

PECO ENERGY COMPANY
PENNSYLVANIA DEFAULT SERVICE SUPPLIER
MASTER AGREEMENT

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PENNSYLVANIA DEFAULT SERVICE SUPPLIER MASTER AGREEMENT

THIS DEFAULT SERVICE SUPPLIER MASTER AGREEMENT, made and entered into this ____ day of _____, ____ (“Effective Date”) by and between PECO ENERGY COMPANY (the “Company” and “Buyer”), a corporation and a public utility organized and existing under the laws of the Commonwealth of Pennsylvania and **INSERT NAME OF SUPPLIER** (“DS Supplier”), the Company and the DS Supplier hereinafter sometimes referred to collectively as the “Parties”, or individually as a “Party”,

WITNESSETH:

WHEREAS, the Company is an electric public utility engaged, inter alia, in providing retail electric service within its service territory located in the Commonwealth of Pennsylvania; and

WHEREAS, the Pennsylvania Public Utility Commission (“PaPUC” or “Commission”) Orders issued pursuant to the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801-2812, direct Buyer to supply electric service to Default Service Load within Buyer’s Pennsylvania franchise service territory; and

WHEREAS, the PaPUC has found that, for periods further identified in Appendix C and Transaction Confirmation(s) under this Agreement it would serve the public interest for the Company to secure Default Service Supply (“DS Supply”) through a competitive procurement process (“DS Solicitation”) and the PaPUC has approved such a process; and

WHEREAS, the Company has conducted and completed a successful DS

Solicitation for the provision of DS Supply, and the DS Supplier was one of the winning bidders in the DS Solicitation; and

WHEREAS, pursuant to the competitive bidding procedures of the DS Solicitation, the Company and the DS Supplier desire to enter into this Agreement setting forth their respective rights and obligations concerning the provision of DS Supply.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby covenant, promise and agree as follows:

ARTICLE 1: DEFINITIONS

Any capitalized or abbreviated term not elsewhere defined in this Agreement shall have the definition set forth in this Article.

Alternative Energy Credit or “AEC” – Shall have the meaning ascribed thereto in the AEPS Act.

AEPS Act – The Pennsylvania Alternative Energy Portfolio Standards Act, 73 P.S. §§ 1648.1-1648.8.

Affiliate – Shall mean, with respect to any entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such entity. 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.

Allocated AECs – Shall mean the types and amounts of AECs specified on Appendix E and a Transaction Confirmation.

Alternative Energy Portfolio Standards or “AEPS” – Standards requiring that a certain amount of electric energy sold to retail electric customers in the Commonwealth of Pennsylvania be comprised of electricity generated from alternative energy sources, as measured by AECs, in accordance with the requirements of the AEPS Act and provisions of the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2812-

14, in effect on the Effective Date including, without limitation, any subsequent increases in Tier I requirements under 66 Pa.C.S. § 2814.

Ancillary Services – Shall have the meaning ascribed thereto in the PJM Agreements.

Applicable Legal Authorities – Those federal and Pennsylvania statutes and administrative rules and regulations that govern the electric utility industry in Pennsylvania, as they may be amended from time to time.

Auction Revenue Rights or “ARRs” – The current or any successor congestion management mechanisms as may be employed by PJM (whether set forth in the PJM Agreements or elsewhere) for the purpose of allocating financial congestion hedges or financial transmission auction revenue rights. As currently defined by PJM, ARR are entitlements allocated annually by PJM which entitle the holder to receive an allocation of the revenues from the annual auction of financial transmission rights conducted by PJM pursuant to the PJM Agreements.

Bankruptcy Code – 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., as such laws may be amended, modified, replaced or superseded from time to time.

Billing Month – Each calendar month during the term of this Agreement.

Business Day – Any day on which the Company’s and PJM’s corporate offices are open for business and commercial banks are not authorized or required to close in New York, New York.

Capacity – “Unforced Capacity” as set forth in the PJM Agreements, or any successor, measurement of the capacity obligation of a Load Serving Entity as may be employed in PJM (whether set forth in the PJM Agreements or elsewhere).

Charge – Any fee, charge or other amount that is billable by the Company to the DS Supplier under this Agreement.

Commercial Class – Group of Rate Schedules that comprise the Commercial Class for DS Supply and itemized in Appendix C.

Company – PECO Energy Company.

Costs – With respect to the Non-Defaulting Party, brokerage fees, commissions 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 Transaction(s) under this Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement.

Customer – Any person or entity who enters a contractual agreement with the Company to receive retail electric service including, without limitation, all persons or entities taking service under a retail tariff, eligible to receive competitive electricity supply from an EGS or DS, respectively, in accordance with the Applicable Legal Authorities.

Damages – Financial compensation from the Defaulting Party to the Non-Defaulting Party associated with the occurrence of an Event of Default or an Early Termination of this Agreement. This compensation shall be assessed pursuant to Article 5 of this Agreement.

Defaulting Party – A Party to this Agreement that has caused or precipitated an Event of Default or an Early Termination of this Agreement.

Default Service or “DS” – Electric generation service that is provided at retail pursuant to the Applicable Legal Authorities under the Company’s retail electric tariffs and under any other agreements or arrangements between the Company and Customers, to any Customer that is not being served by an EGS.

Default Allocation Assessment – shall have the meaning ascribed to it under the PJM Agreements.

Delivery Period – The delivery period specified in an Appendix C Transaction Confirmation.

Delivery Point – Means the applicable zone of the Company as designated by PJM.

DS Customer(s) – Retail customers who are provided Default Service pursuant to the terms of this Agreement, the Applicable Legal Authorities and the Company’s retail tariffs.

DS Fixed Percentage – The percentage of DS Supply provided at a fixed price, as set forth in Appendix C.

DS Fixed Price – The price in dollars per MWh, as set forth in Appendix C hereto, as determined pursuant to the DS Solicitation.

DS Load – The aggregate load of DS Customers being provided DS Supply, except with respect to the Residential Class, less a fractional percentage of committed energy and capacity obtained under contract with Allegheny Electric Cooperative, Inc. for supply from the New York Power Authority.

DS Solicitation – The competitive bidding processes, procedures and rules employed by the Company to competitively procure DS Supply for purposes of this Agreement.

DS Supplier – An entity that (i) has been selected through the DS Solicitation and has accepted the obligations and associated rights to provide DS Supply to the Company for DS Customers in accordance with the Applicable Legal Authorities, (ii) has entered into this Agreement with the Company as a Party, and (iii) is a PJM Member and registered with PJM as a LSE.

DS Supplier Representative – Any officer, director, employee, consultant, contractor, or other agent or representative of the DS Supplier in connection with the DS Supplier's activity under this Agreement. To the extent the DS Supplier is a division or group of a company, the term DS Supplier Representative does not include any person in that company who is not part of the DS Supplier division or group.

DS Supplier Responsibility Share – The fixed percentage share of the Company's DS Load for which the DS Supplier is responsible as set forth in Appendix C.

Default Service Supply or "DS Supply" – All necessary Energy, Capacity, AECs for AEPS Act compliance, Ancillary Services, and transmission services including Network Integration Transmission Service, all transmission and distribution losses and congestion and imbalance costs associated with the provision of such services, and such other services or products that the DS Supplier may be required, by PJM or any governmental body having jurisdiction, to provide in order to meet the DS Supplier Responsibility Share for serving DS Load under this Agreement and as detailed in Appendix C. For the avoidance of doubt, (i) any reference in this Agreement to any other agreement for DS Supply shall include any agreement between the Parties for the provision of Energy to serve DS Load, even if such other agreement does not require delivery of additional products (e.g., Capacity); and (ii) DS Load shall include unaccounted for energy, as reflected in PJM settlement volumes (including adjustments required by PJM for PJM's derating in conjunction with implementation of marginal losses as appropriate per PJM Agreements).

DS Tariffs – The Company's existing schedules of rates and services provided to retail customers as currently on file with the Commission and on the Company's website at EDC website, as they may be amended from time to time.

DS Variable Percentage – The percentage of DS Supply provided at a variable price, as set forth in Appendix C hereto.

DS Variable Price – The price in dollars per MWh, as set forth in Appendix C hereto.

Early Termination – Termination of this Agreement prior to the end of the term due to the occurrence of an Event of Default as specified in Section 5.2 of this Agreement and the declaration of Early Termination.

Early Termination Date – The date upon which an Early Termination becomes effective as specified in Section 5.2 of this Agreement.

Effective Date - The date specified above as the effective date.

Electric Distribution Company or “EDC” – A public utility providing facilities for the transmission and distribution of electricity to retail customers in Pennsylvania.

Electric Generation Supplier or “EGS” – A person or entity that is duly certified by the Commission to offer and provide competitive electric supply to retail customers located in the Commonwealth of Pennsylvania.

Emergency – (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; or (ii) a condition that requires implementation of Emergency Operations Procedures as defined in the PJM Agreements or PJM manuals; or (iii) any other condition or situation that the Company or PJM deems imminently likely to endanger life or property or to affect or impair the Company’s electrical system or the electrical system(s) of other(s) to which the Company’s electrical system is directly or indirectly connected (a “Connected Entity”). Such a condition or situation may include, but shall not be limited to, potential overloading of the Company’s transmission and/or distribution circuits, PJM minimum generation (“light load”) conditions, or unusual operating conditions on either the Company’s or a Connected Entity’s electrical system, or conditions such that the Company is unable to accept Energy from the DS Supplier without jeopardizing the Company’s electrical system or a Connected Entity’s electrical system. Other additional emergencies can only be declared by PJM, FERC, or the PaPUC.

Energy – Three-phase, 60-cycle alternating current electric energy, expressed in units of kilowatt-hours or megawatt-hours.

Event of Default – A Party’s breach of obligations under this Agreement as set forth in Article 5 of this Agreement.

FERC – The Federal Energy Regulatory Commission.

