

**MASTER ENERGY SUPPLY AGREEMENT**

**BY AND BETWEEN**

**OHIO POWER COMPANY**

**AND**

**EACH ENERGY SUPPLIER SET FORTH ON ATTACHMENT A HERETO**

**DRAFT**

**05 November 2012**

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## **MASTER ENERGY SUPPLY AGREEMENT**

This Master Energy Supply Agreement (“Agreement”), dated as of \_\_\_\_\_, 2013 (“Effective Date”), is by and between Ohio Power Company, an Ohio corporation with offices at 1 Riverside Plaza, Columbus, Ohio (“AEP Ohio”) and each of the suppliers listed on Attachment A severally, but not jointly, (each an “Energy Supplier” and collectively “Energy Suppliers”). AEP Ohio and each Energy Supplier are hereinafter referred to individually as a “Party” or collectively as the “Parties”).

### **RECITALS**

**WHEREAS**, AEP Ohio is an Ohio public utility that engages, inter alia, in providing Standard Service Offer supply within its service territory; and

**WHEREAS**, the PUCO found that it would serve the public interest for AEP Ohio to secure a percentage of Energy Supply through a competitive bidding process; and

**WHEREAS**, on \_\_\_\_\_, 2013 AEP Ohio conducted and completed a successful Solicitation for a percentage of its Energy Supply; and

**WHEREAS**, each Energy Supplier was one of the winning bidders in the Solicitation for Energy Supply; and

**WHEREAS**, the PUCO has authorized AEP Ohio to contract with winning bidders for Energy Supply to serve Energy Load in accordance with the terms of this Agreement;

**WHEREAS**, AEP Ohio shall be responsible for the provision of any renewable energy resource requirement as set forth in Ohio Rev. Code Ann. Sections 4928.64 and 4928.65 and regulations promulgated in respect thereto; and

**WHEREAS**, AEP Ohio and the Energy Suppliers desire to enter into this Agreement setting forth their respective obligations concerning the provision of Energy Supply.

**NOW, THEREFORE**, for and in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties intending to be legally bound hereby agree as follows:

## ARTICLE 1

### DEFINITIONS

The following definitions and any terms defined in this Agreement shall apply hereunder.

["AEP Load Zone"] means that set of electrical locations, designated by PJM as Pnode ID number \_\_\_\_\_, determined pursuant to the applicable PJM Tariff, rules, agreements and procedures, representing the aggregate area of consumption [for AEP Ohio] within PJM and used for the purposes of scheduling, reporting withdrawal volumes, and settling Energy transactions at aggregated load levels, to facilitate Energy market transactions. ~~NTD – Once final decision is made regarding Delivery Point, clarify this definition to make it clear whether the Delivery Point is the PJM Load Zone or the AEP Ohio Aggregate.~~

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"AEP Ohio Indemnified Party" has the meaning set forth in Section 10.1(a).

"Affiliate" means, with respect to any Person, any other Person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

"Ancillary Services" has the meaning set forth in the PJM Agreements.

"Bankrupt" means with respect to any entity, that such entity (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is unable to pay its debts as they fall due.

"Bankruptcy Code" means those laws of the United States of America related to bankruptcy, codified and enacted as Title 11 of the United States Code, entitled "Bankruptcy" and found at 11 U.S.C. § 101 et seq.

"Billing Period" means ~~hour ending 0100 on the first day of a calendar month through hour ending 2400 on the last day of the applicable calendar month, with respect to any calendar month of a Delivery Period, the date(s) determined to be the PJM Settlement Date(s) pursuant to the PJM Agreements.~~

"Billing Statement" has the meaning set forth in Section 6.1(a).

"Business Day" means any day except a Saturday, Sunday or a day PJM declares to be a holiday, as posted on the PJM website. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. prevailing Eastern Time, unless otherwise agreed to by the Parties in writing.

“Capacity” means “Unforced Capacity” as set forth in the PJM Agreements, or any successor measurement of capacity obligation of an LSE as may be employed in PJM (whether set forth in the PJM Agreements or elsewhere).

“Charge” means any fee, charge, PJM charge, the Energy Share Adjustment if in favor of AEP Ohio, or any other amount that is billable by AEP Ohio to the Energy Supplier under this Agreement.

“Commercial/Industrial Customer” means a Customer taking service under one of AEP Ohio’s non-residential rates (Ohio Power Rate Zone: Rate GS-1, Rate GS-2,); Rate GS-3, Rate GS-4, Rate GS-TOD, Rate COGEN/SPP, Rate SBS, Rate EHG, Rate EHS, or Rate SS; Columbus Southern Power Rate Zone: Rate GS-1, Rate GS1-TOD, Rate GS2, Rate GS-3, Rate GS-4, Rate GS-2-TOD, Rate COGEN/SPP or Rate SBS).

“Costs” mean, with respect to the Non-Defaulting Party, all reasonable attorney’s fees, brokerage fees, commissions, PJM charges and other similar transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace this Agreement; and all reasonable attorney’s fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement as between AEP Ohio and the applicable Energy Supplier.

“Credit Limit” means an amount of credit, based on the creditworthiness of an Energy Supplier or its Guarantor, if applicable, determined pursuant to Section 5.6, granted by AEP Ohio to such Energy Supplier to be applied towards the Total Exposure Amount for such Energy Supplier.

“CRES Supplier” means a Person that is duly certified by the PUCO to offer and to assume the contractual and legal responsibility to provide Standard Service Offer pursuant to retail open access programs approved by the PUCO to Customers who are not SSO Customers of AEP Ohio.

“Cross Default Amount” means an amount equal to five percent (5%) of a Defaulting Party’s or Defaulting Party’s Guarantor’s (as applicable) Tangible Net Worth.

“Customer” means any Person who receives distribution service from AEP Ohio in accordance with the Legal Authorities.

“Default Allocation Assessment” has the meaning set forth in the PJM Agreements.

“Default Damages” means direct damages, calculated in a commercially reasonable manner, that the Non-Defaulting Party incurs as a result of an Event of Default by the Defaulting Party. Default Damages may include: (i) the positive difference (if any) between the price of Energy Supply hereunder and the price at which AEP Ohio or the Energy Supplier is able to purchase or sell (as applicable) Energy Supply from or to third parties including other Energy Suppliers and PJM; (ii) Emergency Energy charges; (iii) additional transmission or congestion charges incurred to purchase or sell Energy Supply; and (iv) Costs.

“Defaulting Party” has the meaning set forth in Section 7.1.

“Delivery Period” means the Original Delivery Period, unless this Agreement is terminated earlier in accordance with the provisions hereof.

“Delivery Point” means the [AEP Load Zone] as defined within PJM.

“Early Termination” has the meaning set forth in Section 2.3.

“Early Termination Date” means, as between AEP Ohio and the applicable Energy Supplier, the date upon which an Early Termination becomes effective as specified in Section 7.2(b).

“Effective Date” has the meaning set forth in the preamble.

“Emergency” means (i) an abnormal system condition requiring manual or automatic action to maintain system frequency, or to prevent loss of firm load, equipment damage, or tripping of system elements that could adversely affect the reliability of an electric system or the safety of persons or property; (ii) a condition that requires implementation of emergency operations procedures; or (iii) any other condition or situation that AEP Ohio, transmission owner(s) or PJM deems imminently likely to endanger life or property or to affect or impair AEP Ohio’s electrical system or the electrical system(s) of other Person(s) to which AEP Ohio’s electrical system is directly or indirectly connected (a “Connected Entity”). Such a condition or situation may include potential overloading of AEP Ohio’s subtransmission or distribution circuits, PJM minimum generation (“light load”) conditions, or unusual operating conditions on either AEP Ohio’s or a Connected Entity’s electrical system, or conditions such that AEP Ohio is unable to accept Energy from the Energy Supplier without jeopardizing AEP Ohio’s electrical system or a Connected Entity’s electrical system.

“Emergency Energy” has the meaning set forth in the PJM Agreements.

“Energy” means electric energy of the character commonly known as three-phase, sixty-hertz electric energy that is delivered at the nominal voltage of the Delivery Point, expressed in MWh.

“Energy Load” means the Energy requirements of SSO Customers, as estimated by AEP Ohio for each hour and scheduled prior to the daily scheduling deadline established by the PJM Agreements (which generally is the close of the first Business Day following the applicable operating day). Energy Load will include all transmission and distribution losses, and shall be derated by PJM for marginal losses.

“Energy Supplier” has the meaning set forth in the preamble.

“Energy Supplier Responsibility Share” means, for each Energy Supplier, the fixed percentage share of the Energy Load for which the Energy Supplier is responsible as set forth in Attachment A. The stated percentage is determined by dividing the number of Tranches won by the Energy Supplier in the Solicitation by the total number of Tranches.

“Energy Supply” means Energy delivered to the Delivery Point in order to meet the Energy requirements of the Energy Load. Energy Supply will be scheduled pursuant to Article IV.

“Estimated Hourly Energy Share” means a quantity of Energy expressed in MWh which, for any hour on any day of the Delivery Period on which Energy Supply is required to be delivered, is the preliminary calculation of the Energy Supplier’s Energy Supplier Responsibility Share for that hour. The Estimated Hourly Energy Share will be determined by AEP Ohio in a commercially reasonable manner for each hour prior to the daily InSchedule deadline for that hour established

by the PJM Agreements (which generally is the close of the first Business Day following the operating day) using the best data then available.

“Estimated Monthly Energy Share” means a quantity of Energy expressed in MWh which, for any Billing Period, is the preliminary calculation of the Energy Supplier’s Energy Supplier Responsibility Share. The Estimated Monthly Energy Share will be equal to the sum of the Estimated Hourly Energy Shares for each hour that Energy is scheduled for delivery during each Billing Period.

“Event of Default” has the meaning set forth in Section 7.1.

“Excess Collateral” has the meaning set forth in Section 5.7

“FERC” means the Federal Energy Regulatory Commission or such succeeding organization.

“Final Hourly Energy Share” means a quantity of Energy expressed in MWh which, for any hour on any day of the Delivery Period on which Energy Supply is required to be delivered, is the Estimated Hourly Energy Share for that hour adjusted for any estimation, billing or metering errors identified within sixty (60) days of the applicable operating day. ~~For any hour in which the Final Hourly Energy Share is not less than 80% nor more than 120% of the Estimated Hourly Energy Share for that hour, the Final Hourly Energy Share shall equal the Estimated Hourly Energy Share.~~

“Firm Transmission Service” has the meaning ascribed to “Network Integration Transmission Service” under the PJM Agreements. In the event the PJM Agreements are modified such that “Network Integration Transmission Service” is no longer offered, Firm Transmission Service means the type of transmission service offered under the PJM Agreements that is accorded the highest level of priority for scheduling and curtailment purposes.

“Forward Market Prices” means forward market prices for a specific geographic Market Price Hub, as adjusted by AEP Ohio to reflect impact of load shape.

“Gains” means an amount equal to the present value of the economic benefit to the Non-Defaulting Party, if any, exclusive of Costs, resulting from an Early Termination.

“Governmental Authority” means any federal, state, local, municipal or other governmental entity, authority or agency, department, board, court, tribunal, regulatory commission, or other body, whether legislative, judicial or executive, together or individually, exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power over a Party to this Agreement.

“Guarantor” means any Person having the authority and agreeing to guarantee an Energy Supplier’s financial obligations under this Agreement, provided that such party meets AEP Ohio’s creditworthiness requirements for Energy Suppliers.

“Guaranty” means the ICT Guaranty or the Total Exposure Guaranty, as applicable.

“Hourly Energy Share Adjustment” means for any Billing Period, the monetary amount due to an Energy Supplier or AEP Ohio, as the case may be, in order to reconcile any difference between



the Estimated Hourly Energy Shares used for the purpose of calculating estimated payments made to such Energy Supplier for a given month and the Final Hourly Energy Shares used for calculating the final payments due to the Energy Supplier for such hour, as more fully described in Article 6. The Hourly Energy Share Adjustment will equal the net sum, for each hour that Energy is scheduled for delivery during each Billing Period, of the Price multiplied by the Applicable Seasonal Billing Factor minus the PJM ~~Real-Time~~Day-Ahead LMP multiplied by the Final Hourly Energy Share minus the Estimated Hourly Share. A positive Hourly Energy Share Adjustment will be due to the Energy Suppliers and a negative Hourly Energy Share Adjustment will be due to AEP Ohio

“ICR Collateral” has the meaning set forth in Section 5.4(d).

“ICRT” has the meaning set forth in Section 5.3.

“ICT Guaranty” means a guaranty, in the form substantially set forth in Attachment D, provided by a Guarantor in favor of AEP Ohio guaranteeing an Energy Supplier’s financial obligations in connection with ICT.

“Indemnification Losses” has the meaning set forth in Section 10.1(a).

“Indemnified Supplier” has the meaning set forth in section 10.1(b).

“Independent Credit Requirement or ICR” means an amount per Tranche required as security under Section 5.3, to mitigate the risk to AEP Ohio of Energy price movements between the date of an Early Termination caused by an Event of Default by an Energy Supplier and the date the final calculation of Default Damages owing to AEP Ohio under Section 7.2(c) is made.

“Independent Credit Threshold or ICT” means an amount of credit, based on the creditworthiness of an Energy Supplier or its Guarantor, if applicable, determined pursuant to Section 5.4, granted by AEP Ohio to such Energy Supplier to be applied towards the satisfaction of such Energy Supplier’s Independent Credit Requirement.

“Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate (“Prime Rate”) as may be published from time to time in the Federal Reserve Statistical Release H.15; or (b) the maximum lawful interest rate.

“Kilowatt or kW” means a unit of measurement of useful power equivalent to 1,000 watts.

“Kilowatt-hour or kWh” means one kilowatt of electric power used over a period of one hour.

“Legal Authorities” means, generally, those federal and Ohio statutes and administrative rules and regulations that govern the electric utility industry in Ohio.

“Letter of Credit” means a standby irrevocable letter of credit in the form set forth in Attachment E, or in such other form as AEP Ohio deems acceptable in its sole discretion, and in each case conforming to all of the requirements specifically set forth in Section 5.9(b).

“LIBOR” means the rates published daily as the London Inter-Bank Offered Rates for U.S. dollar deposits. For discounting purposes, the rates will be converted into a series of monthly rates representing the equivalent forward LIBOR rate from the valuation date to the month of delivery.

“Lighting Customer” means a Customer taking service under AEP Ohio’s lighting rates (Ohio Power Rate Zone: Rate AL or Rate SL; Columbus Southern Power Rate Zone: Rate AL or Rate SL).

“Load Serving Entity or LSE” has the meaning set forth in the applicable PJM Agreements.

“Losses” means an amount equal to the present value of the economic loss to the Non-Defaulting Party, if any, exclusive of Costs, resulting from an Early Termination.

“Margin” means, at any time, the amount by which the Total Exposure Amount exceeds the Credit Limit of the Energy Supplier or its Guarantor.

“Margin Call” has the meaning set forth in Section 5.6(d).

“Margin Collateral” has the meaning set forth in Section 5.6(d).

“Margin Interest Rate” means the Federal Funds Effective Rate, defined below, for the period of time the funds are on deposit. The Federal Funds Effective Rate is published daily on the Federal Reserve website at: <http://federalreserve.gov/releases/h15/update/>, or its successor.

“Mark-to-Market Exposure Amount” means an amount calculated daily for each Energy Supplier reflecting the exposure to AEP Ohio due to fluctuations in market prices for Energy as set forth in Section 5.5.

“Market Price Hub” means ~~a liquid pricing point located within PJM’s geographic footprint~~the AEP-Dayton Hub (Pnode # 34497127) as currently defined by PJM, or any successor thereto.

“Midwest ISO Tariff” means the Open Access Transmission, Energy and Operating Reserve Markets Tariff for the Midwest Independent Transmission System Operator, Inc., or the successor, superseding or amended versions of the Open Access Transmission, Energy and Operating Reserve Markets Tariff that may take effect from time to time.

“Minimum Margin Threshold” means \$100,000.

“Minimum Rating” means a minimum senior unsecured debt rating as defined in Section 5.4(a).

“MW” means megaWatt.

“MWh” means megaWatt hour.

“NERC” means the North American Electric Reliability Corporation or its successor.

“Non-Defaulting Party” means (i) where an Energy Supplier is the Defaulting Party, AEP Ohio; (ii) where AEP Ohio is the Defaulting Party with respect to an Event of Default, the Energy Supplier to which the applicable obligation was owed.

“Ohio Sales and Use Taxes” has the meaning set forth in Section 12.8.

“Original Delivery Period” has the meaning set forth in Attachment A.

“Other Energy Supply Agreement” has the meaning set forth in Section 7.3(c).

“Party” has the meaning set forth in the preamble to this Agreement, and includes such Party’s successors and permitted assigns.

“Performance Assurance” means collateral in the form of cash, letters of credit, or other security reasonably acceptable to the Requesting Party.

