Address: <u>25 W. Jefferson St Jefferson OH 44017</u> E-mail: <u>JArcaro@ashtabulacounty.us</u> Phone: <u>440 576-3748</u>
Sales Contact Name: <u>Brooke Muck</u> Address: <u>312 Walnut Street, Ste. 1500 Cincinnati, OH 45202</u> E-mail: <u>Brooke.lantry@vistraenergy.com</u> Phone: <u>(513) 762-8208</u>	Notices/Inquires Attn: <u>Customer Care</u> Address: <u>6555 Sierra Drive Irving, TX 75039</u> E-mail: <u>ContractLegal12@vistraenergy.com</u> Phone: <u>(800) 920-5039</u>

Upon execution and delivery to Supplier, this Agreement is binding. Please retain a copy for your records and send a signed copy to ContractLegal12@vistraenergy.com. Supplier will forward all necessary documents to the Utility.

ELECTRIC SERVICE AGREEMENT
ACCOUNT INFORMATION SHEET FOR
ASHTABULA COUNTY AS OF 04/08/2021

Table 2 Utility: First Energy			
	Account #	Bill Group	Service Location
1	08004764931930028944	19	N POPLAR ST, JEFFERSON, OH 44047
2	08004765161140092508	19	
3	08004765161220097052	19	87 N CHESTNUT ST, JEFFERSON, OH 44047
4	08004765161250097026	19	93 N CHESTNUT ST, JEFFERSON, OH 44047
5	08004765161420094269	23	
6	08004765161460098292	19	2 W WALNUT ST, JEFFERSON, OH 44047
7	08004765161820079601	19	77 N CHESTNUT ST, JEFFERSON, OH 44047
8	08004765161860025548	19	35 W JEFFERSON ST, JEFFERSON, OH 44047
9	08004765161920056570	19	556 OAK ST, JEFFERSON, OH 44047
10	08004765161950077869	19	39 WALL ST, JEFFERSON, OH 44047
11	08004765161950082727	19	36 W WALNUT ST, JEFFERSON, OH 44047
12	08004765161980095719	19	8 W WALNUT ST, JEFFERSON, OH 44047
13	08004765165001400712	20	
14	08004765191550101050	20	NETCHER RD, JEFFERSON, OH 44047
15	08004765191560101052	20	GIDDINGS RD, JEFFERSON, OH 44047
16	08004765191610096423	13	HRPRSFLD/GRAN RD, GENEVA, OH 44041
17	08004765191620096426	2	CREEK RD, CONNEAUT, OH 44030
18	08004765191720001914	16	440 DODGEVILLE RD, NEW LYME, OH 44047

19	0800476519500056229	16	440 DODGEVILLE RD, NEW LYME, OH 44047
20	08004765195000179702	17	000000 WISWELL RD, WINDSOR, OH 44099
21	08004765195000339773	20	0 BENETKA RD, ASHTABULA, OH 44004
22	08004765311460001939	19	W JEFFERSON ST, JEFFERSON, OH 44047
23	08004765311820079649	19	N CHESTNUT ST, JEFFERSON, OH 44047
24	08004765331460000020	23	PLYMOUTH RD, ASHTABULA, OH 44004
25	08004765331590097232	19	DOYLE RD, JEFFERSON, OH 44047
26	08014405531150095884	13	849 STATE ROUTE 534, GENEVA, OH 44041
27	08014405535000385869	17	3501 STATE ROUTE 45, ROME, OH 44085
28	08014458701150095194	9	7720 CENTER RD, ASHTABULA, OH 44004
29	08014458701730099840	18	2949 INDUSTRIAL PARK DR, AUSTINBURG, OH 44010
30	08014458705000316083	10	6833 LAKE RD W, GENEVA, OH 44041
31	08014458705000380608	18	2909 STATE ROUTE 307, AUSTINBURG, OH 44010
32	08014502771650097337	9	8820 CENTER RD, AUSTINBURG, OH 44010
33	08014787501940026514	9	CENTER RD, AUSTINBURG, OH 44010
34	08014855201420100842	9	2940 SEXTON RD, ASHTABULA, OH 44004
35	08014956331300096981	19	10 W WALNUT ST, JEFFERSON, OH 44047
36	08014956331310096983	19	91 N CHESTNUT ST, JEFFERSON, OH 44047
37	08014956331670094245	19	25 W JEFFERSON ST, JEFFERSON, OH 44047
38	08014965375001286442	13	1501 HARPERSFIELD RD, GENEVA, OH 44041
39	08014965375001360672	4	0 CHERRY LN, ASHTABULA, OH 44004