Final Monthly Energy Allocation or “FMEA” – A quantity of Energy which, for any Billing Month, is the PMEA adjusted for any billing or metering data received subsequent to the calculation of PMEA of which PJM is notified within 60 days.

Force Majeure – Shall mean an event or circumstance which prevents one Party from performing its obligations under one or more transactions, such as riots or revolutions, demands or embargoes of the United States Government, fire, flood, drought, insurrection, acts of God which are not within the reasonable control of, or the results of the negligence of the affected Party and which, by the exercise of due diligence, the Party is unable to mitigate or avoid or cause to be avoided. Notwithstanding the foregoing, under no circumstance shall an event of Force Majeure be based on: (i) the loss or failure of DS Supplier’s supply; (ii) DS Supplier’s ability to sell the DS Supply at a price greater

than that received under any Transaction; (iii) curtailment by a utility transmitting DS Supply; (iv) the Company's ability to purchase the DS Supply at a price lower than paid under any Transaction; (v) any change in requirements of any governmental authority; or (vi) labor stoppage or lockout.

Forward Market Price – The price for On-peak Energy Forward Price and Off-peak Energy Forward Price as determined by averaging concurrent broker quotes obtained by the Company for the Market Price Hub as available.

Gains – With respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from an Early Termination of this Agreement, determined in a commercially reasonable manner.

Generator Attribute Tracking System or "GATS" - the system owned and operated by PJM Environmental Information Services, Inc. to provide reporting and tracking services to its subscribers in support of the AEPS Act, or any successor credit registry selected by the PaPUC. (As specified in Appendix E)

Guaranty – A guaranty, suretyship, hypothecation agreement, margins or security agreement or any other document in the form attached to this DS Supplier Master Agreement or other form approved by the Company.

Guarantor – Any party having the authority and agreeing to guarantee the DS Supplier's financial obligations under this Agreement, recognizing that such party shall be obligated to meet the Company's creditworthiness requirements specified in this Agreement for such DS Supplier.

Industrial Class - Group of Rate Schedules that comprise the Industrial Class for the DS Supply and itemized in Appendix C.

Interest Index – The average Federal Funds Effective Rate for the period of time the funds are on deposit. The Federal Funds Effective Rate is published daily on the Federal Reserve website (<http://www.federalreserve.gov/releases/h15/update/>).

Kilowatt or "kW" – Unit of measurement of useful power equivalent to 1000 watts.

Kilowatt-hour or "kWh" – One kilowatt of electric power used over a period of one hour.

Load Serving Entity or "LSE" – An entity that has been granted the authority or has an obligation pursuant to state or local law, regulation or franchise to sell electricity to retail customers located within the PJM Control Area as that term is defined in the PJM Agreements or in successor, superseding or amended versions of the PJM Agreements that may take effect from time to time over the term of this Agreement.

Losses – With respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from an Early Termination of this Agreement, determined in a commercially reasonable manner.

Margin – The amount by which the Total Exposure Amount exceeds the DS Supplier’s, or Guarantor’s, credit limit as defined in Section 6.4.

Mark-to-Market (“MtM”) Exposure Amount – An amount calculated daily for each DS Supplier reflecting the total MtM credit exposure to the Company due to fluctuations in market prices for Energy. The methodology for calculation of the MtM credit exposure is illustrated in Appendix B.

Market Price Hub - A liquid pricing point located within PJM’s geographic footprint, as specified in Appendix B.

Maximum Credit Limit – The lesser of the applicable percentage of TNW or the applicable credit limit cap as specified in Section 6.4 of this Agreement.

Megawatt or MW – One thousand kilowatts.

Megawatt-hour or MWh – One megawatt of electric power used over a period of one hour.

Merger Event – When a DS Supplier consolidates or amalgamates with, or merges into or with, or transfers all or substantially all of its assets to another entity and either (i) the resulting entity fails to assume all of the obligations of such DS Supplier hereunder as determined in the sole discretion of the Company or (ii) the benefits of any credit support provided pursuant to Article 6 of this Agreement fail to extend to the performance by such resulting, surviving or transferee entity of the DS Supplier’s obligations hereunder, and the resulting entity or its guarantor fails to meet the creditworthiness requirements of this Agreement as determined in the sole discretion of the Company.

Minimum Rating – A minimum senior unsecured debt rating as defined in Appendix A of this Agreement.

Minimum Transfer Amount - \$100,000.

NERC – The North American Electric Reliability Council or its successor.

Network Integration Transmission Service or “NITS” – “Network Integration Transmission Service” under the PJM Agreements in effect as of the date of this Agreement, or its successor, superseding or amended versions of the PJM Agreements that may take effect from time to time over the term of this Agreement. In the event the PJM Agreements are modified such that “Network Integration Transmission Service” is no longer offered, Network Integration Transmission Service shall mean the type of

transmission service offered under the PJM Agreements that is accorded the highest level of priority for scheduling and curtailment purposes.

Non-Defaulting Party - A Party to this Agreement who, at the time an Event of Default occurs, is not itself in default of this Agreement and has not otherwise caused or precipitated an Event of Default or Early Termination of this Agreement.

Off-Peak Energy Forward Price - Shall mean the price for Off-Peak Hours for each Billing Month of the delivery period stated in terms of \$/MWh as based on the most recent publicly available information and/or quotes from Reference Market Makers on forward energy transactions occurring at the Market Price Hub. In the event that the Market Price Hub is no longer available or no longer representative of a transparent trading hub, the Parties will negotiate in good faith to agree upon an alternate liquid price.

On-Peak Energy Forward Price - Shall mean the price for On-Peak Hours for each Billing Month of the delivery period stated in terms of \$/MWh as based on the most recent publicly available information and/or quotes from Reference Market Makers on forward energy transactions occurring at the Market Price Hub. In the event that the Market Price Hub is no longer representative of a transparent trading hub, the Parties will negotiate in good faith to agree upon an alternate liquid price.

PaPUC or Commission - The Pennsylvania Public Utility Commission or its successor.

PJM - PJM Interconnection L.L.C. or its successor.

PJM Agreements - The PJM OATT, PJM RAA, PJM OA and all other PJM agreements, procedures, manuals and documents applicable to the Transactions covered by or relating to this Agreement.

PJM Control Area - That certain Control Area encompassing electric systems in parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and the District of Columbia, as may be modified from time to time, and which is recognized by the North American Electric Reliability Council as the "PJM Control Area".

PJM Member - A member in good standing of PJM that satisfies the requirements to conduct business with PJM.

PJM OA - The PJM Operating Agreement or the successor, superseding or amended version of the PJM Operating Agreement that may take effect from time to time.

PJM OATT - The PJM Open Access Transmission Tariff or the successor, superseding or amended version of the PJM Open Access Transmission Tariff that may take effect from time to time.

PJM OI – The PJM Office of Interconnection, the system operator for the PJM Control Area.

PJM RAA – The PJM Reliability Assurance Agreement or the successor, superseding or amended version of the PJM Reliability Assurance Agreement that may take effect from time to time.

PMEA/FMEA Adjustment Amount – For any Billing Month, the monetary amount due to the DS Supplier or the Company, as the case may be, in order to reconcile any difference between the PMEA used for the purpose of calculating estimated payments made to DS Supplier for a given month and the FMEA used for calculating the final payments due to the DS Supplier for such month as more fully described in Article 9 hereof.

Preliminary Monthly Energy Allocation or “PMEA” – A quantity of Energy which, for any Billing Month, is the preliminary calculation of the DS Supplier’s DS Supplier Responsibility Share for that Billing Month.

Rate Schedule(s) – Shall mean the specified existing, and modified or successor customer rate schedule(s) in the electric service tariff of the Company filed with the Commission.

Reliability First Corporation or “RFC” – The approved regional NERC entity with responsibility for the Commonwealth of Pennsylvania.

Residential Class – Group of Rate Schedules that comprise the Residential Class for the DS Supply and itemized in Appendix C

Seasonal Billing Factor – A numerical factor, as set forth in Appendix C hereto, 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 DS Fixed Price in accordance with the provisions of Article 9 hereof and thereby used to adjust the Company’s payments to the DS Supplier.

Rounding Amount - \$100,000.

Settlement Amount – With respect to a Non-Defaulting Party, the net amount of the Losses or Gains, and Costs, expressed in U.S. Dollars, which such Party incurs as a result of Early Termination, as set forth in Section 5.4(a) of this Agreement. For the purposes of calculating the Termination Payment, the Settlement Amount shall be considered an amount due to the Non-Defaulting Party under this Agreement if the total of the Losses and Costs exceeds the Gains and shall be considered an amount due to the Defaulting Party under this Agreement if the Gains exceed the total of the Losses and Costs.

Statement – A monthly report prepared by the Company for the DS Supplier indicating the amount due to the DS Supplier by the Company as compensation for DS Supply

supplied to DS Customers by the DS Supplier during the applicable Billing Month, in accordance with DS Supplier's obligations under this Agreement.

Supply Day – Any calendar day during the term of this Agreement on which the DS Supplier is providing, or is obligated by this Agreement to provide, DS Supply to the Company's DS Customers.

Tangible Net Worth or "TNW" – Total assets less intangible assets and total liabilities. Intangible assets include benefits such as goodwill, patents, copyrights and trademarks.

Termination Payment – An amount paid by the Defaulting Party or Non-Defaulting Party due to Early Termination.

Tier I AEC – Shall mean an AEC generated by a non-solar photovoltaic energy source that will satisfy the non-solar photovoltaic Tier I requirements of the AEPS Act applicable to the Company. (As specified in Appendix E)

Tier I (Solar) AEC – Shall mean an AEC generated by a solar photovoltaic energy source that will satisfy the Tier I solar photovoltaic requirements of the AEPS Act applicable to the Company. (As specified in Appendix E)

Tier II AEC - Shall mean an AEC generated by a non-solar photovoltaic energy source that will satisfy the Tier II requirements of the AEPS Act applicable to the Company. (As specified in Appendix E)

Total Exposure Amount – An amount calculated daily for the DS Supplier reflecting the total credit exposure to the Company and consisting of the sum of (i) the Buyer's Exposure for all Transactions under this Agreement; (ii) any amount(s) designated as "buyer's exposure" under any other DS Supply agreements providing for "DS Supply" or similar default service; 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.