“Person” means an individual, partnership, joint venture, corporation, limited liability company, trust, association or unincorporated organization, any Governmental Authority, or any other entity.

“PIPP Customers” means Customers that take service under AEP Ohio’s percentage of income payment plan.

“PJM” means PJM Interconnection, L.L.C. or any successor organization thereto.

“PJM Agreements” means the PJM OATT, PJM Operating Agreement, PJM RAA and any other applicable PJM manuals or documents, or any successor, superseding or amended versions thereof that may take effect from time to time.

“PJM Balancing Authority Area” means the control area recognized by NERC as the PJM Balancing Authority Area.

“PJM E-Account” means an account obtainable through PJM which provides access to web-based PJM scheduling, settlement, accounting, marketing and other informational and economic systems.

“PJM OATT or PJM Tariff” means the Open Access Transmission Tariff of PJM or the successor, superseding or amended versions of the Open Access Transmission Tariff that may take effect from time to time.

“PJM Operating Agreement” means the Amended and Restated Operating Agreement of PJM or the successor, superseding or amended versions of the Amended and Restated Operating Agreement that may take effect from time to time.

“PJM RAA” means the Reliability Assurance Agreement Among Load Serving Entities in the PJM Region or any successor, superseding or amended versions of the Reliability Assurance Agreement Among Load Serving Entities in the PJM Region that may take effect from time to time.

“PJM Settlement Date(s)” means the date(s) on which payments are due to PJM for weekly and monthly services provided by PJM in accordance with the PJM Agreements and schedules.

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“Price” means, with respect to each Energy Supplier, the price in \$/MWh set forth in Attachment A, resulting from AEP Ohio’s Solicitation for the opportunity to provide Energy Supply. The Price is the basis for financial settlement of Energy Supply supplied by an Energy Supplier for SSO Customers under this Agreement.

“PUCO” means the Public Utilities Commission of Ohio, or any successor thereto.

“Residential Customer” means a Customer taking service under AEP Ohio’s residential rates (Ohio Power Rate Zone: Rate RS, Rate RS-ES, Rate RS-TOD or Rate RDMS; Columbus Southern Power Rate Zone: Rate R-R, Rate R-R-1, Rate RLM, Rate RS-ES, Rate RS-TOD, Rate RS-TOD2, Rate CPP or Rate RS-RTP).

“Seasonal Billing Factor” means a numerical factor, as set forth in Attachment B, one amount applicable during the summer months of June through September, and one amount applicable during the non-summer months of October through May, applied to the Price in accordance with the provisions of Article 6 and thereby used to adjust AEP Ohio’s payments to Energy Suppliers.

“Settlement Amount” means the net amount of the Losses or Gains, and Costs, expressed in U.S. Dollars, which the Non-Defaulting Party incurs as a result of Early Termination, calculated from the Early Termination Date through the end of the Original Delivery Period. For purposes of calculating the Settlement Amount, the quantity of Energy provided for under this Agreement for the period following the Early Termination Date through the remainder of the Original Delivery Period will be determined by the Non-Defaulting Party in a commercially reasonable manner reflecting estimated Energy Load for un-switched customers as of the Early Termination Date based on the then most recent load switching report filed by AEP Ohio with the PUCO as of the Early Termination Date. The calculation of Settlement Amount with respect to an Early Termination shall exclude Default Damages calculated pursuant to Section 7.3(a).

“Solicitation” means the auction by which the counterparty, quantity, pricing and other terms of this Agreement are established.

“Special Contract Customers” means Customers that take retail generation service from AEP Ohio under terms and conditions different than the otherwise applicable tariff.

“Specified Indebtedness” with respect to a Party means as of any date, without duplication, (i) all obligations of such Party for borrowed money, (ii) all indebtedness of such Party for the deferred purchase price of property or services purchased (excluding current accounts payable incurred in the ordinary course of business), (iii) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired, (iv) all indebtedness under leases which shall have been or should be, in accordance with generally accepted accounting principles, recorded as capital leases in respect of which such Party is liable as lessee, (v) the face amount of all outstanding letters of credit issued for the account of such Party (other than letters of credit relating to indebtedness included in indebtedness of such Party pursuant to another clause of this definition) and, without duplication, the unreimbursed amount of all drafts drawn thereunder, (vi) indebtedness secured by any lien on property or assets of such Party, whether or not assumed (but in any event not exceeding the fair market value of the property or asset), (vii) all direct guarantees of indebtedness referred to above of another Party, (viii) all amounts payable in connection with mandatory redemptions or repurchases of preferred stock or

member interests or other preferred or priority equity interests and (ix) any obligations of such Party (in the nature of principal or interest) in respect of acceptances or similar obligations issued or created for the account of such Party.

“SSO Customers” means Residential Customers, PIPP Customers, Commercial/Industrial Customers, Lighting Customers, Special Contract Customers, and any other Customer taking retail generation service from AEP Ohio, but excluding replacement Energy provided to interruptible service customers during AEP Ohio requested interruptions.

“Standard Service Offer” means a standard service offer provided by AEP Ohio under PUCO tariffs of all competitive retail electric services necessary to maintain essential electric service to Customers, including Energy, Capacity, Ancillary Services and Firm Transmission Service, including all transmission and distribution losses, congestion and imbalance costs associated with the provision of the foregoing services, other obligations or responsibilities currently imposed or that may be imposed by PJM, and such other services or products that are provided by a CRES Supplier ~~or an Energy Supplier or LSE~~ to fulfill its obligations to serve customer load, as required by Section 4928.141 of the Ohio Revised Code.

“Tangible Net Worth” or “TNW” means total assets less intangible assets and total liabilities. Intangible assets include benefits such as goodwill, patents, copyrights and trademarks, each as would be reflected on a balance sheet prepared in accordance with generally accepted accounting principles.

“Taxes” have the meaning set forth in Section 12.8.

“Term” has the meaning set forth in Section 2.1.

“Termination Payment” has the meaning set forth in Section 7.3(c).

“Total Exposure Amount” means an amount calculated daily for each Energy Supplier reflecting the total credit exposure to AEP Ohio and consisting of the sum of: (i) the Mark-to-Market Exposure Amount arising under this Agreement; (ii) any amount(s) designated as the “mark-to-market exposure amount” (or similar designation) under any Other Energy Supply Agreement; and (iii) the amount designated as the “credit exposure” (or similar designation) under any Other Energy Supply Agreement; less (iv) amounts due to such Energy Supplier pursuant to Section 6.1; provided that in the event the amount calculated for any day is a negative number, it shall be deemed to be zero for such day.

“Total Exposure Amount Guaranty” means a guaranty, in substantially similar form as set forth in Attachment D, provided by a Guarantor in favor of AEP Ohio guaranteeing an Energy Supplier’s financial obligation with respect to its Total Exposure Amount.

“Tranche” means a fixed percentage share of the Energy Load as determined for the purposes of the Solicitation conducted to procure Energy Supply for the Energy Load.

**ARTICLE 2**  
**TERM AND TERMINATION**

**2.1    Term**

The Term of this Agreement shall begin on the Effective Date and extend through and include the end of the Delivery Period (“Term”) unless terminated earlier or extended pursuant to the terms of this Agreement; provided, however, that the provision of Energy Supply by Energy Suppliers will commence on [\_\_\_\_\_, 2013 at 12:01 a.m. prevailing Eastern Time and end on May 31, 2015.

**2.2    Mutual Termination**

AEP Ohio and any Energy Supplier may terminate this Agreement at any time during the Term on such terms and under such conditions as they mutually agree.

**2.3    Early Termination**

This Agreement may be terminated by a Party prior to the end of the Term due to an occurrence of an Event of Default and the declaration of an Early Termination Date by the Non-Defaulting Party pursuant to Section 7.2 (an “Early Termination”).

**2.4    Effect of Termination**

The applicable provisions of this Agreement shall continue in effect and survive the termination of this Agreement to the extent necessary to provide for final accounting, billing, billing adjustments, resolution of any billing disputes, realization of any collateral or other security, set-off, final payments, or payments pertaining to liability and indemnification obligations arising from acts or events that occurred in connection with this Agreement during the Term.

## ARTICLE 3

### GENERAL TERMS AND CONDITIONS

#### 3.1 Energy Supplier's Obligations to Provide Energy Supply and Other Obligations

Each Energy Supplier hereby agrees, severally, but not jointly, as follows:

(a) during the Delivery Period, such Energy Supplier shall sell, deliver, schedule (in accordance with Section 4.1(c)) and provide Energy Supply on a firm and continuing basis in order to meet its Energy Supplier Responsibility Share, in accordance with this Agreement and the PJM Agreements;

(b) during the Delivery Period, Energy Supplier shall be responsible for all those PJM billing statement line items that are allocated to Energy Supplier in Attachment F – PJM Sample Invoice; [Intentionally Omitted];

(c) (i) each Energy Supplier's obligation under Section 3.1(a) will result in physical delivery of Energy Supply and not financial settlement; (ii) the quantity of Energy Supply that such Energy Supplier must deliver will be determined by the requirements of the Energy Load, which may be different than the amount indicated in the Solicitation; and (iii) this Agreement does not provide for an option by such Energy Supplier with respect to the quantity of Energy Supply to be delivered;

(d) each Energy Supplier shall be responsible for all costs and expenses related to the scheduling and delivery of Energy Supply at the Delivery Point in proportion to its Energy Supplier Responsibility Share;

(e) during the Term, each Energy Supplier is responsible, at its sole cost and expense, for any changes in PJM products and pricing required for the delivery of its Energy Supplier Responsibility Share;

(f) [Intentionally Omitted] each Energy Supplier is responsible for all costs incurred to schedule and deliver its Energy Supplier Responsibility Share; [NTD – Redundant with Section 3.1(d)]

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(g) each Energy Supplier shall be at all times during the Delivery Period (i) a member in good standing of PJM and (ii) qualified by PJM as a “Market Buyer” and “Market Seller” pursuant to the PJM Agreements;

(h) [Intentionally Omitted]; and

(i) each Energy Supplier shall have and maintain, throughout the Delivery Period, FERC authorization to make sales of Energy at market-based rates within PJM.

### **3.2 AEP Ohio’s Obligation to Take Energy Supply and other Obligations**

AEP Ohio hereby agrees as follows:

(a) during the Delivery Period, AEP Ohio shall purchase and receive, or cause to be received, the Energy Supply provided by an Energy Supplier pursuant to Section 3.1 at the Delivery Point and shall pay the Energy Supplier the Price; and

(b) during the Delivery Period, AEP Ohio shall be a member in good standing of PJM; and-

(c) during the delivery period, as between Energy Supplier and AEP Ohio, AEP Ohio shall be responsible for providing all products, including any renewable energy resource requirements required under Ohio law, other than Energy required to be included in a Standard Service Offer; and~~[Intentionally Omitted]~~.

(d) during the Delivery Period, AEP Ohio shall be responsible for all those PJM billing statement line items that are allocated to AEP Ohio in Attachment F – PJM Sample Invoice~~[Intentionally Omitted]~~ and any new PJM charges or line items that are added after the Effective Date .

(e) [Intentionally Omitted].

(f) [Intentionally Omitted].

### **3.3 PJM E-Accounts**



Each Energy Supplier and AEP Ohio shall work with PJM to establish any PJM E-Accounts necessary for such Energy Supplier to provide Energy Supply. Each Energy Supplier may manage its PJM E-Accounts in its sole discretion; provided such Energy Supplier acts in accordance with the standards set forth in the PJM Agreements.

#### **3.4 Reliability Guidelines**

Each Party agrees to adhere to the applicable operating policies, criteria and guidelines of the NERC, PJM, their successors, and any regional and sub-regional requirements.

#### **3.5 Regulatory Authorizations**

(a) AEP Ohio and each Energy Supplier shall obtain and maintain throughout the Delivery Period all regulatory authorizations necessary to perform their respective obligations under this Agreement.

(b) Each Energy Supplier shall cooperate in good faith with AEP Ohio in any regulatory compliance efforts as may be required to maintain the ongoing legitimacy and enforceability of the terms of this Agreement and to fulfill any regulatory reporting requirement associated with the provision of Energy Supply before the PUCO, FERC or any other Governmental Authority; provided, however, that Energy Supplier shall not be obligated to provide any cooperation that Energy Supplier reasonably believes is contrary to its best interests.-

#### **3.6 [Intentionally Omitted]**

#### **3.7 [Intentionally Omitted]**

#### **3.8 Sales for Resale**

All Energy Supply provided by an Energy Supplier to AEP Ohio shall be sales for resale, with AEP Ohio reselling such Energy Supply to SSO Customers.

## ARTICLE 4

### SCHEDULING, FORECASTING AND INFORMATION SHARING

#### 4.1 Scheduling

(a) Subject to subsection (c), Each Energy Supplier shall schedule Energy Supply and make all necessary arrangements for the delivery of Energy Supply through the PJM Office of Interconnection pursuant to the PJM Agreements.

(b) Subject to subsection (c), AEP Ohio will provide to each Energy Supplier and to PJM all information required by PJM for the purpose of calculating each Energy Supplier's Energy Supply obligations, including the magnitude of each Energy Supplier's Energy Supply obligation, as required by the PJM Office of Interconnection.

(c) Energy Supply will be scheduled and reported by each Energy Supplier and AEP Ohio to PJM as a bilateral transaction for the physical transfer of Energy, as follows:

(i) AEP Ohio and each Energy Supplier will bilaterally establish and confirm a contract ("Contract") in PJM's InSchedule system, or a successor PJM E-Account system ("InSchedule"), related to this Agreement. The Contract will have the following attributes: (1) AEP Ohio will be designated as "Buyer" and the Energy Supplier as "Seller"; (2) the "Schedule Confirmation Type" will be "Unilateral Buyer," such that AEP Ohio will have unilateral schedule confirmation rights for all schedules between the parties; (2) the "Sink" will be the Delivery Point; (3) the "Pricing" will be designated as "Day-Ahead", such that settlement of schedules will occur at Day-Ahead pricing for each hour; (4) the "Service Type" will be "Internal Bilateral Transaction" ("IBT"); and (5) other attributes consistent with the parties obligations under Agreement.

(ii) Only AEP Ohio will have the right to create new schedules and make changes to schedules in InSchedule. For each day during the Delivery Period on which Energy Supply is required to be delivered under this Agreement, AEP Ohio will establish a unilateral schedule in InSchedule for each Energy Supplier equal to its Estimated Hourly Energy Share for each one-hour increment of the selected day in MWh, rounded to the nearest 0.001 MWh. AEP Ohio will enter the schedule for each day as soon as practical

but will have the right to enter, delete and modify the schedule for each day up until the daily InSchedule deadline established by the PJM Agreements (which generally is the close of the first Business Day following the day of flow).

(iii) Any deviations from the foregoing procedures are subject to written approval of AEP Ohio and the applicable Energy Supplier(s).

#### **4.2 Load Forecasting**

AEP Ohio shall not be required to provide to any Energy Supplier any load forecasting services.

#### **4.3 Disconnection and Curtailment by AEP Ohio**

AEP Ohio shall have the right, without incurring any liability to any Energy Supplier, to disconnect (or otherwise curtail, interrupt or reduce deliveries from) ~~the Energy Suppliers or to disconnect (or otherwise curtail, interrupt or reduce deliveries to)~~ any Customer whenever AEP Ohio determines in its discretion acting in good faith that such a disconnection, curtailment, interruption or reduction is necessary to facilitate construction, installation, maintenance, repair, replacement or inspection of any of AEP Ohio's facilities; or due to any other reason affecting the safe and reliable operation of any of AEP Ohio's or a Customer's facilities, including Emergencies, forced outages or potential overloading of any of AEP Ohio's transmission or distribution circuits, potential damage to the Customer's facilities or any risk of injury to persons, or when AEP Ohio is directed by PJM. AEP Ohio shall not show any preference for any Affiliate in connection with any such disconnection, curtailment or reduction. **INTD – Energy Supplier is only providing an IBT. There is nothing to curtail or disconnect.**

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#### **4.4 Loss of Service to SSO Customers**

The Parties agree and acknowledge that service to SSO Customers may be lost due to storms, weather, accidents, breakage of equipment or other events beyond the reasonable control of AEP Ohio affecting the transmission and distribution facilities of AEP Ohio. No Party will have any liability to any other Party for the occurrence of such events. In no event will a loss of

service to a Customer affect a Party's obligation to make any payments then due or becoming due with respect to performance rendered prior to such loss of service.