40	08014995165000058216	3	5740 DIBBLE RD, KINGSVILLE, OH 44048
41	08014999091450001960	3	3914 C CT, ASHTABULA, OH 44004
42	08015024085000058079	19	W STATE ROUTE 307, JEFFERSON, OH 44047
43	08015134214000010730	6	2247 LAKE AVE, ASHTABULA, OH 44004
44	08015134591810084999	5	BRIDGE ST, ASHTABULA, OH 44004
45	08015342751810037153	9	4250 AUSTIN RD, GENEVA, OH 44041
46	08015469421440001967	3	2924 DONAHOE DR, ASHTABULA, OH 44004
47	08015604841830077187	3	
48	08015861361390001968	3	5740 DIBBLE RD, KINGSVILLE, OH 44048
49	08015862231470001965	3	3816 DONAHOE DR, ASHTABULA, OH 44004
50	08015929881880100838	4	931 MINERAL SPRINGS RD, ASHTABULA, OH 44004
51	08015929885000277778	17	3091 STATE ROUTE 45, ROCK CREEK, OH 44084
52	08016291741570001933	18	1270 W STATE ROUTE 307, JEFFERSON, OH 44047
53	08016397431730094759	7	2240 CENTER RD NORTH BEACH, ASHTABULA, OH 44004
54	08016397434000004212	13	2070 S COUNTY LINE RD, GENEVA, OH 44041
55	08016703621940023080	19	186 E SATIN ST, JEFFERSON, OH 44047
56	08016708091940023076	19	186 E SATIN ST, JEFFERSON, OH 44047
57	08016835831650098714	19	186 E SATIN ST, JEFFERSON, OH 44047
58	08030451835000081168	9	4888 N BROADWAY, GENEVA, OH 44041
59	08030451835000128298	9	4888 N BROADWAY, GENEVA, OH 44041
60	08030451835001391264	9	

61	08030771150001120964	16	PYMATUNING LAKE RD, ANDOVER, OH 44003
62	08030771150001308870	15	CONCORD AVE, ANDOVER, OH 44003
63	08030771150001308921	15	IMPALA ST, ANDOVER, OH 44003
64	08030771150001308945	15	WINNEBAGO DR, ANDOVER, OH 44003
65	08030771150001309083	15	LAYTON ST, ANDOVER, OH 44003
66	08030771150001309132	15	BONANZA AVE, ANDOVER, OH 44003
67	08030771151140092969	7	3821 LAKE RD W, ASHTABULA, OH 44004
68	08030771151450095502	7	N BEND RD, ASHTABULA, OH 44004
69	08030771151460100964	7	4734 N BEND RD, ASHTABULA, OH 44004
70	08030771151550094770	4	E 27TH ST, ASHTABULA, OH 44004
71	08030771151730094660	4	E 25TH ST, ASHTABULA, OH 44004
72	08030771151780091631	7	CENTER RD, ASHTABULA, OH 44004
73	08030771151820037742	7	4126 CARPENTER RD, ASHTABULA, OH 44004
74	08030771151840031812	4	ELMWOOD DR, ASHTABULA, OH 44004
75	08030771151850017431	3	GREEN RD, KINGSVILLE, OH 44048
76	08030771151860004613	3	INFIRMARY RD, KINGSVILLE, OH 44048
77	08030771151860021290	7	6714 JEFFERSON RD, ASHTABULA, OH 44004
78	08030771151900003001	7	LAKE RD W, ASHTABULA, OH 44004
79	08030771151900004112	8	6320 LAKE RD W, ASHTABULA, OH 44004
80	08030771151900004179	7	4645 LAKE RD W, ASHTABULA, OH 44004
81	08030771151920033988	8	5621 N RIDGE RD W, ASHTABULA, OH 44004