Tranche – A fixed percentage share of the Company's DS Load, as specified in a Transaction Confirmation.

Transaction – Means a particular agreement by which the Company purchases and the DS Supplier sells DS Supply pursuant to this Agreement, the details of which are more fully set forth in a Transaction Confirmation in the form attached as Exhibit 1 in Appendix C.

Transaction Confirmation – Shall have the meaning ascribed to it in Appendix C and Exhibit 1 of this Agreement.

Transaction Date – Shall mean the date that a Transaction is effective as set forth in the Transaction Confirmation.

ARTICLE 2: GENERAL TERMS AND CONDITIONS

2.1 Capacity In Which Company Is Entering Into This Agreement

The DS Supplier agrees and acknowledges that the Company is contracting for the provision of DS Supply from such DS Supplier for Customers receiving Default Service on the Company's electric system pursuant to the authorizations provided to the Company. The DS Supplier further agrees and acknowledges that the Company will administer and monitor the DS Supplier's performance in providing DS Supply under this Agreement and that the Company shall be entitled to enforce the DS Supplier's obligations related to the provision of DS Supply. The DS Supplier hereby permanently, expressly and irrevocably waives any claim that Company is not entitled to seek enforcement of this Agreement on behalf of Customers. It is the specific intention of the Parties hereto that Customers and Customer groups are not third party beneficiaries of this Agreement and that no Customer or Customer group shall seek enforcement of this Agreement against the DS Supplier on their own behalf, either independently or by joining in any legal proceeding brought by the Company.

2.2 Parties' Obligations

(a) Obligations of DS Supplier

The DS Supplier hereby agrees as follows:

- (i) To provide service on a firm and continuous basis such that the supply delivered for the term of each Transaction under the Agreement meets the terms and conditions set forth in Appendix C and the applicable Transaction Confirmation;
- (ii) To provide sufficient quantities of DS Supply on an instantaneous basis at

- all times during the Delivery Period of each Transaction and supplied to the Delivery Point to meet the DS Supplier Responsibility Share;
- (iii) To procure those services provided by the PJM OI and to perform such functions as may be required by the PJM OI that are necessary for the delivery of DS Supply required hereunder;
 - (iv) To cooperate with the Company in any regulatory compliance efforts that 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 DS Supply, before the PaPUC, FERC or any other regulatory body asserting jurisdiction;
 - (v) To become the LSE with respect to the provision of DS Supply for the DS Supplier Responsibility Share and to comply with all requirements of a LSE with respect to such DS Supplier Responsibility Share;
 - (vi) To pay to the Company the PMEA/FMEA Adjustment Amount for any Billing Month in which the PMEA exceeds the FMEA, as more fully described in Article 9 of this Agreement;
 - (vii) To accept assignment of and to fulfill all obligations of a LSE that are assigned to it by this Agreement;
 - (viii) To comply in a timely manner with all obligations under this Agreement imposed upon the DS Supplier; ~~and~~
 - (ix) To comply with the AEPS requirements of the Company's Default Service Plan, as detailed in Appendix E; ~~and~~
 - (x) To provide a completed generation supply report to the Company, in the

form of Appendix H, by March 31st of each calendar year for all Energy provided to the Company under this Agreement in the preceding calendar year.

(b) Obligations of the Company

The Company hereby agrees as follows:

- (i) To pay to the DS Supplier every month an amount due, resulting from the calculations, as detailed in Article 9 of this Agreement, subject to the adjustments as expressed therein;
- (ii) Pay to the DS Supplier the PMEA/FMEA Adjustment Amount for any Billing Month in which the FMEA exceeds the PMEA, as more fully described in Article 9 of this Agreement;
- (iii) To provide to the DS Supplier its estimated aggregate load obligation (Capacity MW value) for each Supply Day no less than five (5) calendar days prior to the day of delivery. Further, this information will be posted in the DS Supplier's specific PJM eMTR account, or successor system or process;
- (iv) To comply in a timely manner with all obligations under this Agreement imposed upon the Company;
- (v) Accept the delivery of DS Supply necessary to meet the DS Load; and
- (vi) Be responsible (as between the Company and the DS Supplier) for the provision of the Allocated AECs to satisfy AEPS requirements.

2.3 Congestion and Congestion Management

The DS Supplier is responsible for any congestion costs incurred to meet the DS

Supplier Responsibility Share. The Company shall transfer or assign to the DS Supplier the Company's rights to ARR to which the Company is entitled as a LSE pursuant to the PJM Agreements provided that such rights are related to the service being provided to meet the DS Supplier Responsibility Share and such rights are for the Delivery Period indicated in the Transaction Confirmation(s). All rights, liabilities and obligations associated with such ARRs will accrue and be assumed by the DS Supplier through the transfer or assignment from the Company to the DS Supplier including the responsibility and ability of the DS Supplier to request or nominate such ARRs when applicable and feasible. Should the conditions above not be met, the entity recognized by PJM as having the right to make the nominations will nominate such ARRs for the upcoming PJM planning period and such ARRs will be allocated to the DS Supplier in accordance with the PJM Agreements based upon its DS Supplier Responsibility Share.

2.4 PJM Services

The DS Supplier shall make all necessary arrangements for the delivery of DS Supply through the PJM OI. The Company will advise the PJM OI of the magnitude and location of each DS Supplier's actual DS Supplier Responsibility Share, as required by the PJM OI, for the purpose of calculating such DS Supplier's appropriate DS Supply requirements related to the provision of service under this Agreement by DS Supplier arising under the PJM Agreements. The DS Supplier shall remain responsible to PJM for the performance of its LSE obligations associated with the provision of DS Supply under this Agreement until the effective date of the transfer of such LSE obligations.

The Company shall generate and provide to DS Supplier PJM shortname(s) associated with supplier's unique contract type(s), as necessary. Unique shortname(s)

may be generated for each differing contract type. DS Supplier shall complete all required forms and processing to PJM to create shortname(s) within the PJM system.

For the period of time this Agreement is in effect, both the Company and DS Supplier shall have executed the PJM Declaration of Authority, and shall remain in effect during the Term of each Transaction under this Agreement. In the event PJM requires that the Declaration of Authority be amended after execution by the DS Supplier, DS Supplier agrees to execute a revised Declaration of Authority in accordance with PJM requirements.

2.5 PJM Agreement Modifications

(a) If the PJM Agreements are amended or modified so that any schedule or section references herein to such agreements is changed, such schedule or section references herein shall be deemed to automatically (and without any further action by the Parties) refer to the new or successive schedule or section in the PJM Agreements which replaces that originally referred to in this Agreement.

(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, both Parties shall cooperate to make conforming changes to this Agreement to fulfill the purposes of this Agreement, including the DS Supplier's responsibility for changes in PJM products and pricing during the term of each Transaction under this Agreement.

2.6 PJM Member Default Cost Allocation

In the event PJM imposes a Default Allocation Assessment upon the Company relating to a default during the term of Transaction(s) under this Agreement, the

Company shall invoice DS Supplier and DS Supplier shall pay an amount equal to the product of (i) DS Supplier Responsibility Share and (ii) the Default Allocation Assessment, less the amounts of any types of charges allocated to the Company under this Agreement that are used by PJM in calculating such Default Allocation Assessment.

2.7 Other Fines and Penalties

If fees, fines, penalties, or costs are claimed or assessed against the Company by any Applicable Legal Authority or PJM due to non-compliance by the DS Supplier with this Agreement, any other requirements of law, or the PJM Agreements, the DS Supplier shall indemnify and hold the Company harmless against any and all losses, liabilities, damages, and claims suffered or incurred by the Company, including claims for indemnity or contribution made by third parties against the Company, except to the extent the Company recovers any such losses, liabilities or damages through other provisions of this Agreement.

2.8 Communications and Data Exchange

The DS Supplier and the Company shall supply to each other in a thorough and timely manner all data, materials or other information that is specified in this Agreement, or that may otherwise reasonably be required by DS Supplier or by the Company in connection with the provision of DS Supply by the DS Supplier to DS Customers, if required.

The DS Supplier shall be equipped with the communications capabilities necessary to comply with the communications and data exchange standards that are set by and as may, from time to time, be modified by PJM, and shall exclusively bear the costs of installing, maintaining, testing, and operating all required information technology

systems that will enable it to send to and receive data from the Company and PJM and to satisfy its obligations under this Agreement, the PJM Agreements and all other relevant agreements.

2.9 Record Retention

The Company shall retain necessary records for the longer of two years or as required under applicable PaPUC requirements so as to permit DS Supplier to confirm the validity of payments due to DS Supplier hereunder; provided that if a DS Supplier has provided notice pursuant to this Agreement that it disputes the validity of any payments, the Company agrees that it shall retain all records related to such dispute until the dispute is finally resolved.

2.10 Verification

In the event of a good faith dispute regarding any invoice issued or payment due under this Agreement, and provided that a mutually acceptable confidentiality agreement is executed by the Parties, each Party will have the right to verify, at its sole expense, the accuracy of the invoice or the calculation of the payment due by obtaining copies of relevant portions of the books and records of the other Party.

2.11 Forward Contract Merchant

The Parties agree that the Agreement is a “forward contract” within the meaning of the United States Bankruptcy Code, that each Party hereto is a “forward contract merchant” within the meaning of the United States Bankruptcy Code, all setoffs, netting and liquidations contemplated hereunder constitute “settlement payments” as set forth in Sections 101 and 741 of the United States Bankruptcy Code and each payment or

transfer of performance assurance is a “margin payment”, “settlement payment” or transfer within the meaning of Section 101 of the United States Bankruptcy Code for the purposes of and as used in such Code. Accordingly, the Parties hereto are entitled to the protections of Section 556 of the United States Bankruptcy Code. The Parties therefore agree that the Agreement may be terminated by either Party upon the commencement of a proceeding by the other Party under any chapter of the United States Bankruptcy Code in accordance with Section 5.2 of this Agreement.