#### 4.5 **PJM Requirements**

The Parties acknowledge and agree that, as members of PJM, each of them is bound by the PJM Agreements and any other operating instructions, policies and procedures set forth by PJM. ~~Each Energy Supplier acknowledges and agrees that it will cooperate with AEP Ohio and PJM as the applicable balancing authority and reliability coordinator so that AEP Ohio will be in compliance with all PJM emergency operations procedures, which include procedures pertaining to minimum and maximum generation Emergencies, and measures requiring involuntary Customer participation, such as supply voltage reduction and full interruption of Customer load by either manual or automatic means.~~ **[NTD – Energy Supplier is only providing an IBT. Unclear what cooperation they could provide in an emergency.]**

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#### 4.6 **Compliance with Governmental Directives**

Each Energy Supplier acknowledges and agrees that AEP Ohio may need to act in response to directives by a Governmental Authority that may affect Energy Supply or Energy Load. Each Energy Supplier agrees to ~~cooperate fully~~ **provide commercially reasonable cooperation to** ~~with~~ AEP Ohio in order to comply with such directives.

### ARTICLE 5

#### CREDIT AND PERFORMANCE SECURITY

##### 5.1 **Applicability**

Each Energy Supplier agrees that it will meet the creditworthiness standards of this Article 5 at all times during the Term and will inform AEP Ohio immediately of any changes in its credit rating ~~or financial condition.~~ **[NTD – This could potentially conflict with our SEC reporting obligations.]** Without limiting the foregoing, each Energy Supplier shall, upon the written request of AEP Ohio, affirmatively demonstrate to AEP Ohio in a manner satisfactory to AEP Ohio its compliance with the creditworthiness standards set forth hereunder. AEP Ohio may establish less restrictive creditworthiness standards under this Article 5 in a non-discriminatory manner.

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During the Term, each Energy Supplier or its Guarantor, if applicable, that has been granted an Independent Credit Threshold or a Credit Limit agrees to provide as soon as practicable (i) after the end of each fiscal year, complete annual audited financial statements (including footnotes), and (ii) after the end of each fiscal quarter, complete quarterly unaudited financial statements (including footnotes). If such financial statements are readily and timely available from the Energy Supplier's website or other public website such as [www.sec.gov](http://www.sec.gov), then this requirement shall be deemed to be satisfied.

## **5.2 Creditworthiness Determination**

AEP Ohio will determine the creditworthiness of an Energy Supplier or its Guarantor, if applicable, whether organized under the laws of the United States or organized under the laws of a foreign jurisdiction, based on its most recent senior unsecured debt rating (or, if unavailable, its corporate or issuer rating). AEP Ohio will have full discretion, without liability or recourse to such Energy Supplier or its Guarantor, if applicable, to evaluate the evidence of creditworthiness submitted by such Energy Supplier or Guarantor. AEP Ohio may re-evaluate the creditworthiness of an Energy Supplier or Guarantor from time to time, including whenever it becomes aware of an adverse change in such Energy Supplier's or Guarantor's credit standing. In addition, the Energy Supplier may petition AEP Ohio to re-evaluate its creditworthiness whenever an event occurs that the Energy Supplier reasonably believes would improve the determination made by AEP Ohio of its or its Guarantor's creditworthiness. AEP Ohio's credit re-evaluation must be completed as soon as practicable, but in no event longer than thirty (30) days after receiving a fully documented request. AEP Ohio shall provide the rationale for its determination of the Credit Limit and any resulting security requirement and such determination shall be deemed final and conclusive. AEP Ohio shall perform its credit re-evaluation and associated security calculation in a non-discriminatory manner. Each Energy Supplier or its Guarantor shall provide unrestricted access to its audited financial statements; however, if audited financial statements are not available, AEP Ohio may specify other types of financial statements that will be accepted. If AEP Ohio determines in its sole discretion that it is unable to adequately assess an Energy Supplier's or Guarantor's creditworthiness or the credit rating of an Energy Supplier or its Guarantor is insufficient, such Energy Supplier shall be required to post ICR Collateral in accordance with Section 5.4(d) and Margin Collateral in accordance with Section 5.7.

### **5.3 Independent Credit Requirement**

The Independent Credit Requirement (“ICR”) per Tranche (“ICRT”) that will be required of each Energy Supplier under this Agreement will initially be the sum of the amounts set forth on Attachment C-1 at the inception of the Original Delivery Period for each Tranche and will decline throughout the Term in accordance with the schedule set forth on Attachment C-1.

### **5.4 Independent Credit Threshold**

Each Energy Supplier that qualifies under the following criteria will be granted an Independent Credit Threshold (“ICT”).

(a) For an Energy Supplier or its Guarantor that has been organized under the laws of the United States, the following requirements must be satisfied in order for such Energy Supplier to be granted an ICT:

(i) the Energy Supplier or its Guarantor, as applicable, must (1) be rated by Standard & Poor’s Rating Services (“S&P”), Moody’s Investors Service, Inc. (“Moody’s”) or Fitch, Inc. (“Fitch”), and (2) have a minimum senior unsecured debt rating (or, if unavailable, corporate or issuer rating) of at least “BB” from S&P, “Ba2” from Moody’s, or “BB” from Fitch (a “Minimum Rating”). If the Energy Supplier or its Guarantor is rated by only two rating agencies and the ratings are split, the lower rating will be used. If the Energy Supplier or its Guarantor is rated by three rating agencies and the ratings are split, the lower of the two highest ratings will be used; provided that, in the event that the two highest ratings are common, such common rating will be used. If the Energy Supplier and an Affiliate(s) are both winning bidders in the Solicitation for the provision of Energy Supply, then the Energy Supplier or its Guarantor, as applicable, and the Affiliate(s) will proportionally share the maximum level of the ICT using the highest rating as determined for the Energy Supplier or its Guarantor, as applicable, and the Affiliate(s). The maximum level of the ICT will be determined based on the following table:

Credit Rating of the Energy Supplier or its Guarantor			Maximum Independent Credit Threshold (calculated as the lesser of the percentage of TNW and the applicable Credit Limit Cap below)	
S&P	Moody's	Fitch	Percentage of TNW	Credit Limit Cap
A- and above	A3 and above	A- and above	16%	Not applicable
BBB+	Baa1	BBB+	10%	Not applicable
BBB	Baa2	BBB	10%	Not applicable
BBB-	Baa3	BBB-	8%	Not applicable
BB+	Ba1	BB+	2%	\$3,000,000
BB	Ba2	BB	1%	\$1,500,000
BB- and below	Ba3 and below	BB- and below	0%	\$0

(ii) for Energy Suppliers having a Guarantor, the maximum level of the ICT that can be granted based on an ICT Guaranty will be determined in accordance with subsection (i) above, with reference to the credit rating of the Guarantor.

The ICT granted to the Energy Supplier will not exceed the amount of the ICT Guaranty. The ICT Guaranty tendered by the Energy Supplier to satisfy the ICT requirement arising under this Section 5.4 shall be a separate guaranty from the Total Exposure Amount Guaranty, if any, tendered by the Energy Supplier to satisfy any requirement for a Credit Limit to cover the Total Exposure Amount arising under Section 5.6; provided, however, that a single Guaranty may be provided if such Guaranty is for an unlimited amount.

(b) For an Energy Supplier or its Guarantor that has not been organized under the laws of the United States, the following requirements must be satisfied in order for such Energy Supplier to be granted an ICT:

(i) the Energy Supplier must supply such evidence of creditworthiness as to provide AEP Ohio with comparable assurances of creditworthiness as applicable above for Energy Suppliers that have been organized under the laws of the United States; or

(ii) the Guarantor of an Energy Supplier must supply such evidence of creditworthiness as to provide AEP Ohio with comparable assurances of creditworthiness as applicable above for Guarantors of Energy Suppliers that have been organized under the laws of the United States. AEP Ohio may reject such Guarantors that do not meet the creditworthiness requirements.

(c) All Energy Suppliers or Guarantors of Energy Suppliers that have not been organized under the laws of the United States must, in addition to all documentation required elsewhere in this Section 5.4, supply the following to AEP Ohio as a condition of being granted an ICT:

(i) for an Energy Supplier: (1) a legal opinion of counsel qualified to practice in the foreign jurisdiction in which the Energy Supplier is organized that (A) the Energy Supplier is duly incorporated and existing in such foreign jurisdiction; (B) this Agreement is the binding and enforceable obligation of the Energy Supplier in such foreign jurisdiction and does not violate any local law or the Energy Supplier's organizational or governing documents; and (C) all authorizations, approvals, consents, licenses, exemptions or other requirements of governmental, judicial or public bodies in such foreign jurisdiction have been obtained, and all execution formalities have been duly completed, necessary for the enforcement and validity of this Agreement and the performance by the Energy Supplier of its obligations hereunder; and (2) the sworn certificate of the corporate secretary (or similar officer) of such Energy Supplier that the Person executing this Agreement on behalf of the Energy Supplier has the authority to execute this Agreement and that the governing board of such Energy Supplier has approved the execution of this Agreement. AEP Ohio will have full discretion, without liability or recourse to the Energy Supplier, to evaluate the sufficiency of the documents submitted by the Energy Supplier; or



(ii) for the Guarantor of an Energy Supplier: (1) a legal opinion of counsel qualified to practice in the foreign jurisdiction in which the Guarantor is organized that (A) the Guarantor is duly incorporated and existing in such foreign jurisdiction; (B) the ICT Guaranty is the binding and enforceable obligation of the Guarantor in such foreign jurisdiction and does not violate any local law or the Guarantor's organizational or governing documents; and (C) all authorizations, approvals, consents, licenses, exemptions or other requirements of governmental, judicial or public bodies in such foreign jurisdiction have been obtained, and all execution formalities have been duly completed, necessary for the enforcement and validity of the ICT Guaranty and the performance by the Guarantor of its obligations thereunder; and (2) the sworn certificate of the corporate secretary (or similar officer) of such Guarantor that the Person executing the ICT Guaranty on behalf of the Guarantor has the authority to execute the ICT Guaranty and that the governing board of such Guarantor has approved the execution of the ICT Guaranty. AEP Ohio will have full discretion, without liability or recourse to the Guarantor or the Energy Supplier, to evaluate the sufficiency of the documents submitted by such Guarantor.

(d) Energy Suppliers who do not qualify for an ICT or whose ICT plus the amount of any cash or Letter of Credit already posted in accordance with Section 5.9 to satisfy its aggregate ICR under this Agreement and any Other Energy Supply Agreement (the "ICR Collateral") does not meet its aggregate ICR under this Agreement and any Other Energy Supply Agreement, must post ICR Collateral at the time of or prior to the Effective Date to the extent its aggregate ICR under this Agreement and any Other Energy Supply Agreement exceeds its ICT.

(e) Under no circumstances shall the ICT hereunder plus any other independent credit threshold granted to the Energy Supplier or its Guarantor under any Other Energy Supply Agreement exceed the maximum ICT hereunder.

## **5.5 Mark-to-Market Credit Exposure Methodology**

To calculate the Mark-to-Market Exposure Amount for each Energy Supplier, the following mark-to-market credit exposure methodology will be used. A "market value" for each Tranche will be determined at the time the Solicitation is completed based on the then prevailing

market prices, as described further in Attachment C-2. At the time the Solicitation is completed, the Mark-to-Market Exposure Amount for each Energy Supplier shall be set equal to zero. Subsequently, the differences between the prevailing market prices on a valuation date and the market prices in effect on the date the Solicitation is completed will be used to calculate the Mark-to-Market Exposure Amounts for each Energy Supplier, as described further in Attachment C-2. The total Mark-to-Market Exposure Amount will be equal to the sum of the Mark-to-Market Exposure Amounts for each Billing Period, or portion thereof, remaining during the Original Delivery Period. Forward Market Prices will be determined with reference to publicly available market price quotations obtained by AEP Ohio, as adjusted by AEP Ohio to more closely approximate the price impact of serving a requirements load which reflects hourly variations due to customer usage patterns. Such adjustment is further described in Attachment C-2. However, if market price quotations are not publicly available, Forward Market Prices will be determined by AEP Ohio using any method which AEP Ohio deems appropriate and which reasonably reflects forward market pricing conditions in PJM. The Mark-to-Market Exposure Amount will also be adjusted on a monthly basis to reflect changes in expected Energy Load by means of a volume adjustment factor. The Mark-to-Market Exposure Amount will be stated on a present value basis by discounting using the then-prevailing LIBOR rate. The methodology for calculation of the Mark-to-Market Exposure Amount is illustrated in the example (using hypothetical numbers) in Attachment C-2.

## **5.6 Credit Limit**

The following criteria constitute AEP Ohio's creditworthiness requirements for the Energy Suppliers to cover the Total Exposure Amount:

(a) For Energy Suppliers to be granted a Credit Limit without delivering a Total Exposure Amount Guaranty or other performance assurances acceptable to AEP Ohio, in the case of an Energy Supplier organized under the laws of the United States, the Energy Supplier must (1) be rated by S&P, Moody's or Fitch, and (2) have a minimum senior unsecured debt rating (or, if unavailable, corporate or issuer rating) equal to the Minimum Rating. If the Energy Supplier is

rated by only two rating agencies and the ratings are split, the lower rating will be used. If the Energy Supplier is rated by three rating agencies and the ratings are split, the lower of the two highest ratings will be used; provided that, in the event that the two highest ratings are common, such common rating will be used. If the Energy Supplier and an Affiliate(s) are both winning bidders in the Solicitation for the provision of Energy Supply, then the Energy Supplier or its Guarantor, as applicable, and the Affiliate(s) will proportionally share the maximum level of the Credit Limit using the highest rating as determined for the Energy Supplier or its Guarantor, as applicable, and the Affiliate(s). The maximum level of the Credit Limit to cover the Total Exposure Amount will be determined based on the following table:

Credit Rating of the Energy Supplier or its Guarantor			Maximum Credit Limit (calculated as the lesser of the percentage of TNW and the applicable Credit Limit Cap below)	
S&P	Moody's	Fitch	Percentage of TNW	Credit Limit Cap
A- and above	A3 and above	A- and above	16%	\$75,000,000
BBB+	Baa1	BBB+	10%	\$50,000,000
BBB	Baa2	BBB	10%	\$40,000,000
BBB-	Baa3	BBB-	8%	\$30,000,000
BB+	Ba1	BB+	2%	\$10,000,000
BB	Ba2	BB	1%	\$5,000,000
BB- and below	Ba3 and below	BB- and below	0%	\$0

The Energy Supplier will be required to post cash or a Letter of Credit for the Margin due AEP Ohio as set forth in Section 5.7 of this Agreement.

(b) For Energy Suppliers delivering a Total Exposure Amount Guaranty, in the case of a Guarantor organized under the laws of the United States, the maximum level of the Credit Limit to cover the Total Exposure Amount that could be granted based on the Total Exposure Amount Guaranty will be determined in accordance with subsection (a) above, with reference to the credit rating of the Guarantor, except that the Credit Limit granted to the Energy Supplier will not exceed the amount of the Total Exposure Amount Guaranty.

(c) For an Energy Supplier or Guarantor, if applicable, that has not been organized under the laws of the United States, the following standards will apply:

(i) the Energy Supplier must supply such evidence of creditworthiness as to provide AEP Ohio with comparable assurances of creditworthiness as applicable above for Energy Suppliers that have been organized under the laws of the United States; or

(ii) if the Energy Supplier is providing a Total Exposure Amount Guaranty, the Guarantor of an Energy Supplier must supply such evidence of creditworthiness as to provide AEP Ohio with comparable assurances of creditworthiness as applicable above for Guarantors of Energy Suppliers that have been organized under the laws of the United States. AEP Ohio may reject such Guarantors that do not meet the creditworthiness requirements.

(d) All Energy Suppliers or Guarantors of Energy Suppliers, if applicable, that have not been organized under the laws of the United States must, in addition to all documentation required elsewhere in this Section 5.6, supply the following to AEP Ohio:

(ii) For an Energy Supplier: (1) a legal opinion of counsel qualified to practice in the foreign jurisdiction in which the Energy Supplier is organized that (A) the Energy Supplier is duly incorporated and existing in such foreign jurisdiction; (B) this Agreement is the binding and enforceable obligation of the Energy Supplier in such foreign jurisdiction and does not violate any local law or the Energy Supplier's organizational or governing documents; and (C) all authorizations, approvals, consents, licenses, exemptions or other requirements of governmental, judicial or public bodies in such foreign jurisdiction have been obtained, and all execution formalities have been duly completed, necessary for the enforcement and validity of this Agreement and the performance by the Energy Supplier of its obligations hereunder; and (2) the sworn certificate of the corporate secretary (or similar officer) of such Energy Supplier that the Person executing this Agreement on behalf of the Energy Supplier has the authority to execute this Agreement and that the governing board of such Energy Supplier has approved the execution of this Agreement. AEP Ohio will have full discretion, without

liability or recourse to the Energy Supplier, to evaluate the sufficiency of the documents submitted by the Energy Supplier; or

(ii) For the Guarantor of an Energy Supplier: (1) a legal opinion of counsel qualified to practice in the foreign jurisdiction in which the Guarantor is organized that (A) the Guarantor is duly incorporated and existing in such foreign jurisdiction; (B) the Total Exposure Amount Guaranty is the binding and enforceable obligation of the Guarantor in such foreign jurisdiction and does not violate any local law or the Guarantor's organizational or governing documents; and (C) all authorizations, approvals, consents, licenses, exemptions or other requirements of governmental, judicial or public bodies in such foreign jurisdiction have been obtained, and all execution formalities have been duly completed, necessary for the enforcement and validity of the Total Exposure Amount Guaranty and the performance by the Guarantor of its obligations thereunder; and (2) the sworn certificate of the corporate secretary (or similar officer) of such Guarantor that the Person executing the Total Exposure Amount Guaranty on behalf of the Guarantor has the authority to execute the Total Exposure Amount Guaranty and that the governing board of such Guarantor has approved the execution of the Total Exposure Amount Guaranty. AEP Ohio will have full discretion, without liability or recourse to the Guarantor or the Energy Supplier, to evaluate the sufficiency of the documents submitted by such Guarantor.