82	08030771151920049350	7	N BEND RD, ASHTABULA, OH 44004
83	08030771151920100534	10	6790 LAKE RD, MADISON, OH 44057
84	08030771151930040702	7	W PROSPECT RD, ASHTABULA, OH 44004
85	08030771151930041122	7	4219 N RIDGE W RD, ASHTABULA, OH 44004
86	08030771151930078143	18	1591 STATE ROUTE 45, AUSTINBURG, OH 44010
87	08030771151940006417	3	S RIDGE RD E, ASHTABULA, OH 44004
88	08030771151940024881	7	CENTER RD, ASHTABULA, OH 44004
89	08030771151940025189	7	CENTER RD, ASHTABULA, OH 44004
90	08030771151940070996	18	STATE ROUTE 45, AUSTINBURG, OH 44010
91	08030771151950008025	7	TALL TREES DR, ASHTABULA, OH 44004
92	08030771151950072406	7	W 63RD ST, ASHTABULA, OH 44004
93	08030771151960058838	5	LAKE RD W, ASHTABULA, OH 44004
94	08030771154000010117	20	2382 AIRPORT RD, JEFFERSON, OH 44047
95	08030771155000310783	9	00 NELSON DR, AUSTINBURG, OH 44010
96	08030771155001315414	3	1707 COOK RD, ASHTABULA, OH 44004
97	08039822241470001931	19	12 W JEFFERSON ST, JEFFERSON, OH 44047
98	08039822245000055347	19	12 W JEFFERSON ST, JEFFERSON, OH 44047

Shalonda Kenebrew
Shalonda Kenebrew (Apr 8, 2021 17:09 CDT)

**ELECTRIC SERVICE AGREEMENT
GENERAL TERMS AND CONDITIONS**

This Electric Service Agreement ("Agreement") is between Supplier and Customer and is dated and effective as of the date the Exhibit A is signed by both parties. To the extent there is a conflict in the terms, interpretation or understanding of this Agreement and Exhibit A, the terms of Exhibit A shall supersede the terms of this Agreement.

1. ELECTRIC ENERGY SERVICES

Supplier shall supply and deliver to Customer and Customer shall exclusively purchase and receive from Supplier all Retail Power as defined in Exhibit A, pursuant to the terms and conditions which are described in the attached Exhibit A and incorporated herein for all purposes. The Retail Power will be delivered to the interconnection between the transmission system of the applicable transmission provider and the Utility's ("Utility") distribution system ("Delivery Point"). Customer's Utility will be responsible for delivery of Retail Power to Customer's meter from the Delivery Point. The delivery of Retail Power over the Utility's distribution system is subject to the terms and conditions of the Utility's tariff relating to delivery and metering. Customer's Utility will send Customer a notice confirming the switch to Supplier for electricity (the "Confirmation"). Customer shall provide written notice as soon as practicable of any changes to Customer's Account and meter numbers and/or billing locations associated with Customer's delivery services. Customer is solely responsible for payments of all charges related to the delivery of the Retail Power from the Utility whether billed to Supplier or Customer. Customer represents and warrants it is eligible to receive electric energy services from Supplier and that it has given all required notices to the supplier currently serving Customer, if applicable.

2. TERM OF AGREEMENT

After Supplier and the Utility process Customer's enrollment request, Retail Power delivery will begin for each Account with the first available meter reading date of the month noted under "Delivery Term Begins" in Table 1 or as soon as possible thereafter, and ends with the regularly scheduled meter reading date for the month noted under "Delivery Term Ends" in Table 1 on Exhibit A ("Term"). At the end of the Term of this Agreement, Supplier will return Customer to Utility default service, unless a written amendment has been executed to renew the Term. Notwithstanding the foregoing, the Term is subject to renewal pursuant to the conditions under Section 3, Monthly Renewal.