ARTICLE 3: REPRESENTATIONS AND WARRANTIES

3.1 DS Supplier’s Representations and Warranties

The DS Supplier hereby represents, warrants and covenants to the Company on the Effective Date and throughout the term of the Transaction(s) under this Agreement as follows:

a) It is a corporation, partnership, limited liability company or other legal entity, duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania or, if another jurisdiction, under the laws of such jurisdiction and, in such case, is duly registered and authorized to do business in such other jurisdiction;

b) It has all requisite power and authority to execute and deliver this Agreement and to carry on the business to be conducted by it under this Agreement and to enter into and perform its obligations hereunder, including satisfaction of all applicable FERC requirements;

c) The execution and delivery of this Agreement and the performance of such DS Supplier’s obligations hereunder have been duly authorized by all necessary

action on the part of the DS Supplier and do not and will not conflict with, or constitute a breach of or default under, any of the terms, conditions, or provisions of the DS Supplier's certificate of incorporation or bylaws or other constituent instruments or any indenture, mortgage, other evidence of indebtedness, or other agreement or instrument or any statute or rule, regulation, order, judgment, or decree of any judicial or administrative body to which the DS Supplier is a party or by which the DS Supplier or any of its properties is bound or subject;

d) All necessary and appropriate action that is required on the DS Supplier's part to execute this Agreement has been completed;

e) This Agreement is the legal, valid and binding obligation of the DS Supplier, enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect that affect creditors' rights in general or by general principles of equity;

f) There are no actions at law, suits in equity, proceedings or claims pending or, to the DS Supplier's knowledge, threatened against the DS Supplier before any federal, state, foreign or local court, tribunal or governmental agency or authority that might materially delay, prevent or hinder the DS Supplier's performance of its obligations hereunder;

g) It has entered into this Agreement and all Transactions under this Agreement with a full understanding of the material terms and risks of the same, and it is capable of assuming those risks;

h) It is in good standing as a LSE in PJM, is a signatory to all applicable PJM Agreements, and is in compliance with, and will continue to comply with, all obligations,

rules and regulations, as established and interpreted by the PJM OI, that are applicable to LSEs as defined by the PJM Agreements; provided that the DS Supplier shall not be obligated to become a LSE in PJM until the date it begins providing DS Supply;

i) It has made its trading and investment decisions (including regarding the suitability thereof) based upon its own judgment and any advice from such advisors as it has deemed necessary and not in reliance upon any view expressed by the Company;

j) It will comply with any and all information and data transfer protocols that may be adopted by the Company or that are set by, and from time to time modified by, the PaPUC; provided that DS Supplier shall be entitled to exercise its reserved right to challenge any such protocols in the appropriate forum.

k) It is not bankrupt or insolvent and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt or insolvent;

l) There are no pending, or to its knowledge threatened, actions, suits or proceedings against it or any of its Affiliates, or any legal proceedings before any Governmental Authority, that could materially adversely affect its ability to perform its obligations under this Agreement;

m) 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;

n) It is not relying upon the advice or recommendations of the other Party in entering into this Agreement, it is capable of understanding, understands and accepts the

terms, conditions and risks of this Agreement, and the other Party is not acting as a fiduciary for or advisor to it in respect of this Agreement; and

o) It has entered into this Agreement and all Transactions under this Agreement in connection with the conduct of its business and it has the capacity or ability to provide or take delivery of DS Supply as required by this Agreement; and it is an “eligible contract participant” as defined in Section 1a(18) of the Commodity Exchange Act.

3.2 Company’s Representations and Warranties

The Company hereby represents, warrants and covenants to the DS Supplier as follows:

a) The Company is an electric utility corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania;

b) The Company has all requisite power and authority to carry on the business to be conducted by it under this Agreement and to enter into and perform its obligations hereunder;

c) The execution and delivery of this Agreement and the performance of the Company’s obligations hereunder have been duly authorized by all necessary action on the part of the Company and do not and will not conflict with, constitute a breach of or default under, any of the terms, conditions, or provisions of the Company’s certificate of incorporation or bylaws or any indenture, mortgage, other evidence of indebtedness, or other agreement or instrument or any statute or rule, regulation, order, judgment, or decree of any judicial or administrative body to which the Company is a party or by which the Company or any of its properties is bound or subject;

d) All necessary and appropriate action that is required on the Company's part to execute this Agreement has been completed;

e) This Agreement is the legal, valid and binding obligation of the Company, enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect that affect creditors' rights in general or by general principles of equity and the Commission's power under section 508 of the Public Utility Code, 66 Pa.C.S. § 508, to amend or modify the contracts of public utilities;

f) The ability of the Company to pay any and all amounts due and payable under this Agreement, or upon any potential breach thereof, is not conditioned upon any governmental or administrative appropriation by the Commission, the Commonwealth of Pennsylvania or any other governmental authority;

g) There are no actions at law, suits in equity, proceedings or claims pending or, to the Company's knowledge, threatened against the Company before any federal, state, foreign or local court, tribunal or governmental agency or authority that might materially delay, prevent or hinder the Company's performance of its obligations under this Agreement;

h) It has entered into this Agreement and all Transactions under this Agreement with a full understanding of the material terms and risks of the same, and it is capable of assuming those risks;

i) The Company's performance under this Agreement is not contingent upon the performance of Customers or the ability of Customers to pay rates;

j) The Company shall have sole responsibility for metering and billing with

respect to Customers; and

k) The Company shall be responsible for electric distribution services and the DS Supplier shall not be responsible for distribution charges.

3.3 Survival of Obligations

All representations and warranties contained in this Article are of a continuing nature and shall be maintained during the term of this Agreement or until all amounts due hereunder, including all obligations, have been paid or performed in full. If a Party learns that any of the representations, warranties or covenants in this Agreement are no longer true during the term of any Transaction under this Agreement, the Party shall immediately notify the other Party via facsimile, with a hard copy of the notice delivered by overnight mail.

ARTICLE 4: COMMENCEMENT AND TERMINATION OF AGREEMENT

4.1 Commencement and Termination

The term of this Agreement shall commence upon the Effective Date. Unless otherwise agreed upon by the Company and the DS Supplier, this Agreement shall continue in full force and effect from the Effective Date until the end of all Transaction(s) executed under this Agreement, unless the Agreement is terminated prematurely pursuant to the provisions of this Agreement.

4.2 Termination of Right to Supply

The DS Supplier agrees that termination of this Agreement for reason of an Event of Default shall terminate any right of the DS Supplier to provide DS Supply to the DS Customers and nullify any of the entitlements to which the DS Supplier became entitled

as a result of being selected as a winning bidder in the DS Solicitation.

4.3 Survival of Obligations

Termination of this Agreement for any reason shall not relieve the Company or the DS Supplier of any obligation accrued or accruing prior to such termination. Applicable provisions of this Agreement shall continue in effect after termination to the extent necessary to provide for final billings.

4.4 Mutual Termination

The Company and the DS Supplier may agree at any time during the term of this Agreement to terminate their respective rights and obligations hereunder on such terms and under such conditions that they mutually deem to be appropriate as set forth in a mutual termination agreement acceptable in form and substance to the Company and the DS Supplier (“Mutual Termination Agreement”); provided that Company agrees that it shall enter into such a Mutual Termination Agreement, which will discharge the terminating DS Supplier (the “Terminating DS Supplier”) with respect to liabilities arising after the effective date of the Mutual Termination Agreement if the following conditions precedent are met: (i) the Terminating DS Supplier identifies a replacement DS Supplier willing to assume all obligations of the Terminating DS Supplier hereunder for the remaining term of Transactions under this Agreement (the “Replacement DS Supplier”); (ii) the Replacement DS Supplier demonstrates its compliance with Article 6 of this Agreement, “Creditworthiness”, as of the effective date of the Mutual Termination Agreement, that determination to be made in the sole discretion of Company; (iii) the Replacement DS Supplier executes a counterpart signature page to this Agreement and all Transaction Confirmation(s) that are currently in effect and thereby becomes a Party

under this Agreement and all relevant Transaction(s), effective immediately following the effective date of the Mutual Termination Agreement; and (iv) the Terminating DS Supplier is not, to the belief or knowledge of the Company, subject to an Event of Default as of the effective date of the Mutual Termination Agreement or, if the Company believes that the Terminating DS Supplier may be subject to an Event of Default, either (a) the Company has determined that, as of the effective date of the Mutual Termination Agreement, it has not incurred any Damages as a result of the Event of Default or (b) if the Company has determined, as of the effective date of the Mutual Termination Agreement, that it may have incurred Damages as a result of the Event of Default, that the Replacement DS Supplier has agreed in writing to be responsible for the payment of such Damages or to otherwise cure the Event of Default, in either case to the satisfaction of the Company in its sole discretion.