For an Energy Supplier with a Total Exposure Amount Guaranty, the Energy Supplier will be granted a Credit Limit up to the amount of the Total Exposure Amount Guaranty, but not exceeding the Credit Limit shown in the table above. The Total Exposure Amount Guaranty shall be provided to AEP Ohio on or prior to the Effective Date, but may be modified in any amended or substitute Total Exposure Amount Guaranty provided to AEP Ohio during the Term. The Energy Supplier, however, may not increase or substitute its Total Exposure Amount Guaranty for the purpose of increasing its applicable Credit Limit during the time period after AEP Ohio has made a demand of the Energy Supplier to cover Margin (a "Margin Call") but before the Energy Supplier has provided AEP Ohio with cash credited to a deposit account of AEP Ohio or a Letter of Credit in accordance with Section 5.9, in each case in an amount equal to the Margin (the "Margin Collateral"). Notwithstanding anything herein to contrary, the Energy Supplier may increase the limit of its Total Exposure Amount Guaranty after satisfying a Margin Call. Upon

AEP Ohio's receipt of an amended or substitute Total Exposure Amount Guaranty increasing the limit of the Total Exposure Amount Guaranty, the Energy Supplier may request a return of Margin Collateral in accordance with Section 5.7. The Energy Suppliers will be required to post cash or a Letter of Credit for the Margin due AEP Ohio as set forth in Section 5.7 of this Agreement.

(e) Under no circumstances shall the Credit Limit hereunder plus any other credit limit granted to the Energy Supplier or its Guarantor under any Other Energy Supply Agreement exceed the Credit Limit hereunder.

#### **5.7 Posting Margin Collateral and Return of Excess Collateral**

If at any time and from time to time during the Delivery Period, Margin exists with respect to an Energy Supplier, then AEP Ohio on any Business Day may make a Margin Call of such Energy Supplier; provided however that AEP Ohio may not make a Margin Call unless the Margin exceeds the Minimum Margin Threshold. Upon receipt of a Margin Call, the applicable Energy Supplier shall provide to AEP Ohio Margin Collateral, which shall comprise of cash or a Letter of Credit. The Margin Collateral shall be in the amount equal to the Margin less the amount of any Margin Collateral already posted by the Energy Supplier in which AEP Ohio has a first priority, perfected security interest to secure the obligations of the Energy Supplier under this Agreement and any Other Energy Supply Agreement. For the avoidance of doubt, any ICR Collateral posted pursuant to Section 5.4 shall not constitute Margin Collateral.

If an Energy Supplier receives a Margin Call from AEP Ohio by 1:00 p.m. prevailing Eastern Time on a Business Day, then such Energy Supplier shall post Margin Collateral the following Business Day if posting cash and the second Business Day following the Margin Call if posting a Letter of Credit, unless in each case AEP Ohio agrees in writing to extend the period to provide Margin Collateral. If the Energy Supplier receives a Margin Call after 1:00 p.m. prevailing Eastern Time on a Business Day, whether posting cash or a Letter of Credit, then the Energy Supplier must post Margin Collateral on the second Business Day following the Margin Call unless AEP Ohio agrees in writing to extend the period to provide Margin Collateral. AEP Ohio will not unreasonably deny a request for a one-day extension of such period.

Margin Collateral being held by AEP Ohio that is not needed to satisfy the Margin ("Excess Collateral"), will be returned to the Energy Supplier upon receipt of a written request from the Energy Supplier; provided, however, that the Energy Supplier may not request Excess Collateral until such Excess Collateral exceeds the Minimum Margin Threshold. If the Energy Supplier posted cash and notice is received by 1:00 p.m. prevailing Eastern Time on a Business Day, the Excess Collateral will be returned by the following Business Day and if the Energy Supplier posted cash and notice is received by AEP Ohio after 1:00 p.m. prevailing Eastern Time on a Business Day, the Excess Collateral will be returned by the second Business Day following the date of notice. If the Energy Supplier posted a Letter of Credit, the Excess Collateral shall be returned on the next Business Day following the Business Day on which the amendment to the Letter of Credit is received from the issuing bank, unless in each case the Energy Supplier agrees in writing to extend such period for returning the Excess Collateral. The Energy Supplier will not unreasonably deny a request for a one-day extension of the period for returning the Excess Collateral.

#### **5.8 Grant of Security Interest; Remedies**

To secure its obligations under this Agreement, the Energy Supplier hereby grants to AEP Ohio a present and continuing security interest in, and lien on (and right of setoff against), its right, title and interest, whether now owned or hereafter acquired or arising, in (i) all deposit accounts in the name of AEP Ohio or partially in the name of AEP Ohio or held for the benefit of AEP Ohio and all funds credited to any and all of the foregoing, (ii) all securities, instruments (including promissory notes), money (each of the foregoing terms as defined in the UCC), cash and other tangible property delivered to and held by AEP Ohio (or its agents or custodians) and (iii) all proceeds (as defined in the UCC) of any and all of the foregoing. The Energy Supplier agrees to take such action as reasonably required to create and perfect AEP Ohio's first priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or at any time after the occurrence or deemed occurrence and during the continuation of an Event of Default where an Energy Supplier is the Defaulting Party or an Early Termination Date (whether or not such Energy Supplier was the Defaulting Party), AEP Ohio may do any one or more of the following in any order: (i) exercise any of the rights and remedies of AEP Ohio, including the right to set-off and liquidation, against any and all ICR Collateral, Margin Collateral or other collateral of

such Energy Supplier in the possession of AEP Ohio, whether held in connection with this Agreement or any Other Energy Supply Agreement, including any such rights and remedies under law then in effect, free from any claim or right of any nature whatsoever of such Energy Supplier; and (ii) draw on any outstanding Letter of Credit provided by such Energy Supplier. AEP Ohio will apply the proceeds of the collateral realized upon the exercise of such rights or remedies to reduce such Energy Supplier's obligations under this Agreement and under any Other Energy Supplier Agreement, and such Energy Supplier shall remain liable for any amounts owing to AEP Ohio after such application, subject to AEP Ohio's obligation to return any surplus proceeds remaining after all such obligations are satisfied in full.

All notices, demands or requests regarding credit requirements and credit-related security or deposit transfers shall be sent in accordance with Section 12.2.

#### **5.9 Acceptable Forms of Security**

At each Energy Supplier's option, the following are deemed to be acceptable for posting Margin Collateral or ICR Collateral, if required:

(a) Cash credited to a deposit account of AEP Ohio; and

(b) A Letter of Credit, which shall state that such Letter of Credit will renew automatically for successive one-year or shorter periods, until terminated upon at least ninety (90) days' prior written notice from the issuing financial institution. If AEP Ohio receives notice from the issuing financial institution that the Letter of Credit is being cancelled, the Energy Supplier will be required to provide a substitute Letter of Credit from an alternative bank satisfying the requirements in this Section 5.9. The receipt of the substitute Letter of Credit must be effective as of the cancellation date and delivered to AEP Ohio thirty (30) days before the cancellation date of the original Letter of Credit. If the Energy Supplier fails to supply a substitute Letter of Credit as required, then AEP Ohio will have the right to draw on the existing Letter of Credit and to hold the amount as Margin Collateral or ICR Collateral, as applicable.

The Letter of Credit shall be issued by a U.S. commercial bank or by a U.S. branch of a foreign bank with total assets of at least \$5 billion having a general long-term senior unsecured



debt rating of A- or higher as rated by S&P or A3 or higher as rated by Moody's and shall permit presentation at a bank located in the United States of America.

If at any time the bank or other financial institution from which an Energy Supplier has obtained a Letter of Credit fails to meet the foregoing conditions, the Energy Supplier will immediately notify AEP Ohio and, within one (1) Business Day of the failure of the financial institution to meet the required conditions, obtain a suitable Letter of Credit from another bank or other financial institution that meets those standards, unless such period is extended in writing by AEP Ohio. For avoidance of doubt, Energy Supplier may elect to substitute a cash deposit for the Letter of Credit within the time frame specified herein.

Notwithstanding anything in this Agreement to the contrary, AEP Ohio may exercise any rights or claims to any collateral posted, delivered or pledged to them under this Agreement, before, after, concurrently with, or to the exclusion of, any other collateral posted, delivered or pledged prior to applying any cash collateral against, or making a drawing under any letter of credit in respect of, any liabilities of the Energy Supplier hereunder or its Guarantor under the guaranty to AEP Ohio or any of them.

#### **5.10 Reporting; Maintenance of Creditworthiness**

(a) Each Energy Supplier must promptly notify AEP Ohio of any change in its or its Guarantor's credit rating or financial condition. The Energy Supplier or Guarantor must also furnish evidence of an acceptable credit rating or financial condition upon the request of AEP Ohio.

(b) If the lowest credit rating (whether corporate or issuer rating or unsecured senior debt rating) used to determine the Energy Supplier's ICT or its Credit Limit adversely changes, AEP Ohio will require ICR Collateral or Margin Collateral from such Energy Supplier in accordance with Sections 5.4, 5.6 and 5.7. The additional security must be in a form acceptable to AEP Ohio, as specified in Section 5.9.

#### **5.11 Interest on Cash Held by Companies**

AEP Ohio will pay simple interest calculated at the lower of the Margin Interest Rate or 6% per annum on all cash held by AEP Ohio pursuant to this Agreement. If applicable, each Billing Period the Energy Supplier will prepare a statement of interest amounts due from AEP Ohio. The statement will be sent to AEP Ohio within three (3) Business Days after the end of the Billing Period via overnight mail or other expeditious means. AEP Ohio will make interest payments on the first Business Day after the fifth (5<sup>th</sup>) day of each calendar month.

#### **5.12 No Endorsement of Energy Supplier**

AEP Ohio's determination of an Energy Supplier's creditworthiness pursuant to the process set forth in this Article 5 will not be deemed to constitute an express or implied warranty or guarantee of any kind with respect to the financial or operational qualifications of such Energy Supplier. AEP Ohio will treat all Energy Suppliers in a non-discriminatory manner and shall provide no preference to any Energy Supplier.

### **ARTICLE 6**

#### **BILLING, PAYMENT AND NETTING**

##### **6.1 Invoice Statement**

Subject to Section 6.2, AEP Ohio and each Energy Supplier shall pay all amounts due to each other hereunder in accordance with the following provisions:

(a) For each Billing Period, AEP Ohio will prepare and provide an invoice to each Energy Supplier, which will show (i) amounts due to the Energy Supplier equal to the Price multiplied by the applicable Seasonal Billing Factor multiplied by the Estimated Monthly Energy Share, (ii) the Hourly Energy Share Adjustment from such Billing Period, if any, and (iii) all Charges due to AEP Ohio incurred during the Billing Period (the "Billing Statement").

(b) AEP Ohio will determine the total amount payable by one Party to the other Party by netting the aggregate amounts due and owing to one Party against the aggregate amounts due and owing to the other Party, with the Party, if any, owing the greater aggregate amount paying the other Party the difference between the amounts owed. For any amounts due and owing AEP

Ohio, AEP Ohio will specify in each Billing Statement how the amounts will be allocated among the Energy Suppliers. In the case of the Hourly Energy Share Adjustment, the allocation will be based on the respective Energy Loads of AEP Ohio.

(c) The Billing Statement will be sent to each Energy Supplier within six (6) Business Days after the end of the Billing Period.

(d) AEP Ohio or the Energy Supplier, as the case may be, will make payment on or before the ~~twentieth (20<sup>th</sup>)~~ fifth (5<sup>th</sup>) Business Day of each calendar month after receipt of a Billing Statement. If such day falls on a Saturday, Sunday or any other day which is a legal holiday or a day on which banking institutions are closed, payment will be due the following Business Day. All such payments shall be made by electronic transfer to an account designated in writing by each respective Party.

(e) All payments shall be subject to adjustment for any arithmetic errors, computation errors, or other errors, provided that the errors become known within one (1) year of the earlier of (i) the end of the Term or (ii) the Early Termination Date.

(f) Overdue payments shall accrue interest at the Interest Rate from, and including, the due date, but excluding date of payment.

(g) If a good faith dispute arises between AEP Ohio and the Energy Supplier regarding a Billing Statement, the disputing Party shall be obligated to pay only the undisputed portion of the Billing Statement, if any, no later than the due date and shall present the dispute in writing and submit supporting documentation to the non-disputing Party within one hundred twenty (120) calendar days from the date of the Billing Statement in dispute. Billing Statement disputes must be addressed promptly, and in accordance with the dispute resolution procedures set forth in Article 11. Upon resolution of a Billing Statement dispute, any payments made to either Party will include interest at the Interest Rate on the payment payable from the date that notice of a Billing Statement dispute was received by the non-disputing Party.

(h) Notwithstanding anything to the contrary contained in this Section 6.1, the determination of the allocation among AEP Ohio of amounts due and owing to AEP Ohio, as set forth in a Billing Statement, will be final and binding, absent manifest error.

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## **6.2 PJM Billing; Third Party Billing**

(a) AEP Ohio and each Energy Supplier shall direct PJM to invoice AEP Ohio and such Energy Supplier for PJM charges and credits relating to such Energy Supplier's and AEP Ohio's rights and obligations under this Agreement. If PJM is unable to invoice charges or credits in accordance with the foregoing sentence, AEP Ohio shall rectify such PJM invoice discrepancy in the Billing Statement sent pursuant to Section 6.1.

(b) [Intentionally Omitted].

(c) The Parties agree that the PJM invoice may change from time to time. Allocation of any charges that are reflected in a PJM invoice that are not included on or are inconsistent with Attachment F will be determined pursuant to Sections 3.1(b), 3.2(c), and 3.2(d), 3.1(e), 3.1(f), 3.2(d) and 12.6.

(d) AEP Ohio shall have no responsibility for billing between an Energy Supplier and any other third party. AEP Ohio shall be solely responsible for billing SSO Customers for Energy Supply.

## **ARTICLE 7**

### **BREACH AND DEFAULT**

#### **7.1 Events of Default**

An "Event of Default" shall mean with respect to a Party (the "Defaulting Party") the occurrence of any of the following:

(a) the failure of the Defaulting Party to make, when due, any payment required pursuant to this Agreement (including under Section 6.2) if such failure is not remedied within two (2) Business Days after receipt of written notice of non-payment, and provided the payment is not the subject of a good faith dispute as described in Section 6.1;

(b) any representation or warranty made by the Defaulting Party herein is false or misleading in any material respect when made;

(c) the failure of the Defaulting Party to perform any material obligation set forth in this Agreement (other than events that are otherwise specifically covered in this Article 7 as a separate Event of Default) if such failure is not remedied within two (2) Business Days after written notice;

(d) the Defaulting Party becomes Bankrupt;

(e) with respect to an Energy Supplier, the failure of the Defaulting Party to provide Margin Collateral, or with respect to AEP Ohio, the failure of the Defaulting Party to return Excess Collateral, in each case pursuant to Section 5.7;

(f) failure of the Defaulting Party to comply with its obligations pursuant to Article 5 (except to the extent constituting a separate Event of Default under Section 7.1(e)) if such failure is not remedied within three (3) Business Days after receipt of written notice of such failure;

(g) the failure of the Defaulting Party to comply with the requirements of Sections 3.1(g), 3.1(i) and 3.5, as applicable, if such failure is not remedied within three (3) Business Days of such failure;

(h) PJM has declared the Defaulting Party to be in default of any provision of any PJM Agreement, which default prevents the Defaulting Party's performance hereunder, if such failure is not remedied within three (3) Business Days after written notice;

(i) PJM holds AEP Ohio responsible for the provision of Energy Supply to meet the Defaulting Party's Energy Supplier Responsibility Share under this Agreement;

(j) the occurrence and continuation of: (i) a default, event of default or other similar condition or event in respect of the Defaulting Party or its Guarantor, if applicable, under one or more agreements or instruments, individually or collectively, relating to Specified Indebtedness in an aggregate amount of not less than the applicable Cross Default Amount, which results in such Specified Indebtedness becoming immediately due and payable; (ii) a default by the Defaulting Party or its Guarantor, if applicable, in making on the due date therefor one or more payments in respect of any obligation under contract or at law, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount; or (iii) a default, event of default or other similar condition or event by the Defaulting Party under the Other Energy Supply

Agreement or by its Guarantor under any guaranty with respect to any Other Energy Supply Agreement; and

(k) with respect to a Defaulting Party's Guarantor, if any, (i) any representation or warranty made by such Guarantor in connection with this Agreement or any related Guaranty is intentionally or unintentionally false or misleading in any material respect when made or when deemed made or repeated; (ii) the failure of such Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice; (iii) the failure of such Guarantor's Guaranty to be in full force and effect (other than in accordance with its terms) prior to the satisfaction of all obligations of the Defaulting Party under this Agreement without the written consent of AEP Ohio; (iv) such Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of the Guaranty; or (v) such Guarantor becomes Bankrupt.