3. MONTHLY RENEWAL

This Agreement shall automatically continue on a monthly basis ("Renewal Term") at the rates determined by Supplier, which may vary from month to month. If Customer has not notified Supplier that Customer has elected to obtain Retail Power from another retail supplier, then Supplier may in its sole discretion place Customer on Renewal Term service or Supplier may return Customer to Utility default service, thereby terminating this Agreement. In the event the

customer is placed on Renewal Term or Supplier returns Customer to Utility Default Service, Supplier shall provide written notice to Customer as soon as reasonably possible.

4. PAYMENTS/INVOICES

Supplier will issue an invoice via mail or e-mail based on actual usage data provided by the Utility as soon as practicable after the end of each Monthly Billing Cycle in which service was provided. Each invoice will include Supplier charges set forth in this Agreement and payments shall be received by Supplier within twenty-one (21) Calendar Days following the issue date of each invoice, the "Due Date". Alternatively and upon mutual agreement of the Parties and approval by Utility, Supplier may issue an invoice that includes both Supplier charges set forth in this Agreement and the Utility's delivery service charges, in which case the Due Date shall be reduced to fourteen (14) days. All payments shall be made via an electronic method or check, to the account specified on each invoice. Should the Utility fail to provide the customer's usage information to Supplier within five (5) Business Days after the published meter read date, Supplier reserves the right to provide the Customer with an estimated bill, to be tried up in an invoice that follows receipt of the actual bill. Amounts not paid on or before the Due Date shall be deemed delinquent and a late payment charge equivalent to one and one-half percent (1.5%) will be assessed each month on the unpaid balance ("Interest Rate"). If Customer in good faith, disputes the correctness of any invoice rendered under this Agreement then Customer shall 1) provide written explanation of the basis of the dispute to Supplier no later than the Due Date and 2) pay the undisputed portion of the amount invoiced no later than the Due Date. If the disputed amount is determined to have been due by Supplier, it shall be paid to Supplier within five (5) Business Days of such determination, along with interest at the Interest Rate from and including the date such amount was due, but excluding the date paid. For purposes of this Agreement, Business Day shall mean any day except a Saturday, Sunday, or a Federal Reserve Bank holiday and Calendar Day shall mean every day including Saturday, Sunday and Federal Reserve Bank holidays.

Alternatively, if eligible, Customer will receive a single bill from the Utility that contains Supplier charges set forth in this Agreement and Utility charges. Customer will make payments to the Utility according to the Utility's billing rules and schedules. Failure to pay Supplier charges may result in the Account(s) being returned to the Utility's standard service and forfeiture of Customer's right to choose another retail electric service provider until past due amounts are paid. Failure to pay invoice charges may result in the Account(s) being disconnected in accordance with the Utility's business practices. If, due to Utility rules, any Account(s) become ineligible for a single bill from the Utility, at any time during contract, then Supplier will issue an invoice for all ineligible Account(s). Supplier's invoice will reflect the Power Price for Retail Power times the kWh each month for those accounts billed by supplier, and Customer will make

payments to Supplier in the terms described above in Supplier billing.

If Customer is a state government entity as defined by its local government Prompt Payment Requirements Act indicated in Exhibit A, then in such event said Act shall control with regard to the calculation of payment due dates and late payment charges. All other provisions in this paragraph remain the same and are in effect.

5. CUSTOMER INFORMATION

Customer authorizes Supplier to receive current and historical energy billing and usage data from the Utility and such authorization shall remain in effect unless Customer rescinds such authorization in writing. Supplier reserves the right to cancel this Agreement in the event that Customer rescinds such authorization. Customer has the right to request from Supplier, twice within a twelve (12) month period without charge, up to twenty-four (24) months of Customer's payment history.

6. TAXES

Except for taxes on the gross income and property of Supplier, all federal, state, and municipal or other governmental subdivision taxes, assessments, fees, use taxes, sales taxes or excise taxes, or similar taxes or fees incurred by reason of Retail Power sold under this Agreement are the sole responsibility of Customer. It is understood that Supplier is responsible for all taxes applicable prior to Supplier's delivery to the Delivery Point, and Supplier agrees to hold harmless and indemnify Customer from any liability, demand or payment for same.