ARTICLE 5: BREACH AND DEFAULT

5.1 Events of Default

An Event of Default under this Agreement shall occur if a Party (the “Defaulting Party”):

- (i) Is the subject of a voluntary bankruptcy, insolvency or similar proceeding;
- (ii) Makes an assignment for the benefit of its creditors;
- (iii) Applies for, seeks consent to, or acquiesces in the appointment of a receiver, custodian, trustee, liquidator or similar official to manage all or a substantial portion of its assets;
- (iv) Is dissolved (other than pursuant to a consolidation, amalgamation or merger) or is the subject of a Merger Event;

(v) Has a secured party take possession of all or substantially all of its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets;

(vi) Has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);

(vii) In the case of a DS Supplier, PJM terminates the DS Supplier's ability to make purchases from PJM markets or PJM holds the Company responsible for the provision of DS Supply under this Agreement and PJM does not rescind such termination or assignment of responsibility within seven (7) Business Days;

(viii) Fails to comply with the creditworthiness requirements as set forth in Article 6 of this Agreement, including, without limitation, compliance with the creditworthiness requirements to cover the Margin calculated under Section 6.3 or post any performance assurance collateral as set forth in Section 6.7 to cover Margin due under Section 6.5 of this Agreement, within the time frames set forth in this Agreement;

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

(x) Fails to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within two (2) Business Days after written notice;

(xi) Violates any federal, state or local code, regulation or statute applicable to the supply of Energy and/or AECs in a manner that materially, and adversely, affects the Party's performance under this Agreement, including by way of failure to continually

satisfy all applicable FERC requirements, or, in the case of the DS Supplier, by way of failure to maintain any other governmental approvals required for participation in the Pennsylvania retail Energy market, or defaults on any obligation or other failure to comply with PJM requirements under the PJM Agreements;

(xii) Is the subject of an involuntary bankruptcy or similar proceeding;

(xiii) Subject to Section 5.3 (b) of this Agreement, in the case of the Company, fails to accept DS Supply properly tendered by the DS Supplier under this Agreement;

(xiv) Fails to perform any material covenant or obligation set forth in this Agreement, if such failure is not remedied within three (3) Business Days after written notice;

(xv) Makes a materially incorrect or misleading representation or warranty under this Agreement or under any response to the DS Solicitation;

(xvi) Commits an act or makes an omission that constitutes an “Event of Default” under any other agreement(s) for the provision of DS Supply between the Company and the DS Supplier; and fails to remedy such condition, event or delinquency herein above described such that the other Party (the “Non-Defaulting Party”) is completely made whole with respect to such condition, event or delinquency, within three (3) Business Days of receipt of written notice thereof from such Non-Defaulting Party; provided, however, that an Event of Default shall be deemed to have occurred immediately, without any need for the provision of notice thereof by the Non-Defaulting Party and without any right of cure on the part of the Defaulting Party, in the event of the occurrence of a condition, event or delinquency described in subsections “i”, “ii”, “iii”, “iv”, “v”, “vi”, “vii” or “viii” above. Termination of this Agreement or any Transactions

hereunder by the PaPUC, other regulatory authority or court of law does not constitute an Event of Default under this Agreement; or

(xvii) With respect to the DS Supplier's Guarantor, if any:

1. any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;
2. Guarantor fails to make, when due, 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 two (2) Business Days after written notice;
3. Guarantor's guaranty fails to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of the DS Supplier under this Agreement without the written consent of the Company; or
4. Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of any guaranty.

5.2 Rights upon Default

Upon and during the continuation of an Event of Default, the Non-Defaulting Party shall have the right to suspend performance, provided that such suspension shall not

continue for longer than ten (10) Business Days. At any time during or subsequent to the temporary suspension of performance, the Non-Defaulting Party may proceed with the steps outlined in Sections 5.6 and 5.7. In addition to any other remedies available at law or in equity to the Non-Defaulting Party, if an Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right to implement either or both of the following remedies:

(i) Declare an Early Termination Date of this Agreement with respect to the obligations of the Defaulting Party without any liability or responsibility whatsoever except for obligations arising prior to the date of termination, by providing written notice to the Defaulting Party; provided, however, that this Agreement shall immediately terminate automatically and without notice in the case of any Event of Default in which a DS Supplier is the Defaulting Party occurring under subsections (i), (ii), (iii), (iv), (v), (vi), (vii) or (viii) of Section 5.1 of this Agreement and such date of automatic termination shall be deemed the Early Termination Date of this Agreement with respect to such DS Supplier; and

(ii) Receive Damages in accordance with Section 5.3 of this Agreement.

5.3 Damages Resulting From an Event of Default

(a) **DS Supplier's Failure to Supply DS Supply or Declaration of Early Termination By Company:** Damages resulting from (i) the DS Supplier's failure to (A) provide DS Supply in conformance with Section 2.2 hereof or (B) pay PJM for purchases of any products or services from PJM, or other failure to comply with PJM requirements, such that PJM holds the Company responsible for the provision of DS Supply to meet the DS Supplier's DS Supplier Responsibility Share under Transaction(s)

of this Agreement or (ii) the occurrence of any Event of Default attributable to the DS Supplier resulting in Early Termination, shall include all Costs incurred by the Company, acting in a commercially reasonable manner consistent with any statutory or regulatory requirements imposed by the Applicable Legal Authorities, in obtaining replacement services or in obtaining a replacement supplier, which Costs exceed the amounts that would have been payable to the defaulting DS Supplier under this Agreement. Costs incurred by the Company for the purpose of calculating Damages hereunder will consist of:

(i) The cost of DS Supply allocated to the Company by the PJM OI due to the failure of the DS Supplier to meet obligations owing to the PJM OI in connection with its obligations under this Agreement;

(ii) The costs of DS Supply purchased by the Company to replace DS Supply that a DS Supplier was obligated to supply under this Agreement during the term hereof;

(iii) Administrative and legal costs associated with procuring replacement DS Supply; and

(iv) Financial hedging costs incurred by the Company on behalf of DS Customers as a result of having to procure DS Supply not provided by the DS Supplier.

The Parties further recognize and agree that the final calculation of Damages hereunder may not be known for some time since the level of such Damages may be dependent upon the arrangements made by the Company to obtain replacement services or a replacement DS Supplier. The Company and the DS Supplier agree that, until the calculation of Damages under this provision is completed, the amount and payment to the Company of the Settlement Amount on behalf of DS Customers in the event of an Early

Termination as set forth in Section 5.4 of this Agreement shall be immediately due and owing as an estimate of all Damages ultimately determined to be due and owing. After Damages have been finally determined under this Section 5.3, the amounts of Damages due and owing will be reconciled with payments already made by the DS Supplier under Section 5.4 of this Agreement.

(b) **Failure By Company on Behalf of Customers To Accept DS Supply Tendered By DS Supplier:** Damages resulting from the failure of the Company on behalf of Customers to accept DS Supply tendered by the DS Supplier necessary to meet the DS Supplier Responsibility Share of DS Load under Transaction(s) of this Agreement shall consist of the positive difference (if any) between (i) the amounts that would have been payable to the DS Supplier hereunder had the Company accepted the DS Supply tendered by the DS Supplier necessary to meet the DS Supplier Responsibility Share of DS Load under Transaction(s) of this Agreement and (ii) the amount realized by the DS Supplier in disposing, in a commercially reasonable manner, of the DS Supply not accepted by the Company; provided, however, that the Company shall not be required to accept on behalf of any Customer, quantities of DS Supply utilized by Customers on an instantaneous basis as a function of electrical load, in excess of such Customer's instantaneous consumption of such component of DS Supply; and further provided that the Company shall not be liable for any Damages if this Agreement is terminated by the PaPUC, other regulatory authority or a court of law.

(c) **Damages Resulting From Early Termination Due To An Event of Default Attributable To the Company:** Damages resulting from Early Termination due to an Event of Default attributable to the Company shall be as set forth in Section 5.4

of this Agreement. Damages calculated in accordance with said Section 5.4 shall be the exclusive remedy available to the DS Supplier in the event of Early Termination resulting from an Event of Default attributable to the Company.

(d) **Damages Resulting from DS Supplier's Failure to Continuously Satisfy its AEPS Obligations:** Damages resulting from the DS Supplier's failure to continuously meet and satisfy all or any portion of its obligations under Section 2.2 (a)(ix) of this Agreement shall include, but not be limited to, the amount of all penalties, and costs associated with the procurement of additional AECs, etc. including, without limitation, interest and other charges, if any, levied against the Company related to AEPS regulations, due to such DS Supplier's conduct or inaction.

(e) **Other Damages:** Damages for Events of Default not specified above shall consist of the direct Damages incurred by the Non-Defaulting Party.

(f) **Waiver of Event of Default:** If an Event of Default has occurred and the Non-Defaulting Party is the Company, then unless the Event of Default was a failure by the DS Supplier to meet any or all of its DS Supply obligations, the Company may elect, at its sole discretion, to offer to waive the default on such terms and conditions as the Company, at its sole discretion, may deem appropriate to propose a special remedy. Any such special remedy can only be offered to the DS Supplier if it first is specifically approved by the PaPUC in accordance with Commission Orders.

5.4 Declaration of an Early Termination Date and Calculation of Settlement Amount and Termination Payment

(a) **Settlement Amount.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the Non-Defaulting Party shall have the right (i) to designate a day, no earlier than the day such notice is effective and no

later than twenty (20) days after such notice is effective, as the Early Termination Date to accelerate all amounts owing between the Parties and to liquidate and terminate the undertakings set forth in this Agreement, (ii) to withhold any payments due to the Defaulting Party under this Agreement, and (iii) to suspend performance; provided however, that an Early Termination Date shall be deemed to occur automatically and concurrently with the Event of Default, without any requirement for the provision of notice by the Non-Defaulting Party, with respect to an Event of Default under subsections (i), (ii), (iii), (iv), (v), (vi), (vii), and (viii) of Section 5.1 of this Agreement. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount with respect to the obligations under this Agreement.

The DS Supplier may, in its sole discretion, select the notional quantity in the following subsection 5.4(a)(1) by checking this box. If the DS Supplier does not check the box to select subsection 5.4(a)(1) it will be deemed to be excluded from this Agreement.

5.4(a)(1) For the purposes of such determination, the DS Supply provided for under this Agreement for the period following the Early Termination Date through the remainder of the term of this Agreement shall be deemed to be those quantity amounts that would have been delivered on an hourly basis, had this Agreement been in effect during the previous calendar year adjusted for such DS Load changes as may have occurred since the previous calendar year.