## **7.2 Remedies Upon an Event of Default**

If an Event of Default shall have occurred and be continuing, the Non-Defaulting Party shall have the right to:

(a) immediately suspend performance upon written notice to the Defaulting Party; provided, however, that if an Energy Supplier is the Non-Defaulting Party, such Energy Supplier may only suspend performance if the default of the Defaulting Party constitutes an Event of Default under Sections 7.1(a) or (d);

(b) declare an Early Termination and designate by written notice an Early Termination Date which shall be no earlier than the day such designation notice is effective and no later than twenty (20) calendar days after such notice is effective; provided, however, that if an Energy Supplier is the Non-Defaulting Party, such Energy Supplier may only declare on Early Termination if the default of the Defaulting Party constitutes an Event of Default under Section 7.1(a) or (d);

(c) calculate and receive from the Defaulting Party payment for any Default Damages which the Non-Defaulting Party incurs as of the date of the event giving rise to the Event of

Default, until the earlier of; (i) the Early Termination Date (if applicable); (ii) the date the Event of Default has been cured by the Defaulting Party; or (iii) the date the Non-Defaulting Party waives such Event of Default;

(d) withhold any payments due to the Defaulting Party under this Agreement as a set-off against any Default Damages, or Termination Payment, as applicable, the Defaulting Party is entitled to receive;

(e) draw down, liquidate, set-off against, or demand payment under, any Guaranty, ICR Collateral and Margin Collateral; and

(f) exercise any other remedies at law or in equity.

### **7.3 Default Damages; Settlement Amount; Termination Payment**

(a) **Default Damages.** Subject to Section 7.3(e), the Defaulting Party shall pay Default Damages on or before three (3) Business Days after receipt of an invoice therefor. The invoice shall include a written statement explaining in reasonable detail the calculation of such amount. Neither Party will be liable for Default Damages if this Agreement is terminated by a Governmental Authority.

(b) **Settlement Amount.** If the Non-Defaulting Party has declared an Early Termination Date pursuant to Section 7.2(b), the Non-Defaulting Party shall have the right to (i) accelerate all amounts owing between the Defaulting Party and the Non-Defaulting Party and to liquidate and terminate the undertakings set forth in this Agreement as between the Defaulting Party and the Non-Defaulting Party; and (ii) withhold any payments due to the Defaulting Party under this Agreement pending payment of the Termination Payment. The Non-Defaulting Party will calculate, in a commercially reasonable manner, the Settlement Amount with respect to the Defaulting Party's obligations under the Agreement and shall net the Settlement Amount in the manner provided for in Section 7.3(c).

(c) **Termination Payment.** The Non-Defaulting Party will calculate a single payment (the "Termination Payment") by netting out (i) the sum of the Settlement Amount under this Agreement payable to the Defaulting Party, plus (a) similar settlement amounts payable to the Defaulting Party under any other agreements between AEP Ohio and the applicable Energy

Supplier for the provision of Energy Supply or similar service (each, an “Other Energy Supply Agreement”) being terminated due to the event giving rise to the Event of Default plus, (b) at the option of the Non-Defaulting Party, any Performance Assurance then available to the Non-Defaulting Party under this Agreement or Other Energy Supply Agreements and actually received, liquidated and retained by the Non-Defaulting Party, plus (c) any or all other amounts due to the Defaulting Party under this Agreement and, at the option of the Non-Defaulting Party, Other Energy Supply Agreements, and (ii) the sum of the Settlement Amount under this Agreement payable to the Non-Defaulting Party, plus (a) similar settlement amounts payable to the Non-Defaulting Party under any Other Energy Supply Agreement being terminated due to the event giving rise to the Event of Default plus, (b) at the option of the Non-Defaulting Party, any Performance Assurance then available to the Defaulting Party under this Agreement or Other Energy Supply Agreements and actually received, liquidated and retained by the Defaulting Party, plus (c) any or all other amounts due to the Non-Defaulting Party under this Agreement and, at the option of the Non-Defaulting Party, Other Energy Supply Agreements.

The Termination Payment will be due to or due from the Non-Defaulting Party as appropriate; provided, however, that if an Energy Supplier is the Defaulting Party and the Termination Payment is due to such Energy Supplier, AEP Ohio will be entitled to retain a reasonable portion of the Termination Payment, which may be equal to the entire amount of the Termination Payment, as a security for additional amounts that may be determined to be due and owing by such Energy Supplier as Default Damages; and further provided that any previously attached security interest of AEP Ohio in such retained amounts will continue. If the Termination Payment has been retained by AEP Ohio as security for additional amounts that may be determined to be due and owing by the Energy Supplier, and if, upon making a final determination of Default Damages and payment therefor, the Termination Payment, or any portion thereof, is to be made to the Energy Supplier, AEP Ohio will pay interest at the Interest Rate on the Termination Payment amount being made to the Energy Supplier for the period of such retention.

(d) **Notice of Termination Payment.** As soon as practicable after calculation of the Termination Payment, notice must be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in



reasonable detail the calculation of such amount. Subject to Section 7.3(e), the Termination Payment must be made by the Party that owes it within three (3) Business Days after such notice is received by the Defaulting Party.

(e) **Disputes With Respect to Default Damages or Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Default Damages or Termination Payment, in whole or in part, the Defaulting Party must, within three (3) Business Days of receipt of the Non-Defaulting Party's calculation of the Default Damages or Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Any dispute under this Section 7.3(e) shall be subject to the dispute resolution procedures in Article 11; provided, however, that if the Default Damages or Termination Payment is due from the Defaulting Party, the Defaulting Party must first provide Performance Assurance to the Non-Defaulting Party in an amount equal to the Default Damages or Termination Payment, as the case may be.

#### 7.4

##### **Energy Supplier Right to Assume**

If an Energy Supplier defaults in its obligations hereunder resulting in the exercise of the right of Early Termination by AEP Ohio with respect to such Energy Supplier, then AEP Ohio, subject to Legal Authorities, may offer all of the non-defaulting Energy Suppliers the right to assume under this Agreement additional Tranches of Energy Load at current market prices, subject to further compliance with the creditworthiness provisions of Article 5. If more than one Energy Supplier is interested in assuming the additional Tranches of Energy Load and the Parties are unable to agree on an allocation of such additional Tranches, then AEP Ohio shall utilize a blind lottery process to determine which Energy Suppliers shall serve the additional Tranches of Energy Load. The

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provision of any such offer by AEP Ohio to non-defaulting Energy Suppliers shall indicate the duration of the offer and the manner of acceptance thereof. Following the assumption by one or more Energy Suppliers of additional Tranches hereunder, such Energy Supplier(s) and AEP Ohio shall execute an amendment to this Agreement modifying Attachment A to reflect the revised Energy Supplier Responsibility Share of the non-defaulting Energy Supplier(s) accepting such offer and the price at which such Energy Supplier shall provide such additional Tranches. An Energy Supplier will not suffer any prejudice under this Agreement or otherwise arising from its election to decline an offer to assume additional Tranches upon the default of another Energy Supplier.

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#### **7.5 Setoff of Payment Obligations of the Non-Defaulting Party**

Any payment obligations of the Non-Defaulting Party to the Defaulting Party pursuant to this Agreement or any Other Energy Supply Agreement will be set off: (i) first, to satisfy any payment obligations of the Defaulting Party to the Non-Defaulting Party pursuant to this Agreement or any Other Energy Supply Agreement that are unsecured and not subject to any Guaranty; (ii) second, to satisfy any payment obligations under any Other Energy Supply Agreement that are unsecured, but which are guaranteed by a Guaranty; and (iii) third, to satisfy any remaining payment obligations of the Defaulting Party to the Non-Defaulting Party pursuant to this Agreement or any Other Energy Supply Agreement.

#### **7.6 Preservation of Rights of Non-Defaulting Party**

The rights of the Non-Defaulting Party under this Agreement, including Sections 7.2, 7.3 and 7.5, will be supplemental to, and not in lieu of, any right of recoupment, lien, or set-off afforded by applicable law, and all such rights are expressly preserved for the benefit of the Non-Defaulting Party.

## ARTICLE 8

### REPRESENTATIONS AND WARRANTIES

#### 8.1 AEP Ohio's Representations and Warranties

AEP Ohio hereby represents and warrants to the Energy Suppliers as follows:

- (a) it is an electric utility corporation duly organized, validly existing and in good standing under the laws of the State Ohio;
- (b) it has all requisite power and authority necessary for it to enter into and to legally perform its obligations under this Agreement and any other documentation relating to this Agreement;
- (c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision of any Governmental Authority;
- (d) this Agreement and each other document executed and delivered in accordance with this Agreement constitute its legally valid and binding obligation enforceable against it in accordance with its terms;
- (e) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings, including before a Governmental Authority, that could materially adversely affect its ability to perform its obligations under this Agreement or any other document relating to this Agreement;
- (f) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement;

(g) it is acting for its own account, has made its own independent decision to enter into this Agreement, is not relying upon the advice or recommendations of any other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement;

(h) at the commencement of the Original Delivery Period, it has obtained all authorizations from any Governmental Authority necessary for it to perform its obligations under this Agreement; and

(i) it is not in violation of any law, rules, regulations, ordinances or judgments of any Governmental Authority which could reasonably be expected to adversely affect its ability to perform its obligations under this Agreement.

## **8.2 Energy Supplier Representations and Warranties**

Each Energy Supplier hereby represents and warrants to AEP Ohio as follows:

(a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and, if organized outside the State of Ohio, is qualified to conduct its business and is in good standing in Ohio;

(b) it has all regulatory authorizations and all requisite power and authority necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement;

(c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision of any Governmental Authority;

(d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms;

(e) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code;

(f) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings, including before a Governmental Authority, that could materially adversely affect its ability to perform its obligations under this Agreement or any other document relating to this Agreement;

(g) no Event of Default or event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement;

(h) it is acting for its own account, has made its own independent decision to enter into this Agreement, is not relying upon the advice or recommendations of AEP Ohio in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement;

(i) at the commencement of the Original Delivery Period, it (i) has obtained all authorizations from any Governmental Authority necessary for it to perform its obligations under this Agreement; (ii) is a member in good standing with PJM; and (iii) is qualified by PJM as a “Market Buyer” and “Market Seller” pursuant to the PJM Agreements; and (iv) has duly obtained all FERC authorization necessary or desirable to make sales of Energy at market-based rates within PJM; and

(j) it is not in violation of any law, rules, regulations, ordinances or judgments of any Governmental Authority which could reasonably be expected to adversely affect its ability to perform its obligations under this Agreement.

## ARTICLE 9

### RISK OF LOSS; LIMITATION OF LIABILITY

#### 9.1 Risk of Loss

Title and risk of loss with respect to the Energy Supply shall pass from each Energy Supplier to AEP Ohio when the Energy Supply is delivered to the Delivery Point. As between the Parties, each Energy Supplier shall be deemed to be in exclusive control and possession of the Energy Supply prior to and at the Delivery Point, and AEP Ohio shall be deemed to be in exclusive control and possession of the Energy Supply from the Delivery Point. Each Energy Supplier warrants that it will deliver the Energy Supply to AEP Ohio at the Delivery Point free and clear of all liens, claims and encumbrances arising or attaching prior to the Delivery Point.

#### 9.2 Limitation of Liability

EXCEPT TO THE EXTENT EXPRESSLY SET FORTH IN THIS AGREEMENT, INCLUDING ARTICLE 10, AS BETWEEN AEP OHIO AND EACH ENERGY SUPPLIER, EACH PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES INCURRED AS A RESULT OF A PARTY'S FAILURE TO COMPLY WITH THIS AGREEMENT. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. NO PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, ARISING OUT OF SUCH PARTY'S FAILURE TO COMPLY WITH ITS OBLIGATIONS UNDER THIS AGREEMENT.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NOTHING HEREIN SHALL IMPOSE ANY OBLIGATION OR LIABILITY FROM ONE ENERGY SUPPLIER TO ANY OTHER ENERGY SUPPLIER, EXCEPT AS PROVIDED IN ARTICLE 10.

**ARTICLE 10**  
**INDEMNIFICATION**

**10.1 Indemnification**

(a) Each Energy Supplier shall defend, save harmless and indemnify AEP Ohio and its Affiliates, shareholders, managers, directors, officers, employees and agents (collectively, the “AEP Ohio Indemnified Party”) against and from any and all of the following incurred by the AEP Ohio Indemnified Party solely as a result of a third party claim (including PJM and each other Energy Supplier) against the AEP Ohio Indemnified Party: loss, liability, damage, claim, cost, charge, demand or expense (including reasonable attorneys’ fees) (collectively “Indemnification Losses”) for injury or death to persons and damage to property including a Party’s employees or any third party to the extent (i) caused by any act or omission (or alleged act or omission) of the Energy Suppliers or their respective Affiliates, managers, directors, officers, employees and agents and (ii) such Indemnification Losses arise out of or are in any manner connected with the performance of this Agreement by the Energy Suppliers or for which the Energy Supplier assumed liability under the terms of this Agreement, except to the extent that a court of competent jurisdiction determines that the Indemnification Losses were caused wholly or in part by the gross negligence or willful misconduct of AEP Ohio. AEP Ohio may, at its own expense, retain counsel and participate in the defense of any such suit or action.

(b) AEP Ohio and each Energy Supplier shall defend, save harmless and indemnify each other Energy Supplier and its Affiliates, shareholders, managers, directors, officers, employees and agents (the “Indemnified Supplier”) against and from any and all of the following incurred by the Indemnified Supplier solely as a result of a third party claim (including another Energy Supplier) against the Indemnified Supplier: Indemnification Losses for injury or death to persons and damage to property including a Party’s employees or any third party to the extent (i) caused by any act or omission (or alleged act or omission) of AEP Ohio or such Energy Supplier or their respective Affiliates, managers, directors, officers, employees and agents, and (ii) such Indemnification Losses arise out of or are in any manner connected with the performance of this Agreement by AEP Ohio or such Energy Supplier or for which the Energy Supplier assumed liability under the terms of this Agreement, except to the extent that a court of competent

jurisdiction determines that the Indemnification Losses were caused wholly or in part by the gross negligence or willful misconduct of the Indemnified Supplier. The Indemnified Supplier may, at its own expense, retain counsel and participate in the defense of any such suit or action.

(c) Any Party that receives notice of any claim, action, or proceeding for which it may seek indemnification under this Section shall promptly notify the indemnitor in writing; provided, however, that the failure to so notify the indemnitor shall not relieve the indemnitor of liability hereunder except to the extent that the defense of such claim, action, or proceeding is prejudiced by the failure to give the notice. The indemnitee shall cooperate fully with the indemnitor in connection with any such litigation or proceeding the defense of which the indemnitor has assumed. No indemnitee may consent to entry of any judgment or enter into any settlement of any claim, action, or proceeding that would give rise to any liability of the indemnitor hereunder without the indemnitor's prior written consent, which consent may not be unreasonably withheld or delayed. If the indemnitor assumes the defense of the claim, action, or proceeding, no compromise or settlement of such claim, action, or proceeding may be effected by the indemnitor without the indemnitee's consent unless (i) there is no finding or admission of any violation of law or the rights of any Person and no effect on any other claims, actions, or proceedings that may be made against the indemnitee and (ii) the sole relief provided is monetary damages and such damages and the associated costs of suit and attorneys' fees are paid in full by the indemnitor.

## ARTICLE 11

### DISPUTE RESOLUTION

#### 11.1 Informal Dispute Resolution

If a dispute arises between the Parties relating to this Agreement, a Party shall give the other Party written notice of a dispute which has not been resolved in the normal course of business. Such notice shall include: (a) a statement of that Party's position and a summary of arguments supporting such position, and (b) the name and title of the executive who will be representing that Party and of any other person who will accompany the executive. Within five (5) days after delivery of the notice, the receiving Party shall respond with (a) a statement of that



Party's position and a summary of arguments supporting such position, and (b) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within ten (10) days after delivery of the initial notice, the executives of both Parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. If, within twenty (20) days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, then either Party may pursue any remedies available at law or in equity as set forth below.