7. CREDIT

Should Customer's creditworthiness or financial condition deteriorate following the date of this Agreement, Supplier may request adequate financial security from Customer in a form acceptable to Supplier as determined in a commercially reasonable manner. The failure of Customer to provide adequate financial security to Supplier within ten (10) Business Days of a written request by Supplier shall be considered an Event of Default under Section 14. For purposes of this Section, creditworthiness or financial condition shall be determined by Supplier in a commercially reasonable manner, based upon but not limited to, reasonable concern over Customer's payment pattern, discovery of negative or derogatory public information, and/or based upon a review of Customer's most recently audited annual financial statements or such other documents that may be necessary to adequately determine Customer's creditworthiness (which, if available, shall be supplied by Customer upon the reasonable request of Supplier). In addition, the determination of creditworthiness or financial condition may include consideration of the market exposure assumed by Supplier relevant to the liquidation value of this Agreement under Section 14.

8. CONFIDENTIALITY

Subject to Ohio's Public Records Law, Ohio Revised Code Section 149.43, Customer and Customer's agents and Supplier and/or Supplier's agents shall treat as confidential

all terms and conditions of this Agreement, including all information and documentation exchanged by the Parties during the negotiations of this Agreement. Neither Party will disclose terms and conditions of this Agreement to any other party, except as required by law. Notwithstanding the foregoing, Supplier and/or Supplier's agents and Customer and/or Customer's agents shall be allowed to acknowledge that an Agreement for Retail Power services does exist between the Parties. At Supplier's discretion, third-party agents of Customer may be asked to execute a confidentiality agreement.

9. WARRANTY, DISCLAIMER AND LIMITATION OF LIABILITY

Supplier warrants title to all Retail Power delivered hereunder, and sells such Retail Power to Customer free from liens and adverse claims to the delivery point. THIS IS SUPPLIER'S ONLY WARRANTY CONCERNING THE RETAIL POWER PROVIDED HEREUNDER, AND IS MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR OTHERWISE. UTILITY WILL PROVIDE DELIVERY SERVICES UNDER THIS AGREEMENT; THEREFORE SUPPLIER IS NOT LIABLE FOR ANY DAMAGES RESULTING FROM FAILURE BY THE UTILITY OR RTO. SUPPLIER DOES NOT GUARANTEE UNINTERRUPTED SERVICE AND SHALL NOT BE LIABLE FOR ANY DAMAGES SUSTAINED BY CUSTOMER BY REASON OF ANY FAILURE, ALTERATION OR INTERRUPTION OF SERVICE. NEITHER PARTY SHALL BE RESPONSIBLE UNDER ANY CIRCUMSTANCES FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE, INCURRED BY THE OTHER PARTY.

10. FORCE MAJEURE

If a Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement (the "Claiming Party") and gives notice and details of the Force Majeure to the other Party as soon as practicable, then the Claiming Party shall be excused from the performance of its obligations under this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. During the period excused by Force Majeure, the non-Claiming Party shall not be required to perform its obligations under this Agreement. "Force Majeure" shall mean an event or circumstance which prevents the Claiming Party from performing its obligations or causes delay in the Claiming Party's performance under this Agreement, which event or circumstance was not anticipated as of the date this Agreement was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence or use of good utility practice, as defined in the applicable transmission