(b) **Net Out of Settlement Amounts.** The Non-Defaulting Party shall calculate a Termination Payment by aggregating all Settlement Amounts due under this Agreement or any other agreement(s) between the Company and the DS Supplier for the

provision of DS Supply into a single amount by netting out (i) all Settlement Amounts that are due or will become due to the Defaulting Party, plus at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party and actually received, liquidated and retained by the Non-Defaulting Party, plus any or all other amounts due to the Defaulting Party under this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply against (ii) all Settlement Amounts that are due or will become due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply, so that all such amounts shall be netted out to a single liquidated amount; provided, however, that if the DS Supplier is the Defaulting Party and the Termination Payment is due to the DS Supplier, the Company shall be entitled to retain a commercially reasonable portion of the Termination Payment, which may be equal to the entire amount of the Termination Payment, as security for additional amounts that may be determined to be due and owing by the DS Supplier as Damages and further provided that any previously attached security interest of the Company in such retained amounts shall continue. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate. If the Termination Payment has been retained by the Company as security for additional amounts that may be determined to be due and owing by the DS Supplier, and if, upon making a final determination of Damages, the Termination Payment, or any portion thereof, is to be made to the DS Supplier, the Company will pay simple interest on the Termination Payment amount being made to the DS Supplier. Simple interest will be calculated at the lower of the Interest Index or six (6) percent per

annum.

(c) **Notice of Termination Payment.** As soon as practicable after calculation of a Termination Payment, notice shall 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 5.4(b) above, the Termination Payment shall be made by the Party that owes it within three (3) Business Days after such notice is effective.

(d) **Disputes With Respect to Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within three (3) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer collateral to the Non-Defaulting Party in an amount equal to the Termination Payment, such collateral to be in a form acceptable to the Non-Defaulting Party as specified in the Termination Payment dispute notice.

(e) **Multiple DS Supply Agreements.** It is the intention of the Company and the DS Supplier that, in the event the DS Supplier is a party to other agreements with the Company for the provision of DS Supply that existed prior to the Effective Date of this Agreement or are entered into after the Effective Date of this Agreement, the Company will calculate a single Termination Payment applicable to all such agreements as set forth herein.

5.5 Step-up Provision

The Company may ask other DS Suppliers whether they wish to assume all or part of the delivery obligations on the same terms and price contained herein, but any DS Supplier shall not be obligated to assume any such step-up requests. Any agreement to make additional supply available shall be termed a “Step-Up”, and is subject to compliance with the creditworthiness provisions of Section 6 of this Agreement and the DS Supplier’s load cap as per the Company’s approved default service procurement plan. For the avoidance of doubt, in the event that the DS Supplier does not respond to the Company’s Step-Up request within the relevant timeframe, then the DS Supplier shall be deemed to have rejected the Company’s request in full.

5.6 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 agreement(s) between the Company and the DS Supplier for the provision of DS Supply shall 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 agreement(s) between the Company and the DS Supplier for the provision of DS Supply that are unsecured and not subject to any Guaranty; (ii) second, to satisfy any payment obligations of the Defaulting Party to the Non-Defaulting Party pursuant to this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply that are unsecured, but which are subject to 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 agreement(s) between the Company and the DS Supplier for the provision of DS Supply.

5.7 Preservation of Rights of Non-Defaulting Party

The rights of the Non-Defaulting Party under this Agreement, including without limitation Sections 5.4 and 5.6 of this Agreement, shall 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.

- a. Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's failure to perform pursuant to this Agreement.
- b. Return of Auction Revenue Rights. When the DS Supplier is the Defaulting Party, the DS Supplier will make best efforts to facilitate the transfer or reassignment to the entity which is the replacement DS Supplier on the Early Termination Date, any and all of the replacement DS Supplier's rights to ARRs to which the replacement DS Supplier is entitled as a LSE pursuant to the PJM Agreements, which were transferred or assigned to the DS Supplier under Section 2.3 (Congestion and Congestion Management).

ARTICLE 6: CREDITWORTHINESS

6.1 Applicability

The DS Supplier agrees that it shall meet the creditworthiness requirements of this Article 6 at all times during the term of this Agreement and shall inform the Company immediately of any changes in its credit rating or financial condition. Without limitation

of the foregoing, the DS Supplier shall, upon written request, affirmatively demonstrate to the Company, its compliance with the creditworthiness requirements set forth hereunder. The Company may establish less restrictive creditworthiness requirements under this Article 6 in a non-discriminatory manner.

6.2 Creditworthiness Determination

The DS Supplier may submit and maintain a security deposit in accordance with Section 6.4 of this Agreement in lieu of submitting to or being qualified under a creditworthiness evaluation. The DS Supplier shall have the opportunity to request that the Company re-evaluate its creditworthiness whenever an event occurs that the DS Supplier believes would improve the determination made by the Company of its creditworthiness. The Company's credit re-evaluation must be completed as soon as possible but no longer than thirty (30) days after receiving a fully documented request. The Company must provide the rationale for its determination of the credit limit and any resulting security requirement. The Company must perform its credit re-evaluation and associated security calculation in a non-discriminatory manner. DS Supplier shall provide the Company and its agents unrestricted access to audited financial statements; provided that if audited financial statements are not available, the Company, in its sole discretion, may specify other types of financial statements that will be accepted.

6.3 Buyer's Exposure and Mark-to-Market Credit Exposure Methodology

To calculate the daily exposure for each DS Supplier the MtM credit exposure methodology will be used. The "mark" for each Billing Month will be determined at the time the auction is completed based on the available Forward Market Prices and for the remaining Billing Months will be derived based on historical data. At the time the

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auction is completed, the MtM credit exposure for each DS Supplier shall be equal to zero. Subsequently, the differences between the available Forward Market Prices on the valuation date and the “mark” prices for the corresponding Billing Months will be used to calculate the daily credit exposures for each DS Supplier. The total MtM credit exposure will be equal to 1.1 times the sum of the MtM credit exposures for each Billing Month. The methodology for calculation of Buyer’s Exposure under this Agreement including the MtM credit exposure is illustrated in the example (using hypothetical numbers) set forth in Appendix B hereto.

6.4 Credit Limit

The following criteria constitute the Company’s creditworthiness requirements for the DS Supplier to cover the Total Exposure Amount. In all instances, the most current senior unsecured debt rating (or, if unavailable, the most current corporate issuer rating) will be used.

(i) For a DS Supplier to be granted an unsecured line of credit, the DS Supplier must be rated by at least two of the following rating agencies: S&P, Moody’s, or Fitch. The methodology for determining the credit rating to use is set forth in Appendix A of this Agreement. The Maximum Credit Limit to cover the Total Exposure Amount will be determined based on the credit matrix table in Appendix A of this Agreement.

The DS Supplier will be required to post cash or a letter of credit in an acceptable form as defined in Section 6.7 (b) of this Agreement (see standard format in Appendix F) for the Margin due the Company as set forth in Section 6.5 of this Agreement; or

(ii) For a DS Supplier having a Guarantor, in the case of a Guarantor

organized under the laws of the United States, the Guarantor (1) must be rated by at least two of the following rating agencies: S&P, Moody's, or Fitch, and (2) must have a minimum senior unsecured debt rating (or, if unavailable, corporate issuer rating) equal to the Minimum Rating. If the Guarantor is rated by only two rating agencies, and the ratings are split, the rating will be established based on the methodology outlined in Appendix A of this Agreement. The Maximum Credit Limit to cover the Total Exposure Amount that could be provided through the Guaranty (see standard format in Appendix G) will be determined based on the credit matrix table for Guarantors on Appendix A. The DS Supplier will be granted a credit limit equal to the lesser of (i) the amount of the Guaranty as provided to the Company at the time this Agreement is executed as such amount may be modified in any amended or substitute Guaranty provided to the Company during the term of this Agreement, or (ii) the DS Supplier's Maximum Credit Limit. The DS Supplier, however, may not increase or substitute its Guaranty for the purpose of increasing its applicable credit limit during the time period after the Company has made a Margin call but before the DS Supplier has posted the required performance assurance collateral as set forth in Section 6.7 to cover Margin. Notwithstanding anything herein to the contrary, the DS Supplier may increase the limit of its Guaranty after satisfying a Margin call from the Company and upon the Company's receipt of an amended or substitute Guaranty increasing the limit of the Guaranty, the DS Supplier may request a return of the posted performance assurance collateral in accordance with Section 6.5 of this Agreement. The DS Supplier will be required to post cash or a letter of credit in an acceptable form as defined in Section 6.7(b) of this Agreement (see standard format in Appendix F) for the Margin due the Company as set forth in Section 6.5 of this

Agreement; or

(iii) For a DS Supplier or Guarantor that has not been incorporated or otherwise formed under the laws of the United States and whose financial data is not denominated in United States currency and does not conform to generally accepted accounting principles (“GAAP”) in the United States, they shall supply the following additional information:

- a. A legal opinion of counsel qualified to practice in the foreign jurisdiction in which the DS Supplier or Guarantor is incorporated or otherwise formed that this Agreement is, or upon completion of execution formalities will become, the binding obligation of the DS Supplier or Guarantor in the jurisdiction in which it has been incorporated or otherwise formed; and
- b. The sworn certificate of the corporate secretary (or similar officer) of such DS Supplier or Guarantor that the person executing this Agreement on behalf of the DS Supplier has the authority to execute the Agreement and that the governing board of the DS Supplier or Guarantor has approved the execution of this Agreement;
- c. The sworn certificate of the corporate secretary (or similar officer) of such DS Supplier or Guarantor that the DS Supplier or Guarantor has been authorized by its governing board to enter into agreements of the same type as this Agreement; and
- d. Such other documents and certificates as may be required by the Company in its sole discretion.

(iv) The posting of cash or a letter of credit as defined in Section 6.7 (b) below for the entire Total Exposure Amount as set forth in Section 6.5 of this Agreement.