### **11.2 Binding Arbitration**

After the requirements of Section 11.1 have been satisfied, all disputes between the Parties, except where this Agreement requires otherwise, shall be submitted to an Ohio State court of competent jurisdiction or to a federal court of competent jurisdiction situated in the State of Ohio, which courts shall have exclusive jurisdiction to settle disputes arising under or related to this Agreement.

### **11.3 Recourse to Agencies or Courts of Competent Jurisdiction**

Notwithstanding Section 11.2, nothing in this Agreement shall restrict the rights of a Party to file a complaint with the FERC under relevant provisions of the Federal Power Act or with the PUCO under relevant provisions of the Legal Authorities. The Parties' agreement under this Section 11.3 is without prejudice to any Party's right to contest jurisdiction of the FERC or PUCO to which a complaint is brought.

## **ARTICLE 12**

### **MISCELLANEOUS PROVISIONS**

#### **12.1 Assignment**

(a) AEP Ohio may not assign this Agreement or its rights or obligation hereunder without the prior written consent of the applicable Energy Suppliers, which consent may not be unreasonably withheld, conditioned or delayed; provided, however, AEP Ohio may, without the consent of the Energy Suppliers (i) transfer, sell, pledge, encumber or assign this Agreement or

the accounts, revenues, or proceeds hereof in connection with any financing or other financial arrangements; (ii) transfer or assign this Agreement to any Person having a Minimum Rating; and (iii) transfer or assign this Agreement to any Person succeeding to all or substantially all of the assets of AEP Ohio. Under (a)(ii) and (a)(iii) above, AEP Ohio shall be relieved of its obligations upon the assignment and assumption of the assignee, except for those obligations which have arisen prior to the date of assignment.

(b) An Energy Supplier may not assign this Agreement or any rights or obligation hereunder without the prior written consent of AEP Ohio, which consent may not be unreasonably withheld, conditioned or delayed; provided, however, an Energy Supplier may, without the consent of AEP Ohio (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues, or proceeds hereof in connection with any financing or other financial arrangements; (ii) transfer or assign this Agreement to any Person having a Minimum Rating; and (iii) transfer or assign this Agreement to any Person succeeding to all or substantially all of the assets of such Energy Supplier. Under (b)(ii) and (b)(iii) above, the assigning Energy Supplier shall be relieved of its obligations upon (x) the assignment and assumption of this Agreement by the assignee and (y) the assignee's satisfaction of the credit requirements set forth in Article 5, except for those obligations which have arisen prior to the date of assignment.

## **12.2 Notices**

All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice by regular mail shall be deemed to have been received by the earlier of actual receipt or three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight mail or courier shall be deemed to have been received by the earlier of actual receipt or two (2) Business Days after it has been sent. A Party may change its addresses by providing notice of the same in accordance with this Section 12.2.

To AEP Ohio:

**NOTICES & CORRESPONDENCE:**

AEP Ohio  
1 Riverside Plaza  
Columbus, OH 43220  
Attn: Contract Administration Manager

Contract Administration Manager Contact:  
Email:  
Phone:  
Fax:

**INVOICES:**

Attention:  
Email:  
Fax Number:  
Phone Number:

**CREDIT:**

Attention:  
Mail Code:  
Email:  
Fax Number:  
Phone Number:

**To Energy Supplier:**

Each Energy Supplier's notification information is set forth on Attachment A.

**12.3 General**

This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement and supersedes all prior communications and proposals (oral or written). This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision

**PAYMENTS:**

Institution:  
Account No.:  
ABA No:

**SCHEDULING:**

Attention:  
Email:  
Fax Number:  
Phone Number:

declared or rendered unlawful by any applicable Governmental Authority or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only.

#### **12.4 Governing Law**

To the extent not subject to the jurisdiction of FERC, this Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the State of Ohio, without regard to principles of conflicts of law.

#### **12.5 Standard of Review**

Except as provided in Sections 7.4 and 12.6, this Agreement shall not be amended, modified, terminated, discharged or supplanted nor any provision hereof waived, unless mutually agreed in writing by the Parties. Except as provided in 12.6, the rates, terms and conditions contained in this Agreement are not subject to change under Sections 205 and 206 of the Federal Power Act, absent the written agreement of the Parties to change any provisions. Other than as expressly permitted in this Agreement, the standard of review for any changes proposed by a Party, a non-party, or the FERC, acting *sua sponte*, shall be the “public interest” application of the “just and reasonable” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the “*Mobile-Sierra*” doctrine), as clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*.

#### **12.6 PJM Agreement Modifications**

(a) If the PJM Agreements are amended or modified so that any term, schedule or section reference herein to such agreement is changed, such term, schedule or section reference herein shall be deemed automatically (and without any further action by the Parties) to refer to the new term, schedule or section of the PJM Agreements.

(b) If the applicable provisions of the PJM Agreements referenced herein, or any other PJM rules relating to the implementation of this Agreement, are changed materially from those in effect on the Effective Date, the Parties shall cooperate to make the conforming changes to this Agreement.

#### **12.7 Confidentiality**

(a) The Parties shall hold in confidence any information disclosed by one Party to the other Party in connection with negotiation of or performance under this Agreement unless (i) required, pursuant to any applicable court order, administrative order, statute, regulation or other official order by any government or any agency or department thereof, to disclose; (ii) such information is already in the possession of the receiving party at the time of disclosure, as evidenced by the receiving party's written documentation; (iii) such information becomes subsequently available to the receiving party on a non-confidential basis from a source not known or reasonably suspected by the receiving party to be bound by a confidentiality agreement or secrecy obligation owed to the disclosing party; and (iv) such information is or becomes generally available to the public other than as a result of a breach of this Agreement.

(b) In the event of disclosure pursuant to 12.7(a)(i), AEP Ohio will attempt to notify the Energy Supplier in advance of such disclosure. However, neither AEP Ohio nor its employees, lenders, counsel, accountants, advisors or agents, will not be responsible to the Energy Suppliers for any such disclosure and AEP Ohio reserves the right to communicate publicly to third parties any and all information and data submitted as part of this Agreement or Solicitation in any proceedings before FERC, the PUCO and any other regulatory body and the courts, without the prior consent of, or notice to the Energy Suppliers, if AEP Ohio deems such disclosure necessary.

(c) A Party may disclose information and documents provided in connection with this Agreement to its employees, lenders, counsel, accountants, advisors, or utility regulators who have a need to know such information and have agreed to keep such terms confidential.

(d) The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

## **12.8 Taxes**

All present and future federal, state, municipal and other taxes imposed by any taxing authority by reason of the provision of Energy Supply by an Energy Supplier under this Agreement (collectively, the “Taxes”) will be the liability of the Energy Supplier, except for Ohio sales and use taxes imposed under Ohio Rev. Code Ann. Tit. 57, Chapters 5739, 5740 and 5741 (the “Ohio Sales and Use Taxes”), if any, which will be AEP Ohio’s responsibility. AEP Ohio shall provide the Energy Supplier with a valid Ohio Sales and Use Tax resale exemption certificate or direct pay permit, and an Energy Supplier shall not collect any Ohio Sales and Use Taxes from AEP Ohio nor remit any Ohio Sales and Use Taxes directly to the applicable taxing authority. AEP Ohio will defend and indemnify the Energy Supplier for any Ohio Sales and Use Taxes Energy Supplier may be required to remit directly to the applicable taxing authority and will pay to the Energy Supplier all such tax amounts upon demand. Each Energy Supplier shall pay all Taxes (other than Ohio Sales and Use Taxes) to the applicable taxing authority to the extent required or permitted by law. Should AEP Ohio be required to remit any Taxes directly to any applicable taxing authority (other than Ohio Sales and Use Taxes ), the Energy Supplier will defend and indemnify AEP Ohio and will pay AEP Ohio all such Tax amounts upon demand.

Each Party shall provide to the other Party all information, data and exemption certificates as such other Party may from time to time reasonably request and otherwise fully cooperate with such other Party in connection with the reporting of (i) any Taxes payable by an Energy Supplier; (ii) any Tax audit; or (iii) any assessment, refund claim or proceeding relating to Taxes. Each Party shall cooperate with the other Party and take any action reasonably requested, which does not cause the Party to incur any material cost or inconvenience, in order to minimize any Taxes payable.

## **12.9 Record Retention**

Each Party will retain for a period of two (2) years following the expiration of the Term necessary records so as to permit the Parties to confirm the accuracy of any statement, charge or computation made pursuant to this Agreement; provided that, if a Party provides notice within two (2) years of the expiration of the Term that it disputes the validity of any payments or quantity of Energy delivered, the Parties agree that they will retain all records related to such dispute until the dispute is resolved pursuant to Article 11.

Each Energy Supplier will have the right, upon reasonable notice, to inspect (at the sole cost and expense of such Energy Supplier) the books and records retained by AEP Ohio only insofar as they relate to payments due and owing, or owed and paid, to such Energy Supplier. Such inspection must take place during regular business hours. AEP Ohio will have the right, upon reasonable notice, to inspect (at the sole cost and expense of AEP Ohio) the books and records retained by such Energy Supplier only insofar as they relate to Energy delivered by such Energy Supplier. Such inspection must take place during regular business hours.

#### **12.10 Rules as to Usage**

Except as otherwise expressly provided herein, the following rules shall apply to the usage of terms in this Agreement:

(a) The terms defined above have the meanings set forth above for all purposes, and such meanings are equally applicable to both the singular and plural forms of the terms defined.

(b) “Include,” “includes” and “including” shall be deemed to be followed by “without limitation” whether or not they are in fact followed by such words or words of like import.

(c) Any law defined or referred to above means such law as from time to time amended, modified or supplemented, including by succession of comparable successor law.

(d) “Hereof,” “herein,” “hereunder” and comparable terms refer, unless otherwise expressly indicated, to the entire agreement or instrument in which such terms are used and not to any particular article, section or other subdivision thereof or attachment thereto. References in an instrument to “Article,” “Section,” or another subdivision or to an attachment are, unless the

context otherwise requires, to the relevant article, section, subsection or subdivision of or an attachment to such agreement or instrument. If such reference in this Agreement to “Article,” “Section,” or other subdivision does not specify an agreement or document, such reference refers to an article, section or other subdivision of this Agreement. All references to exhibits or schedules in any agreement or instrument that is governed by this Agreement are to exhibits or schedules attached to such instrument or agreement.

(e) All titles and headings used herein are for convenience and references purposes only, and shall not be applicable in construing or interpreting obligations under this Agreement.

(f) The word “or” will have the inclusive meaning represented by the phrase “and/or.”

(g) “Shall” and “will” have equal force and effect.

#### **12.11 Counterparts**

This Agreement may be executed in counterparts, each of which will be considered an original, but all of which will constitute one instrument. Any counterpart may be delivered by facsimile transmission or by electronic communication in portable document format (.pdf) or tagged image format (.tif), and the Parties agree that their electronically transmitted signatures shall have the same effect as manually transmitted signatures.

[Signatures appear on next pages]



IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first set forth above.

OHIO POWER COMPANY

By \_\_\_\_\_

Name: Pablo A. Vegas

Title: President, AEP Ohio

[ENERGY SUPPLIER SIGNATURES APPEAR ON SUCCEEDING PAGES]

[ENERGY SUPPLIER]

By: \_\_\_\_\_

Name:

Title

## ATTACHMENTS

- A Energy Supplier Responsibility Share
- B Seasonal Billing Factor
- C Credit Examples
- D Form of Guaranty
- E Form of Energy Supplier Letter of Credit
- F [Intentionally Omitted]

ATTACHMENT A

ENERGY SUPPLIER RESPONSIBILITY SHARE

Energy Supplier	Price (\$MWh)	Energy Supplier Responsibility Share Percentage (%)	No. of Tranches
_____	_____/MWh	_____%	_____

Original Delivery Period: \_\_\_\_\_, 2013 through May 31, 2015.

Address for Notice:

1. In the case of all notices except those required under Article 5:

Name:  
Address:  
Telephone:  
Facsimile:  
E-mail:

Copy to:

Name:  
Address:  
Telephone:  
Facsimile:  
E-mail:

2. Article 5 Notices:

Name:  
Address:  
Telephone:  
Facsimile:  
E-mail:

[ENERGY SUPPLIER]

By: \_\_\_\_\_  
Name:

**05 NOVEMBER 2012**  
**DRAFT FOR COMMENTS**

Title:

ATTACHMENT B  
SEASONAL BILLING FACTOR

The Seasonal Billing Factors are as follows:

June 1 through September 30 \_\_\_\_\_

October 1 through December 31 and  
January 1 through May 31 \_\_\_\_\_

ATTACHMENT C-1

INDEPENDENT CREDIT REQUIREMENT PER TRANCHE

<b>Month</b>	<b>23-Month Procurement (\$/tranche)</b>
Inception through July 2013	900,000
August 2013	900,000
September 2013	900,000
October 2013	900,000
November 2013	800,000
December 2013	800,000
January 2014	800,000
February 2014	800,000
March 2014	600,000
April 2014	600,000
May 2014	600,000
June 2014	600,000
July 2014	500,000
August 2014	500,000
September 2014	500,000
October 2014	500,000
November 2014	300,000
December 2014	300,000
January 2015	300,000
February 2015	300,000
March 2015	200,000
April 2015	200,000
May 2015	200,000

## ATTACHMENT C-2

### EXAMPLE MARK-TO-MARKET EXPOSURE AMOUNT CALCULATION

The following is an illustration of the methodology AEP Ohio will use to determine the Mark-to-Market Exposure Amounts for each Energy Supplier.

On the closing day of the Solicitation, the following parameters will be determined by AEP Ohio:

1. The expected On-Peak Energy Load per Tranche;
2. The expected Off-Peak Energy Load per Tranche;
3. Prevailing On-Peak Forward Market Prices for each month during the Original Delivery Period;
4. Prevailing Off-Peak Forward Market Prices for each month during the Original Delivery Period;
5. On-Peak Price Adjustment Factors; and
6. Off-Peak Price Adjustment Factors.

For purposes of the Mark-to-Market Exposure Amount calculation, “On-Peak” means the hours between 7:00 a.m. and 11:00 p.m. prevailing Eastern Time on Monday through Friday, excluding NERC holidays. “Off-Peak” means any hours that are not considered On-Peak.

The Energy Load for each month will be calculated by multiplying (i) the number of customers then being provided generation service by AEP Ohio (the “Un-Switched Customers”) by (ii) the historical monthly average usage per customer derived from data including only the Un-Switched Customers served by AEP Ohio over a recent three-year period (“Historical Actual Usage”). The Energy Load will be calculated separately for each major rate class and then summed to determine the total Energy Load. The total Energy Load will then be separated into On-Peak and Off-Peak components (consistent with the definitions cited above), still on a monthly basis, based on the Historical Actual Usage for all customer classes combined. The

Energy Load per Tranche (On-Peak and Off-Peak) will be equal to 1% of the total Energy Load calculated for each component.

To the extent that quoted Forward Market Prices are not available on a monthly basis, monthly Forward Market Prices will be determined by AEP Ohio with reference to available market price data. Notwithstanding the foregoing, if AEP Ohio is unable to obtain publicly available market price data for Forward Market Prices, Forward Market Prices will be determined by AEP Ohio using any method which AEP Ohio deems appropriate and which reasonably reflects forward market pricing conditions in PJM.

A set of monthly On-Peak Price Adjustment Factors and Off-Peak Price Adjustment Factors will be developed using historical PJM day-ahead hourly prices applied to hourly usage derived from Historical Actual Usage on the AEP Ohio system, which factors will be applied to On-Peak Forward Market Prices and Off-Peak Forward Market Prices respectively to yield Adjusted On-Peak Forward Market Prices and Adjusted Off-Peak Forward Market Prices. These Adjusted Forward Market Prices will be used for the purpose of computing the Mark-to-Market Exposure Amounts. The purpose of the Price Adjustment Factors is to restate the quoted Forward Market Prices, which are based on fixed block volumes of MWhs, to more closely approximate the price impact of serving a requirements load which reflects hourly variations due to customer usage patterns. The Price Adjustment Factors are anticipated to be recalculated as of each future auction date and applied to all then existing Master Energy Supply Agreements.

The Adjusted Forward Market Prices prevailing on the closing day of the Solicitation are used to establish a “market value” for each month during the Original Delivery Period. Table 1 contains hypothetical initial Adjusted On-Peak and Off-Peak Forward Market Prices for a 24-month Original Delivery Period from June 2013 through May 2015. Table 1 shows the hypothetical “market value” of a Tranche, which will be established on the day the Solicitation is completed using the Adjusted Forward Market Prices determined as shown in Table 2.