tariff, the Claiming Party is unable to overcome or avoid or cause to be avoided, such as, but not limited to, acts of God; fire; flood; earthquake; war; riots; strikes, walkouts, lockouts and other labor disputes that affect Customer or Supplier. Force Majeure shall not be based on 1) Customer's inability to economically use the Retail Power purchased hereunder; or 2) Supplier's ability to sell the Retail Power at a price greater than the price under this Agreement. If the Force Majeure event (other than Utility failure due to no failure by either Party, as recited above) continues for a period of thirty (30) days or longer (Extended Force Majeure Event), the performing Party may terminate this agreement by providing the non-performing party written notice. The Parties agree to settle as follows: (a) in the event the then current market value, as reasonably determined by Supplier, of all remaining quantities of electricity that were otherwise to be provided after such termination date ("the Liquidated Quantities") is greater than the Power Price, then Supplier shall pay to Customer the amount equal to: the Liquidated Quantities multiplied by (such market value minus the Power Price); (b) in the event the Power Price is more than the then current market value, as reasonably determined by Supplier, of the Liquidated Quantities, then Customer shall pay to Supplier the amount equal to: the Liquidated Quantities multiplied by (the Power Price minus such market value). The termination for an Extended Force Majeure Event shall not constitute a material breach of the Agreement.

11. CHANGE IN LAW OR REGULATORY EVENT

In the event that any change in or enactment of any rule, regulation, Utility operating procedure, tariff, ordinance, statute, or law affecting the sale or transmission, distribution, or purchase or other obligation under this Agreement (including but not limited to any administrative ruling, interpretation, or judicial decision), or any new or increased charges to maintain system reliability affects Supplier's costs to deliver Retail Power, as determined in Supplier's reasonable discretion (a "Change in Law"), Supplier shall, 1) provide written notice to Customer of the change; 2) specify the effect on price necessary to accommodate the Change in Law, and 3) state the date upon which such new pricing shall be effective, which date shall not be less than thirty (30) days from the date of the written notice and shall coincide with the next Monthly Billing Cycle invoice that follows the thirty (30) day period. Customer agrees that it shall be bound by the new pricing set forth in the written notice described in the foregoing provision.

12. ASSIGNMENT/CUSTOMER NAME CHANGE

This Agreement shall be binding on each Party's successors and permitted assigns. Neither Party shall assign this Agreement or its rights without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, 1) Supplier may assign its rights and obligations under this Agreement to an affiliate without consent of the Customer, or 2) the assigning party ("Assignor") shall be released from all liability under this Agreement if assignee agrees in writing to be bound by the

terms and conditions and assumes the liability of Assignor under this Agreement. If Customer undergoes a change of legal name during any term of this Agreement, Customer is responsible for notifying the Utility and Supplier of such change in Customer's legal name (such new name, the "New Name") as soon as practicable. Customer further agrees to take any and all steps as may be required by the Utility to continue as Supplier's customer or to re-enroll with Supplier.

13. WAIVER

Except as otherwise set forth in this Agreement, failure or delay on the part of either Party to exercise any right, power, or privilege under this Agreement shall not operate as a waiver of such right, power or privilege of this Agreement.

14. EVENTS OF DEFAULT

Definition: An "Event of Default" shall mean, with respect to a defaulting party (the "Defaulting Party"), the occurrence of any of the following: (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days (as such term is defined in Section 4 above) after written notice of such failure; (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated; (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive where such Party has made payments due for such failure to deliver or receive,) if such failure is not remedied within five (5) Business Days (as such term is defined in Section 4 above) after written notice by Supplier to Customer; (d) such Party (1) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (2) makes an assignment or any general arrangement for the benefit of creditors, (3) otherwise becomes bankrupt or insolvent (however evidenced), or (4) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets as part of bankruptcy proceeding or reorganization for the benefit of creditors; (e) the failure of Customer to satisfy the creditworthiness/collateral requirements under Section 7 of this Agreement; or (f) a Party consolidates or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement, or the resulting, surviving or transferee entity does not satisfy the creditworthiness requirements/collateral requirement set forth in Section 7 of this Agreement (each, an "Event of Default").