6.5 Posting Margin and Return of Surplus Margin

(a) If at any time and from time to time during the term of Transaction(s) under this Agreement, the Total Exposure Amount, rounded by the Rounding Amount, exceeds the DS Supplier's or the Guarantor's credit limit by the Minimum Transfer Amount, then the Company on any Business Day, may request that the DS Supplier provide cash or a letter of credit in an acceptable form as defined in Section 6.7(b) of this Agreement (see standard format in Appendix F), in an amount equal to the Margin (less any performance assurance collateral for Margin posted by the DS Supplier and held by the Company pursuant to this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply).

If the DS Supplier receives written notice for performance assurance collateral to cover Margin from the Company by 1:00 p.m. New York time on a Business Day, then the DS Supplier shall post performance assurance collateral to cover Margin the next following Business Day, if posting cash, and by the second Business Day following the date of notice, if posting a letter of credit, unless the Company agrees in writing to extend the period to provide performance assurance collateral to cover Margin. If the DS Supplier receives notice for Margin from the Company after 1:00 p.m. New York time on a Business Day, whether posting cash or a letter of credit, then the DS Supplier must post performance assurance collateral to cover Margin the second Business Day following the date of notice unless the Company agrees in writing to extend the period to provide

performance assurance collateral to cover Margin. The Company will not unreasonably deny a request for a one-day extension of such period. In the event that the DS Supplier fails to post performance assurance collateral to cover Margin when due in accordance with this Section 6.5, then an Event of Default under Article 5 of this Agreement will be deemed to have occurred and the Company will be entitled to the remedies set forth in Article 5 of this Agreement.

(b) Surplus Margin being held by the Company that is not needed to satisfy the Total Exposure Amount, as determined above, will be returned to the DS Supplier upon receipt of a written request by the DS Supplier. Surplus Margin means cash or a letter of credit posted by the DS Supplier as a result of a request by the Company pursuant to Section 6.5(a) that exceeds the Total Exposure Amount less the DS Supplier's or the Guarantor's credit limit (rounded by the Rounding Amount). If the resulting surplus Margin amount is more than the Minimum Transfer Amount, it will be returned to the DS Supplier. If the DS Supplier posted cash and notice is received by 1:00 p.m. New York time on a Business Day, the surplus Margin will be returned by the next following Business Day and if the DS Supplier posted cash and notice is received by the Company after 1:00 p.m. New York time on a Business Day, the surplus Margin shall be returned by the second Business Day following the date of notice, unless the DS Supplier agrees in writing to extend the period to return the surplus Margin. If the DS Supplier posted a letter of credit, the surplus Margin 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 the DS Supplier agrees in writing to extend the period to return the surplus Margin. The DS Supplier will not unreasonably deny a

request for a one-day extension of such period. In the event that the Company fails to return the surplus Margin when due in accordance with this Article, then an Event of Default under Article 5 of this Agreement will be deemed to have occurred and the DS Supplier will be entitled to the remedies set forth in Article 5 of this Agreement.

6.6 Grant of Security Interest/Remedies

To secure its obligations under this Agreement and to the extent that the DS Supplier posted performance assurance collateral to cover Margin hereunder, the DS Supplier hereby grants to the Company a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, the Company, and the DS Supplier and the Company agree to take such action as is reasonably required to perfect the secured Party'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 any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Company may do any one or more of the following: (i) exercise any of the rights and remedies of the Company with respect to all collateral, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the DS Supplier in the possession of the Company whether held in connection with this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply; (iii) draw on any outstanding letter of credit issued for its benefit; and (iv) liquidate all security held by or

for the benefit of the Company free from any claim or right of any nature whatsoever of the DS Supplier, including any equity or right of purchase or redemption by the DS Supplier. The Company shall apply the proceeds of the collateral realized upon the exercise of such rights or remedies to reduce the DS Supplier's obligation under this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply (the DS Supplier remaining liable for any amounts owing to the Company after such application), subject to the Company's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

All notices, demands or requests regarding credit requirements and credit related security or deposit transfers shall be in writing and shall be personally delivered or sent by overnight express mail, courier service or facsimile transmission (with the original transmitted by any of the other aforementioned delivery methods) addressed as follows:

If to a DS Supplier to:

Copy to:

If to the Company to:

Copy to:

Notice received after the close of the Business Day shall be deemed received on the next Business Day; provided that notice by facsimile transmission shall be deemed to have been received by the recipient if the recipient confirms receipt telephonically or in writing.

6.7 Security Instruments

At each DS Supplier's choice, the following are deemed to be acceptable methods for posting security to satisfy Margin requirements, if required:

- (a) Cash; or
- (b) A standby irrevocable letter of credit acceptable to the Company, in its sole discretion, issued by a bank or other financial institution with a minimum "A-" senior unsecured debt rating (or, if unavailable, corporate issuer rating discounted one notch) from S&P and "A3" from Moody's (see standard format in Appendix F). The letter of credit shall state that it shall 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 the Company receives notice from the issuing financial institution that the letter of credit is being cancelled, the DS Supplier will be required to provide a substitute letter of credit from an alternative bank satisfying the minimum requirements. The receipt of the substitute letter of credit must be effective as of the cancellation date and delivered to the Company thirty (30) days before the cancellation date of the original letter of credit. If the DS Supplier fails to supply a substitute letter of credit as required, then the Company will have the right to draw on the existing letter of credit and to hold the amount as Margin.

If the credit rating of a bank or other financial institution from which a DS Supplier has obtained a letter of credit falls below the levels specified in Article 6 of this Agreement, the DS Supplier shall have two (2) Business Days following written notice by the Company to 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 the

Company. The Company shall have no obligation under this Agreement or otherwise to make or grant such extension.

6.8 Maintenance of Creditworthiness

(a) Reporting of Changes.

The DS Supplier shall promptly notify the Company of any change in its credit rating or financial condition or that of its Guarantor. The DS Supplier or Guarantor shall also furnish evidence of an acceptable credit rating or financial condition upon the request of the Company.

(b) Change in Credit Standing.

The Company will re-evaluate the creditworthiness of a DS Supplier whenever it becomes aware of an adverse change, through the provision of notice by the DS Supplier or otherwise, in the DS Supplier's or Guarantor's credit standing. If the lowest credit rating (whether senior unsecured debt rating or corporate issuer rating) used to determine the DS Supplier's Maximum Credit Limit or its credit limit adversely changes, the Company will require additional security from the DS Supplier in accordance with Section 6.4 of this Agreement. The additional security must be in a form acceptable to the Company in its sole discretion, as specified in Section 6.7 of this Agreement and must be posted as set forth in Section 6.5 of this Agreement.

6.9 Calling on Security

The Company may call upon the security posted by the DS Supplier if the DS Supplier fails to pay amounts due to the Company pursuant to this Agreement or any other agreement(s) between the Company and the DS Supplier for the provision of DS Supply after all of the following events occur:

- (a) Written Notice of Default is provided to the DS Supplier; and
- (b) Any applicable cure period associated with the written Notice of Default ends.

The foregoing notwithstanding, the security posted by the DS Supplier shall become due automatically without prior notice or right of cure in the case of any Event of Default arising under subsections (i), (ii), (iii), (iv), (v), (vi), (vii) and (viii) of Section 5.1 of this Agreement.

6.10 Interest on Cash Held by Company

The Company will pay simple interest calculated at the lower of the Interest Index or six (6) percent per annum on all cash held by the Company pursuant to this Agreement. Each Billing Month, the Company will prepare a statement of interest amounts due to the DS Supplier. The statement will be sent to the DS Supplier within three (3) Business Days after the end of the Billing Month via overnight mail or other expeditious means. The Company shall make interest payments on the first Business Day after the 5th day of each calendar month.

6.11 No Endorsement of DS Supplier

The Company's determination that a DS Supplier is creditworthy pursuant to the process set forth above, shall not be deemed to constitute an express or implied warranty or guarantee of any kind with respect to the financial or operational qualifications of the DS Supplier. The Company will treat all DS Suppliers in a non-discriminatory manner and shall provide no preference to any DS Supplier.

6.12 Multiple DS Supply Agreements

It is the intention of the Company and the DS Supplier that, in the event the DS

Supplier is a party to other agreements with the Company for the provision of DS Supply that existed prior to the effective date of this Agreement, the Company will calculate the Margin applicable to all such agreements as set forth herein. Each DS Supplier that is a party to such other agreements with the Company for the provision of DS Supply hereby agrees that such other agreements are deemed amended by this Agreement for the purpose of calculating the Margin as described herein.

**ARTICLE 7: PROCEDURES FOR ENERGY SCHEDULING,
CAPACITY RESOURCE SUBMISSION AND
TRANSMISSION PROCUREMENT**

7.1 Load Obligations

The Company and the DS Supplier acknowledge and agree that (1) the Company shall determine the DS Load, (2) the Company shall allocate the DS Supply obligation using the DS Supplier Responsibility Share, (3) the Company shall provide the DS Supplier's DS Supply obligation to PJM, and (4) the DS Supplier shall be responsible for meeting its DS Supply obligations as a LSE under the PJM Agreements.

7.2 Data Transmission

The procedures for transmitting load obligation data to PJM for DS Supplier's DS Load shall be as set forth by PJM.

7.3 Energy Scheduling

The Company is not obligated to provide any day ahead scheduling services. If the Company chooses to provide such services, the information provided is not guaranteed by the Company.

ARTICLE 8: THE ENERGY SETTLEMENT/RECONCILIATION PROCESS**8.1 Energy Settlement By PJM**

The settlement process occurs at PJM to reflect the DS Supplier's actual Energy obligations in a supply/usage reconciliation process. The Energy obligations for each DS Supplier will be determined based on the DS Supplier Responsibility Share of the DS Load. The reconciled total DS Energy obligation will be based on the final total Energy loads for the Customers receiving DS service, including deration adjustments for marginal losses.

Any adjustments for billing and metering errors reported subsequent to the calculation of FMEA will be proportionally allocated by the Company to the DS Suppliers based on the respective DS Supplier Responsibility Share.