For each calculation of the Mark-to-Market Exposure Amount, AEP Ohio will determine the Adjusted Forward Market Prices for each month during the Original Delivery Period. Table 3 shows the calculation of an updated “market value” using hypothetical Adjusted Forward Market Prices for each month during the Original Delivery Period assumed to be in effect immediately prior to the Delivery Period for the 24-month Original Delivery Period. The initial market value as of the Solicitation completion date is then subtracted from the updated market value to derive a change in market value. The Mark-to-Market Exposure Amount is then calculated on an un-discounted basis by multiplying this change in market value by a Volume Adjustment Factor. The final Mark-to-Market Exposure Amount is determined by stating the values on a present value basis as of the determination date by discounting the calculated values at the then prevailing LIBOR rate (not shown).

The Volume Adjustment Factor will be determined by recalculating the Energy Load per Tranche reflecting the then current number of Un-Switched Customers and Historical Actual Usage and calculating the ratio of the current Energy Load per Tranche to the initial Energy Load per Tranche. The value for Un-Switched Customers is anticipated to be updated on a monthly basis and the value of Historical Actual Usage is anticipated to be updated in conjunction with each successive auction of Energy Load, but not less than once each calendar year.

TABLE 1

## Market Valuation on Solicitation Closing Date

		<u>Forward Market (a)</u>		<u>Initial Tranche Volume (b)</u>		<u>Mkt Value</u> \$000
		<u>Adjusted</u> <u>On-Peak</u> <u>Market</u> <u>Price</u> \$/MWh	<u>Adjusted</u> <u>Off-Peak</u> <u>Market</u> <u>Price</u> \$/MWh	<u>On-Peak</u> <u>MWh</u>	<u>Off-Peak</u> <u>MWh</u>	
Jun-13	\$	37.94	\$ 26.82	3,386	3,653	\$ 226
Jul-13	\$	42.61	\$ 27.44	4,078	3,844	\$ 279
Aug-13	\$	42.27	\$ 28.75	3,986	3,595	\$ 272
Sep-13	\$	34.06	\$ 24.16	2,900	2,578	\$ 161
Oct-13	\$	31.54	\$ 24.66	2,367	2,452	\$ 135
Nov-13	\$	33.55	\$ 24.39	2,799	2,288	\$ 150
Dec-13	\$	36.55	\$ 29.93	3,480	3,259	\$ 225
Jan-14	\$	40.23	\$ 34.88	3,749	3,247	\$ 264
Feb-14	\$	41.00	\$ 34.63	3,133	2,776	\$ 225
Mar-14	\$	37.96	\$ 30.36	3,095	2,841	\$ 204
Apr-14	\$	38.22	\$ 27.93	2,440	2,554	\$ 165
May-14	\$	37.55	\$ 28.33	2,905	2,705	\$ 186
Jun-14	\$	42.84	\$ 30.55	3,386	3,653	\$ 257
Jul-14	\$	48.17	\$ 30.97	4,078	3,844	\$ 315
Aug-14	\$	48.95	\$ 32.45	3,986	3,595	\$ 312
Sep-14	\$	39.14	\$ 27.46	2,900	2,578	\$ 184
Oct-14	\$	35.27	\$ 27.60	2,367	2,452	\$ 151
Nov-14	\$	37.07	\$ 27.23	2,799	2,288	\$ 166
Dec-14	\$	38.82	\$ 32.97	3,480	3,259	\$ 243
Jan-15	\$	43.74	\$ 37.11	3,749	3,247	\$ 284
Feb-15	\$	44.58	\$ 36.85	3,133	2,776	\$ 242
Mar-15	\$	41.23	\$ 32.43	3,095	2,841	\$ 220
Apr-15	\$	40.56	\$ 29.84	2,440	2,554	\$ 175
May-15	\$	40.59	\$ 31.00	2,905	2,705	\$ 202

(a): Adjusted On-Peak and Off-Peak Forward Market Prices determined as shown on Table 2.

(b): Expected On-Peak and Off-Peak SSO Load per Tranche derived from Historical Actual Usage and number of Un-Switched Customers as described in Attachment C-2.

TABLE 2

Adjusted Market Prices at Solicitation Closing Date  
[VALUES ARE FOR ILLUSTRATION ONLY]

		<u>Forward Price (a)</u>					
		On-Peak	Off-Peak			Adjusted	Adjusted
		Market	Market	<u>Price Adjustment Factor (b)</u>		On-Peak	Off-Peak
		Price	Price			Market	Market
		\$/MWh	\$/MWh	On-Peak	Off-Peak	Price	Price
						\$/MWh	\$/MWh
Jun-13	\$	36.00	\$ 24.45	1.054	1.097	\$ 37.94	\$ 26.82
Jul-13	\$	41.80	\$ 26.80	1.019	1.024	\$ 42.61	\$ 27.44
Aug-13	\$	40.80	\$ 26.80	1.036	1.073	\$ 42.27	\$ 28.75
Sep-13	\$	33.85	\$ 24.10	1.006	1.002	\$ 34.06	\$ 24.16
Oct-13	\$	32.10	\$ 23.90	0.983	1.032	\$ 31.54	\$ 24.66
Nov-13	\$	33.40	\$ 24.90	1.004	0.980	\$ 33.55	\$ 24.39
Dec-13	\$	36.25	\$ 29.50	1.008	1.015	\$ 36.55	\$ 29.93
Jan-14	\$	40.15	\$ 33.50	1.002	1.041	\$ 40.23	\$ 34.88
Feb-14	\$	40.15	\$ 33.50	1.021	1.034	\$ 41.00	\$ 34.63
Mar-14	\$	37.75	\$ 30.10	1.006	1.009	\$ 37.96	\$ 30.36
Apr-14	\$	37.60	\$ 28.45	1.017	0.982	\$ 38.22	\$ 27.93
May-14	\$	37.60	\$ 27.10	0.999	1.046	\$ 37.55	\$ 28.33
Jun-14	\$	40.65	\$ 27.85	1.054	1.097	\$ 42.84	\$ 30.55
Jul-14	\$	47.25	\$ 30.25	1.019	1.024	\$ 48.17	\$ 30.97
Aug-14	\$	47.25	\$ 30.25	1.036	1.073	\$ 48.95	\$ 32.45
Sep-14	\$	38.90	\$ 27.40	1.006	1.002	\$ 39.14	\$ 27.46
Oct-14	\$	35.90	\$ 26.75	0.983	1.032	\$ 35.27	\$ 27.60
Nov-14	\$	36.90	\$ 27.80	1.004	0.980	\$ 37.07	\$ 27.23
Dec-14	\$	38.50	\$ 32.50	1.008	1.015	\$ 38.82	\$ 32.97
Jan-15	\$	43.65	\$ 35.65	1.002	1.041	\$ 43.74	\$ 37.11
Feb-15	\$	43.65	\$ 35.65	1.021	1.034	\$ 44.58	\$ 36.85
Mar-15	\$	41.00	\$ 32.15	1.006	1.009	\$ 41.23	\$ 32.43
Apr-15	\$	39.90	\$ 30.40	1.017	0.982	\$ 40.56	\$ 29.84
May-15	\$	40.65	\$ 29.65	0.999	1.046	\$ 40.59	\$ 31.00

(a): On-Peak and Off-Peak Forward Market Prices as determined by reference to available market price data at time of Solicitation Closing Date.

(b): Price Adjustment Factors as determined by AEP Ohio as described in Attachment C-2.

TABLE 3

Market Valuation Immediately Prior to Start of Delivery Period

[VALUES ARE FOR ILLUSTRATION ONLY]

Forward Market (a)						Original Mkt				Volume	
Adjusted	Adjusted	Initial Tranche Volume (b)		Value on		Solidification		Change in		Adjusted	
On-Peak	Off-Peak	On-Peak	Off-Peak	Current Mkt	Closing Date	Mkt Value	Adjustment	Volume	Change in	Mkt Value	
Market	Market			Value \$000		\$000		Factor		\$000	
Price	Price	MWh	MWh								
\$/MWh	\$/MWh										
Jun-13	\$ 39.60	\$ 26.90	3,386	3,653	\$ 232	\$ 226	\$ 6	1.0005	\$ 6		
Jul-13	\$ 45.98	\$ 29.48	4,078	3,844	\$ 301	\$ 279	\$ 22	0.9984	\$ 22		
Aug-13	\$ 44.88	\$ 29.48	3,986	3,595	\$ 285	\$ 272	\$ 13	0.9991	\$ 13		
Sep-13	\$ 37.24	\$ 26.51	2,900	2,578	\$ 176	\$ 161	\$ 15	1.0041	\$ 15		
Oct-13	\$ 35.31	\$ 26.29	2,367	2,452	\$ 148	\$ 135	\$ 13	1.0037	\$ 13		
Nov-13	\$ 36.74	\$ 27.39	2,799	2,288	\$ 165	\$ 150	\$ 16	0.9993	\$ 16		
Dec-13	\$ 39.88	\$ 32.45	3,480	3,259	\$ 245	\$ 225	\$ 20	0.9963	\$ 20		
Jan-14	\$ 44.17	\$ 36.85	3,749	3,247	\$ 285	\$ 264	\$ 21	0.9941	\$ 21		
Feb-14	\$ 44.17	\$ 36.85	3,133	2,776	\$ 241	\$ 225	\$ 16	0.9957	\$ 16		
Mar-14	\$ 41.53	\$ 33.11	3,095	2,841	\$ 223	\$ 204	\$ 19	1.0030	\$ 19		
Apr-14	\$ 41.36	\$ 31.30	2,440	2,554	\$ 181	\$ 165	\$ 16	1.0068	\$ 16		
May-14	\$ 41.36	\$ 29.81	2,905	2,705	\$ 201	\$ 186	\$ 15	1.0052	\$ 15		
Jun-14	\$ 44.72	\$ 30.64	3,386	3,653	\$ 263	\$ 257	\$ 7	1.0005	\$ 7		
Jul-14	\$ 51.98	\$ 33.28	4,078	3,844	\$ 340	\$ 315	\$ 24	0.9984	\$ 24		
Aug-14	\$ 51.98	\$ 33.28	3,986	3,595	\$ 327	\$ 312	\$ 15	0.9991	\$ 15		
Sep-14	\$ 42.79	\$ 30.14	2,900	2,578	\$ 202	\$ 184	\$ 17	1.0041	\$ 18		
Oct-14	\$ 39.49	\$ 29.43	2,367	2,452	\$ 166	\$ 151	\$ 14	1.0037	\$ 15		
Nov-14	\$ 40.59	\$ 30.58	2,799	2,288	\$ 184	\$ 166	\$ 18	0.9993	\$ 18		
Dec-14	\$ 42.35	\$ 35.75	3,480	3,259	\$ 264	\$ 243	\$ 21	0.9963	\$ 21		
Jan-15	\$ 48.02	\$ 39.22	3,749	3,247	\$ 307	\$ 284	\$ 23	0.9941	\$ 23		
Feb-15	\$ 48.02	\$ 39.22	3,133	2,776	\$ 259	\$ 242	\$ 17	0.9957	\$ 17		
Mar-15	\$ 45.10	\$ 35.37	3,095	2,841	\$ 240	\$ 220	\$ 20	1.0030	\$ 20		
Apr-15	\$ 43.89	\$ 33.44	2,440	2,554	\$ 192	\$ 175	\$ 17	1.0068	\$ 17		
May-15	\$ 44.72	\$ 32.62	2,905	2,705	\$ 218	\$ 202	\$ 16	1.0052	\$ 16		
Total Mark-to-Market Exposure per Tranche (before discounting) (c)										\$	271

(a): Adjusted On-Peak and Off-Peak Forward Market Prices determined as described in Attachment C-2 as of the date immediately prior to start of Delivery Period.

(b): Expected On-Peak and Off-Peak SSO Load per Tranche determined as of Solicitation Closing Date - see Table 1.

(c): Actual values will be determined by calculating the present value of the Volume Adjusted Change in Market Value.

ATTACHMENT D

[ICT / TOTAL EXPOSURE AMOUNT] GUARANTY OF

\_\_\_\_\_ [Guarantor]

This Guaranty, dated as of \_\_\_\_\_, 201\_, is made by \_\_\_\_\_, a \_\_\_\_\_ [corporation] (the "Guarantor"), for the benefit of AEP Ohio, Inc., an Ohio corporation ("AEP Ohio"). Capitalized terms used herein but not defined herein shall have the meaning given such terms in the Agreement (as defined below).

WHEREAS, AEP Ohio has entered into or will be entering into that certain Master Energy Supply Agreement dated \_\_\_\_\_, 201\_ (the "Agreement") with \_\_\_\_\_, a \_\_\_\_\_ [corporation] (the "Energy Supplier"), which may involve the extension of credit by AEP Ohio. Guarantor hereby acknowledges that it will receive a direct or indirect benefit from the business transactions between the Energy Supplier and AEP Ohio and the making of this Guaranty.

NOW, THEREFORE, in consideration of, and as an inducement for, AEP Ohio entering into the Agreement, the Guarantor hereby covenants and agrees as follows:

1. **Guaranty.** The Guarantor hereby unconditionally and absolutely guarantees to AEP Ohio the prompt payment when due, subject to any applicable grace period and upon demand in writing from AEP Ohio, of any and all amounts payable by the Energy Supplier to AEP Ohio arising out of the Agreement in connection with Suppliers [ICT / Total Exposure Amount] (the "Obligations"). Notwithstanding the aggregate amount of the Obligations at any time or from time to time payable by the Energy Supplier to AEP Ohio, the liability of the Guarantor to AEP Ohio shall not exceed \_\_\_\_\_ U.S. Dollars (\$\_\_\_\_\_).

2. **Nature of Guaranty.** The Guarantor hereby agrees that its obligations hereunder shall be unconditional irrespective of the impossibility or illegality of performance by the Energy Supplier under the Agreement; the absence of any action to enforce the Agreement; any waiver or consent by AEP Ohio concerning any provisions of the Agreement; the rendering of any judgment against the Energy Supplier or any action to enforce the same; any failure by AEP Ohio to take any steps necessary to preserve its rights to any security or collateral for the Obligations; the release of all or any portion of any collateral by AEP Ohio; or any failure by AEP Ohio to perfect or to keep perfected its security interest or lien in any portion of any collateral.

This Guaranty is one of payment and not of collection. This Guaranty shall remain in full force and effect or shall be reinstated (as the case may be) if at any time any payment guaranteed hereunder, in whole or in part, is rescinded or must otherwise be returned by AEP Ohio upon the insolvency, bankruptcy or reorganization of the Energy Supplier or otherwise, all as though such payment had not been made.

3. **Waivers.** ~~Guarantor's obligation hereunder with respect to the Obligations shall not be affected by the existence, validity, enforceability, perfection or extent of any collateral for such Obligations covered hereunder, or by any extension, or the acceptance of any sum or sums on account of Energy Supplier, or of any note or draft of Energy Supplier and/or any third party, or security from Energy Supplier.~~ AEP Ohio shall not be obligated to file any claim relating to the Obligations owing to it in the event that Energy Supplier becomes subject to bankruptcy, insolvency, reorganization, liquidation, dissolution, or similar proceedings affecting Energy Supplier (whether voluntary or involuntary), and the failure of AEP Ohio to so file shall not affect Guarantor's obligations hereunder.

4. **Effect of Amendments.** Guarantor agrees that AEP Ohio and Energy Supplier may modify or amend any or all of the Agreement and that AEP Ohio may, according to the Agreement, delay or extend the date on which any performance must be made under the Agreement, or release Energy Supplier from the obligation to so perform or waive any right thereunder, all without notice to or further assent by Guarantor, who shall remain bound by this Guaranty, notwithstanding any such act by AEP Ohio.

5. **Termination.** This Guaranty is intended to be and shall be construed to be a continuing, absolute and unconditional guaranty, and shall remain in full force and effect until all Obligations have been fully and finally performed, at which point it will expire. The Guarantor may terminate this Guaranty upon thirty (30) days prior written notice to AEP Ohio, which termination shall be effective only upon receipt by AEP Ohio of alternative means of security or credit support, as specified in the Agreement and in a form reasonably acceptable to AEP Ohio. Upon the effectiveness of any such expiration or termination, the Guarantor shall have no further liability under this Guaranty, except with respect to the Obligations existing prior to the time the expiration or termination is effective, which Obligations shall remain guaranteed pursuant to the terms of this Guaranty until finally and fully performed.

6. **Notices.** All notices and other communications about this Guaranty must be in writing, must be given by facsimile, hand delivery or overnight courier service and must be addressed or directed to the respective parties as follows:

If to AEP Ohio, to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Facsimile No.: \_\_\_\_\_

Attn.: \_\_\_\_\_

If to the Guarantor, to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Facsimile No.: \_\_\_\_\_

Attn.: \_\_\_\_\_

Notices are effective when actually received by the party to which they are given, as evidenced by facsimile transmission report, written acknowledgment or affidavit of hand delivery or courier receipt.