Suspension and Early Termination: If an Event of Default occurs, the non-defaulting Party ("the Non-Defaulting Party") may, at its option and in its sole discretion, 1) suspend its performance under this Agreement, or 2) terminate this

Agreement ("Early Termination"), at which Early Termination, the Non-Defaulting Party shall have the right to liquidate this Agreement and to demand payment of, which the defaulting Party ("the Defaulting Party") shall pay upon invoice, a settlement amount which shall be equal to a) if Customer is the Defaulting Party, any unpaid invoices plus, the positive difference (if any) of the Power Price minus the Market Price multiplied by the Total Monthly Usage kWh in the Monthly Billing Cycles remaining in the Term or Renewal Term, or b) if Supplier is the Defaulting Party, the net result of any unpaid invoices by Customer to Supplier and, the positive difference (if any) of the Market Price minus the Power Price multiplied by the Total Monthly Usage kWh in the Monthly Billing Cycles remaining in the Term or Renewal Term. Any such calculation shall be discounted to present value, plus other costs, expenses and charges under this Agreement which the Non-Defaulting Party incurs as a result of such Early Termination, in addition to and without prejudice to any right of setoff, recoupment, combination of accounts, lien or other right to which the Non-Defaulting Party is otherwise entitled, whether by operation of law, equity, contract or otherwise as a result of the Event of Default and early termination of this Agreement, subject to any limitations on liability as set forth in Section 9 WARRANTY, DISCLAIMER AND LIMITATION OF LIABILITY. For the purposes of this section "Market Price" shall mean the amount, as determined by the Non-Defaulting Party, that a bona fide third party would pay for the subject kWh at the then current prevailing energy prices. The non-Defaulting Party may consider, among other things, quotations from the leading dealers in the wholesale energy industry, internally developed forward market prices and other bona fide third party offers as commercially available to the Non-Defaulting Party, which will be adjusted, as necessary, for the period and differences in transmission costs, volume, and other factors, as reasonably determined by the Non-Defaulting Party.

15. MISCELLANEOUS

This Agreement constitutes the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes and extinguishes any and all prior oral or written agreements between the parties concerning the subject matter of this Agreement. This Agreement may only be modified or amended through a written document signed by both parties. Except as otherwise set forth in this Agreement, failure or delay on the part of Supplier to exercise any right, power, or privilege under this Agreement shall not operate as a waiver of such right, power or privilege of this Agreement.

16. FORWARD CONTRACT/NON-UTILITY ACKNOWLEDGEMENT

The Parties agree this Agreement is construed and understood to be a "forward contract" as defined by the U.S. Bankruptcy Code. Each party agrees that, for purposes of this Agreement, the other party is not a "utility" as such term is used in Section 366 of the U.S. Bankruptcy Code, and each party waives and agrees not to assert the applicability of the provisions of such Section 366 in any bankruptcy proceeding wherein such party is a debtor.

17. RESOLUTION OF DISPUTES

If a question or controversy arises between the Parties concerning the observance or performance of any of the terms, provisions or conditions contained herein or the rights or obligations of either Party under this Agreement, such question or controversy shall in the first instance be the subject of a meeting between the Parties to negotiate a resolution of such dispute. Such meeting shall be held within fifteen (15) days of a written request by either Party. If within fifteen (15) days after that meeting the Parties have not negotiated a resolution or mutually extended the period of negotiation, each Party shall be permitted to commence with legal action. Any litigation arising hereunder shall be brought in a court of competent jurisdiction in the state of Ohio.

18. EXECUTION

Customer may provide Supplier with an executed facsimile copy of the Agreement, or other form of an electronic execution of the Agreement, and in such event the Agreement is binding on the Parties upon acceptance and execution by Supplier, and shall be deemed an original.

19. CHANGES IN CONSUMPTION

Customer will provide Supplier advanced notification of any planned shut-downs or known or anticipated changes to Customer's operations that will have an impact on Supplier's ability to accurately forecast Customer's load and/or notice of any Account closings that may occur or may be expected to occur during the Term. Supplier may incorporate a request that Customer provide a periodic production or load forecast to aid in forecasting Customer's load requirements as part of the terms of this Agreement. During the Term of this Agreement, Customer may add or remove up to ten percent (10%) of contracted volume at no additional cost incurred by the Customer.

20. CUSTOMER SERVICE

For questions about your invoice or Supplier service, please contact our Customer Care Department by calling Supplier at the toll free number listed on the Notices Schedule. To report a service outage in an emergency or for any other questions, please contact your Utility directly.