7. **Representations and Warranties.** The Guarantor represents and warrants to AEP Ohio as of the date hereof that:

a) The Guarantor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has full power and legal right to execute and deliver this Guaranty and to perform the provisions of this Guaranty on its part to be performed;

b) The execution, delivery and performance of this Guaranty by the Guarantor have been and remain duly authorized by all necessary corporate action and do not contravene any provision of its certificate of incorporation or by-laws or any law, regulation or contractual restriction binding on it or its assets;

c) All consents, authorizations, approvals, registrations and declarations required for the due execution, delivery and performance of this Guaranty have been obtained from or, as the case may be, filed with the relevant governmental authorities having jurisdiction and remain in full force and effect, and all conditions thereof have been duly complied with and no other action by, and no notice to or filing with, any governmental authority having jurisdiction is required for such execution, delivery or performance; and

d) This Guaranty constitutes the legal, valid and binding obligation of the Guarantor enforceable against it in accordance with its terms, except as enforcement hereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights or by general equity principles.

8. **Certification.** The Guarantor hereby certifies that it satisfies the Minimum Rating as defined in the Agreement.

9. **Setoffs and Counterclaims.** Without limiting the Guarantor's own defenses and rights hereunder, the Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which the Energy Supplier is or may be entitled arising from or out of the Agreement, except for defenses arising out of bankruptcy, insolvency, dissolution or liquidation of the Energy Supplier.

10. **Subrogation.** The Guarantor will not exercise any rights that it may acquire by way of subrogation until all Obligations shall have been paid in full. Subject to the foregoing, upon payment of all such Obligations, the Guarantor shall be subrogated to the rights of AEP

Ohio against the Energy Supplier, and AEP Ohio agrees to take at the Guarantor's expense such steps as the Guarantor may reasonably request to implement such subrogation.

11. **Expenses.** The Guarantor hereby agrees to pay on demand all reasonable out-of-pocket expenses (including the reasonable fees and expenses of AEP Ohio's counsel) in any way relating to the enforcement or protection of the rights of AEP Ohio hereunder; provided that the Guarantor shall not be liable for any expenses of AEP Ohio if no payment under this Guaranty is due.

12. **Assignment.** This Guaranty shall be binding upon the Guarantor and upon its permitted successors and assigns, and shall inure to the benefit of AEP Ohio and its permitted successors and assigns and shall apply to all successors and assigns of the Energy Supplier. The Guarantor may not assign this Guaranty nor delegate its duties or rights hereunder without the prior express written consent of AEP Ohio. AEP Ohio may assign this Guaranty in accordance with the terms of the Agreement.

13. **Amendments.** No term or provision of this Guaranty shall be amended, modified, altered, waived, or supplemented except in a writing signed by the parties hereto; provided, however, the Guarantor may increase the aggregate amount of the obligations in this Guaranty without a countersignature

14. **Choice of Law and Venue.** The Guarantor and AEP Ohio hereby agree that this Guaranty shall be governed by and construed in accordance with the internal laws of the State of Ohio without giving effect to principles of conflicts of law.

15. **Waiver of Jury Trial.** The Guarantor and AEP Ohio, through acceptance of this Guaranty, waive all rights to trial by jury in any action, proceeding or counterclaim arising or relating to this Guaranty.

16. **Miscellaneous.** This Guaranty is the entire and only agreement between the Guarantor and AEP Ohio with respect to the guarantee of amounts payable by the Energy Supplier to AEP Ohio arising out of the Agreement in connection with Supplier's [ICT / Total Exposure Amount]. All representations, warranties, agreements, or undertakings heretofore or contemporaneously made, which are not set forth herein, are superseded hereby.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed in its [corporate] name by its duly authorized representative as of the date first above written.

[GUARANTOR]

By: \_\_\_\_\_

Its: \_\_\_\_\_



ATTACHMENT E  
FORM OF ENERGY SUPPLIER Letter of Credit

\_\_\_\_\_ (Date)

Letter of Credit No. \_\_\_\_\_

To: Ohio Power Company ("Beneficiary")  
1 Riverside Plaza  
Columbus, Ohio 43220  
Attention: Chief Risk Officer

1. We hereby establish in your favor this irrevocable transferable Letter of Credit (this "Letter of Credit") for the account of \_\_\_\_\_ (the "Applicant"), in the aggregate amount of \$ \_\_\_\_\_, effective immediately and available to you at sight upon demand at our counters at \_\_\_\_\_ (location) and expiring 364 days from date of issuance or any extension thereof (in the form of Annex 5), unless terminated earlier or automatically extended in accordance with the provisions hereof or otherwise extended.

2. This Letter of Credit is issued at the request of the Applicant, and we hereby irrevocably authorize you to draw on us, in accordance with the terms and conditions hereof, up to the maximum amount of this Letter of Credit, subject to reduction as provided in Paragraph 12 hereof. This Letter of Credit may be drawn:

(a) upon an Event of Default with respect to the Applicant under the Master Energy Supply Agreement; or

(b) in the event the Applicant has failed to supply a substitute letter of credit thirty (30) days prior to the expiration of this Letter of Credit as required by the Master Energy Supply Agreement.

3. A partial or full drawing hereunder may be made by you on any Business Day on or prior to the expiration of this Letter of Credit by delivering, by no later than 11:00 A.M. (prevailing Eastern Time<sup>1</sup>) on such Business Day to \_\_\_\_\_ (Bank), \_\_\_\_\_ (address), (i) a notice in the form of Annex 1 hereto, appropriately completed and duly signed by an Authorized Officer of the Beneficiary and (ii) your draft in the form of Annex 2 hereto, appropriately completed and duly signed by an Authorized Officer of the Beneficiary.

4. We may, but shall not be obligated to, accept any request to issue a substitute letter of credit. Such request shall be in an Availability Certificate in the form of Annex 3 hereto by you to us for exchange for a new letter of credit in the amount set forth in an Availability

<sup>1</sup> If the issuer of the Letter of Credit is located in an area that is not in the Eastern time zone, this time and all other times in this Letter of Credit, and the definition of a business day should be adjusted accordingly.

Certificate, which amount shall not exceed the present value of this Letter of Credit. Upon acceptance by us of any such request to issue a substitute letter of credit for exchange, the new letter of credit shall be issued in the amount as set forth in the Availability Certificate.

5. We hereby agree to honor a drawing hereunder made in compliance with the terms and provisions of this Letter of Credit by transferring in immediately available funds the amount specified in the draft delivered to us in connection with such drawing to such account at such banks in the United States as you may specify in your draft delivered to us pursuant to Paragraph 3 hereof, by 3:00 P.M. prevailing Eastern Time on the date of such drawing, if delivery of this requisite document is made prior to 11:00 A.M. (prevailing Eastern time) on a business day pursuant to Paragraph 3 hereof, but at the opening of business on the first Business Day next succeeding the date of such drawing if delivery of the requisite document is made after 11:00 A.M. (prevailing Eastern time) on any Business Day pursuant to Paragraph 3 hereof.

6. If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you prompt notice (not later than three (3) Business Days following the date of receipt of the documents) that the demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefore and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effected in conformity with this Letter of Credit, you may attempt to correct any such non-conforming demand for payment to the extent that you are entitled to do so, provided, however, that in such event a conforming demand for payment must be timely made in accordance with the terms of this Letter of Credit.

7. This Letter of Credit will automatically terminate and be delivered to us for cancellation on the earliest of (i) the making by you of the drawings in an amount equal to the maximum amount available to be made hereunder; (ii) the date we issue a new letter of credit in exchange for this Letter of Credit in accordance with Paragraph 4 hereof; and (iii) the date we receive from you a Certificate of Expiration in the form of Annex 4 hereto. The Letter of Credit will be automatically extended without written amendment for successive additional one (1) year periods from the current or any future extended expiry date, unless at least ninety (90) days prior to such date of expiration, we give written notice to the Beneficiary by registered or certified mail, return receipt requested, or by overnight courier, at the address set forth above, or at such other address of which prior written notice has been provided to us, that we elect not to renew this Letter of Credit for such additional one (1) year period.

8. As used herein:

“Authorized Officer” shall mean President, Treasurer, any Vice President, any Assistant Treasurer or any other person holding an equivalent title.

“Availability Certificate” shall mean a certificate substantially in the form of Annex 3 hereto, appropriately completed and duly signed by an Authorized Officer of the Beneficiary.

“Business Day” shall mean any day on which commercial banks are not authorized or required to close in New York, NY and any day on which payments can be effected on the Fed wire system. “Master Energy Supply Agreement” shall mean that certain Master Energy Supply Agreement between the Applicant and the Beneficiary, dated \_\_\_\_\_.

9. This Letter of Credit is assignable and transferable, in accordance with Annex 6, to an entity certified by you to us in the form of Annex 6, and we hereby consent to such assignment or transfer, provided that this Letter of Credit may not otherwise be amended or modified without consent from us, you and the Applicant, and, except as otherwise expressly stated herein, is subject to the Uniform Customs and Practice for Documentary Credits – 2007 Revision, ICC Publication No. 600, or any successor publication thereto (the “UCP”). Any and all banking charges, transfer fees, expenses and costs shall be borne by the Applicant. This Letter of Credit shall, as to matters not governed by the UCP, be governed and construed in accordance with New York law, without regard to principles of conflicts of law.

10. This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, changed, amplified or limited by reference to any document, instrument or agreement referred to herein, except for Annexes 1 through 6 hereto and the notices referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above.

11. We certify that as of \_\_\_\_\_ (date) we \_\_\_\_\_ (“Bank”) satisfy the minimum long-term senior unsecured debt rating of “A-” from Standard & Poor’s Rating Services or “A3” from Moody’s Investors Service, Inc.

12. The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid through us referencing this Letter of Credit No. \_\_\_\_\_. Partial drawings are permitted hereunder. Drafts showing amounts in excess of amounts available under this Letter of Credit are acceptable, however, in no event will payment exceed the amount available to be drawn under this Letter of Credit.

13. Faxed document(s) are acceptable. Presentation by fax must be made to fax number \_\_\_\_\_ confirmed by telephone to \_\_\_\_\_.

14. In the event of act of God, riot, civil commotion, insurrection, war, terrorism or any strikes or lock outs, or any cause beyond our control, that interrupts our business, and causes the place for presentation of this Letter of Credit to be closed for business on the last day of presentation, the expiration date of this Letter of Credit shall be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

15. This original Letter of Credit has been sent to the Beneficiary located at \_\_\_\_\_ (as per Applicant’s instructions). Any demands or communications in the form of the attached Annexes (except for Annex 5) or other communications directed to us under this Letter of Credit must be signed by an Authorized Officer of the Beneficiary. Acceptance or

rejection of any amendments to this Letter of Credit or any extensions pursuant to Annex 5 must be signed by an Authorized Officer of the Beneficiary.

Very truly yours,

(Bank)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Annex 1 to Letter of Credit**

DRAWING UNDER LETTER OF CREDIT NO. \_\_\_\_\_

\_\_\_\_\_, 20\_\_

To: (Bank)  
(Address)

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

The undersigned is making a drawing under the above-referenced Letter of Credit in the amount specified below and hereby certifies to you as follows:

1. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the Letter of Credit.

2. Pursuant to Paragraph 2 of the Letter of Credit No. \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_, the undersigned is entitled to make a drawing under the Letter of Credit in the aggregate amount of \$ \_\_\_\_\_, inasmuch as (choose one of the following by placing an "X" on the line preceding the statement):

\_\_\_\_\_ (a) An Event of Default has occurred with respect to the Applicant under the Master Energy Supply Agreement;

\_\_\_\_\_ (b) The Applicant has failed to supply a substitute letter of credit thirty (30) days prior to the expiration of this Letter of Credit as required by the Master Energy Supply Agreement.

3. The amount to be received by AEP Ohio, Inc. is \$ \_\_\_\_\_.

4. We acknowledge that, upon your honoring the drawing herein requested, the amount of the Letter of Credit available for drawing shall be automatically decreased by an amount equal to this drawing.

Very truly yours,

Ohio Power Company

By: \_\_\_\_\_  
Name:  
Title:  
Date:

**Annex 2 to Letter of Credit**

DRAWING UNDER LETTER OF CREDIT NO. \_\_\_\_\_

\_\_\_\_\_, 20\_\_

ON [Business Day set forth in Paragraph 5]

PAY TO: AEP Ohio, Inc.

\$ \_\_\_\_\_

For credit to the account of \_\_\_\_\_.

FOR VALUE RECEIVED AND CHARGE TO ACCOUNT OF LETTER OF CREDIT NO.  
\_\_\_\_\_ OF

(Bank)

(Address)

Ohio Power Company

By: \_\_\_\_\_

Name:

Title:

Date:

**Annex 3 to Letter of Credit**

AVAILABILITY CERTIFICATE  
UNDER LETTER OF CREDIT NO. \_\_\_\_\_

\_\_\_\_\_, 20\_\_\_\_  
To: (Bank)  
(Address)

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

Each of the undersigned hereby requests that, in exchange for the above-referenced Letter of Credit, a new letter of credit be issued in the aggregate amount of \$\_\_\_\_\_ (the “New Amount”) and to expire on \_\_\_\_\_ (date), but otherwise in the form of the above-referenced Letter of Credit.

Please acknowledge your intention to issue such new letter of credit in the New Amount upon the surrender of the above-referenced Letter of Credit by signing the attached acknowledgment copy hereof and forwarding it to:

[Beneficiary’s Address]

Very truly yours,

Ohio Power Company

By: \_\_\_\_\_  
Name:  
Title:  
Date:

Agreed and Accepted  
(Bank)  
By: \_\_\_\_\_  
Title:  
Date:

APPLICANT NAME  
By:  
Name:  
Title:  
Date:

**Annex 4 to Letter of Credit**

CERTIFICATE OF EXPIRATION  
OF LETTER OF CREDIT NO. \_\_\_\_\_

\_\_\_\_\_, 20\_\_

To: (Bank)  
(Address)

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

The undersigned hereby certifies to you that the above-referenced Letter of Credit may be cancelled without payment. Attached hereto is said Letter of Credit, marked cancelled.

Ohio Power Company

By: \_\_\_\_\_

Name:

Title:

Date:

cc: \_\_\_\_\_ (Applicant Name)



**Annex 5 to Letter of Credit**

NOTICE OF EXTENSION  
OF LETTER OF CREDIT NO. \_\_\_\_\_

\_\_\_\_\_, 20\_\_

To: AEP Ohio, Inc.  
550 South Tryon Street (DEC40C)  
Charlotte, NC 28202  
Attention: Chief Risk Officer

Re: Our Letter of Credit No. \_\_\_\_\_ presently in the aggregate amount of  
USD \_\_\_\_\_ issued for the account of \_\_\_\_\_ and expiring on  
\_\_\_\_\_.

On the expiration date of the Letter of Credit No. \_\_\_\_\_, we will issue a new Letter  
of Credit No. \_\_\_\_\_ to expire on \_\_\_\_\_ (date). This new Letter of Credit  
No. \_\_\_\_\_ will, aside from the expiration date, be in the amount and form of our  
Letter of Credit No. \_\_\_\_\_.

Very truly yours,

BANK \_\_\_\_\_

By:  
Name:  
Title:  
Date:

Ohio Power Company

By: \_\_\_\_\_  
Name:  
Title:  
Date:

cc: \_\_\_\_\_ (Applicant Name)

**Annex 6 to Letter of Credit**

NOTICE OF TRANSFER  
OF LETTER OF CREDIT NO. \_\_\_\_\_

\_\_\_\_\_, 20\_\_

To:

[Bank]

[Bank Address]

To Whom It May Concern:

Re: Credit \_\_\_\_\_

Issued by \_\_\_\_\_

Advice No \_\_\_\_\_

For the value received, the undersigned Beneficiary hereby irrevocably transfers to:

\_\_\_\_\_  
(Name of Transferee)

\_\_\_\_\_  
(Address)

all rights of the undersigned Beneficiary to draw under the above Letter of Credit in its entirety.

By this transfer, all rights of the undersigned Beneficiary in such Letter of Credit are transferred to the transferee and the transferee shall have the sole rights as beneficiary thereof, including sole rights relating to any amendments, whether increases, extensions or other amendments and whether now existing or hereafter made. All amendments are to be advised direct to the transferee without necessity of any consent of or notice to the undersigned beneficiary.

The advice of such Letter of Credit is returned herewith, and we ask you to endorse the transfer on the reverse thereof, and forward it directly to the transferee with your customary notice of transfer.

Very truly yours,

Ohio Power Company

By: \_\_\_\_\_

Name:

Title:

Date:

The above signature with title as stated conforms to that on file with us and is authorized for the execution of said instruments.

(Name of authenticating party)

(Authorized signature of authenticating party)  
Name  
Title

|

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**ATTACHMENT F**  
**SAMPLE PJM INVOICE**

**[TBD]**

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