8.2 Energy Settlement by the Company

In the event that actual DS Customer consumption data is not available until after the PJM deadline for conducting the final settlement, the Company will conduct the settlement process with the DS Supplier. In the event PJM imposes penalties against the Company as a result of the DS Supplier's Transactions or failure to meet PJM requirements, such penalties shall be passed through by the Company to the DS Supplier as part of this settlement process. In addition, all other applicable charges from PJM, including any billing adjustments, will be appropriately allocated to the DS Supplier.

ARTICLE 9: BILLING AND PAYMENT**9.1 The Company Payment of Obligations to the DS Supplier**

The Company shall pay all amounts due to the DS Supplier hereunder in

accordance with the following provisions:

(a) Each Billing Month, the Company will prepare a Statement of amounts due to the DS Supplier. This Statement will show the aggregate amounts due based on the DS Fixed Price multiplied by the hourly Energy requirements of DS Supply used to determine the PMEA multiplied by the DS Fixed Percentage as shown in Appendix C, multiplied by the Seasonal Billing Factor, if applicable, for each hour of the Billing Month, plus the aggregate amounts due based on the DS Variable Price multiplied by the hourly Energy requirements of DS Supply used to determine the PMEA multiplied by the DS Variable Percentage as shown in Appendix C for each hour of the Billing Month. With respect to Variable Price Transactions, the Statement will also include additional amounts set forth in Appendix C.

(b) The Statement will be sent to the DS Supplier within eight (8) Business Days after the end of the Billing Month via overnight mail or other expeditious means.

(c) The Company shall make payment on the first Business Day after the 19th day of each calendar month.

(d) To the extent that the FMEA differs from the PMEA, the Company shall pay or charge the DS Supplier for the PMEA/FMEA Adjustment Amount within the PJM deadline for conducting the final settlement.

(e) If each Party owes an amount to the other Party pursuant to this Agreement, including any related interest, payments or credits, the Parties may satisfy their respective obligations to each other by netting the aggregate amounts due to one Party against the aggregate amounts due to the other Party, with the Party, if any, owing

the greater aggregate amount paying the other Party the difference between the amounts owed.

(f) Payments shall be subject to adjustment for any arithmetic errors, computation errors, meter reading errors, or other errors, provided that the errors become known within one (1) year of the termination of all Transactions under this Agreement.

(g) The Company shall make payments of funds payable to the DS Supplier by electronic transfer to a bank designated by the DS Supplier.

(h) If a good faith dispute arises between the Company and the DS Supplier regarding a Statement, the disputing Party shall be obligated to pay only the undisputed portion of the Statement, if any, 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 Statement in dispute. Statement disputes shall be addressed promptly, and in accordance with the dispute resolution procedures set forth in Article 11 of this Agreement. Upon resolution of a Statement dispute, any payments made to either Party will include simple interest on the payment at the lower of the Interest Index or six (6) percent per annum payable from the date that notice of a Statement dispute was received by the non-disputing Party.

(i) If payment is made to the DS Supplier after the due date shown on the Statement, a late fee will be added to the unpaid balance until the entire Statement is paid. This late fee shall be the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) or (b) the maximum rate

permitted by applicable law.

9.2 Billing for DS Supplier's Obligations to Other Parties

Except as set forth in Sections 2.5 and 2.6, the Company shall have no responsibility for billing between the DS Supplier and PJM; the DS Supplier and any Energy or Capacity source; or the DS Supplier and any other third party. The Company will be solely responsible for billing DS Customers for Default Service.

9.3 The DS Supplier Payment of Obligations to the Company

The DS Supplier shall pay all Charges it incurs hereunder in accordance with the following provisions:

(a) Each Billing Month, the Company shall submit an invoice to the DS Supplier for all Charges owed by the DS Supplier under this Agreement. The DS Supplier shall make payment for Charges shown on the invoice. The due date will be on the first Business Day after the 19th day of each calendar month. The invoice will be sent to the DS Supplier within eight (8) Business Days after the end of the Billing Month via overnight mail or other expeditious means.

(b) Invoices shall be subject to adjustment for any arithmetic errors, computation errors, meter reading errors, or other errors, provided that the errors become known within one (1) year of the termination of all Transactions of this Agreement.

(c) The DS Supplier shall make payments of funds payable to the Company by electronic transfer to a bank designated by the Company.

(d) If a good faith dispute arises between the Company and the DS Supplier regarding an invoice, the disputing Party shall pay only the undisputed portion of the invoice, if any, 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 due date of the invoice in dispute. Billing disputes shall be addressed promptly, and in accordance with the dispute resolution procedures set forth in Article 11 of this Agreement. Upon resolution of a billing dispute, any payments made to either Party will include simple interest on the payment at the lower of the Interest Index or six (6) percent per annum payable from the date that notice of a bill dispute was received by the non-disputing Party.

(e) If payment is made to the Company after the due date shown on the invoice, a late fee will be added to the unpaid balance until the entire invoice is paid. This late fee shall be the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) or (b) the maximum rate permitted by applicable law.

ARTICLE 10: SYSTEM OPERATION

The Parties shall adhere to any applicable operational requirements of PJM necessary to protect the integrity of the transmission system within the PJM Control Area and the transmission systems of interconnected control areas, and shall satisfy any and all PJM, RFC and NERC criteria, when applicable. The DS Supplier shall also adhere to any applicable operational requirements of the Company necessary to protect the integrity of the Company's local distribution system.

10.1 Disconnection and Curtailment By the Company

The Company shall have the right, without incurring any liability to the DS

Suppliers, to disconnect (or otherwise curtail, interrupt or reduce deliveries from) the DS Suppliers or to disconnect (or otherwise curtail, interrupt or reduce deliveries to) any Customer whenever the Company determines in the exercise of its good faith discretion, or when the Company is directed by PJM, that such a disconnection, curtailment, interruption or reduction is necessary to facilitate construction, installation, maintenance, repair, replacement or inspection of any of the Company's facilities; or due to any other reason affecting the safe and reliable operation of the Company's or a Customer's facilities, including, without limitation, an Emergency, forced outage or potential overloading of the Company's transmission and/or distribution circuits, potential damage to any Customer's facilities or any risk of injury to persons or property.

10.2 Inadvertent Loss of Service to DS Customers

The Parties agree and acknowledge that service to DS Customers may be inadvertently lost due to storms, weather, accidents, breakage of equipment or other events beyond the reasonable control of the Company affecting the transmission and distribution system of the Company. Neither Party will have any liability to the other Party for the occurrence of such events except for the Company's obligation to pursue steps for the resumption of the disrupted service as set forth in Section 10.3 below. In no event will an inadvertent loss of service affect a Party's obligation to make any payments then due or becoming due with respect to performance rendered prior to such inadvertent loss of service.

10.3 Good Faith Efforts

The Company shall use good faith efforts to: (a) minimize any curtailment, interruption or reduction in service to DS Customers to the extent reasonably practicable

under the circumstances; (b) provide the DS Supplier with prior notification of any curtailment, interruption or reduction in service to DS Customers, to the extent reasonably practicable; and (c) resume service to DS Customers as promptly as reasonably practicable.

10.4 PJM Requirements

The DS Supplier acknowledges and agrees that, as a member of PJM, the Company is bound by all PJM operating instructions, policies and procedures as are currently set forth in the PJM Operating Manual, which are available through the Internet on the PJM Home Page (<http://www.pjm.com>), as may be revised from time to time, which are needed to maintain the integrity of the PJM system. The DS Supplier acknowledges and agrees that it will cooperate with the Company so that the Company will be in compliance with all PJM Emergency Operations Procedures, which include, but are not limited to, those procedures pertaining to minimum and maximum generation Emergencies, and measures requiring involuntary Customer participation, such as supply voltage reduction or full interruption of Customer load by either manual or automatic means.

10.5 Compliance With Governmental Directives

The DS Supplier also acknowledges and agrees that the Company may need to act in response to governmental or civil authority directives which may affect DS Load. The DS Supplier agrees to cooperate with the Company in order to comply with said directives.

ARTICLE 11: DISPUTE RESOLUTION**11.1 Informal Resolution of Disputes**

Before pursuing resolution of any dispute arising out of this Agreement (other than an Event of Default under Section 5.1(i)-(ix), (xii), or (xvi)), the disputing Party shall provide written notice to the other Party setting forth the nature of the dispute, the amount involved, if any, and the remedies sought. The Parties shall use good faith and reasonable commercial efforts to informally resolve such dispute. Such efforts shall last for a period of at least thirty (30) calendar days from the date that the notice of the dispute is first delivered from one Party to the other Party. Any amounts that are owed by one Party to the other Party as a result of resolution of a dispute pursuant to this Section 11.1 (Informal Resolution of Disputes), shall be paid within two (2) Business Days of such resolution and the payment shall include interest calculated at the Interest Index from the original due date through the date of payment.

11.2 Recourse to Agencies or Courts of Competent Jurisdiction

After the requirements of Section 11.1 (Informal Resolution of Disputes) have been satisfied, all unresolved disputes, except as noted below, between the Parties shall be submitted to the appropriate authority. Nothing in this Agreement shall restrict the rights of either Party to file a complaint with the FERC under relevant provisions of the Federal Power Act ("FPA"), with the PaPUC under relevant provisions of the Applicable Legal Authorities, with a Pennsylvania State court or a federal court of competent jurisdiction and within reasonably close proximity to the Company. The Party's agreement hereunder is without prejudice to any Party's right to contest the jurisdiction of the agency or court to which a complaint is brought.

The Parties hereby acknowledge and agree that both Parties have negotiated and entered into this Agreement and all Transactions under this Agreement freely and in good faith and that the terms of this Agreement have not been affected in any way, either directly or indirectly, by (A) any fraud, duress, unfairness, or any inequity in the relative bargaining power of the Parties or (B) any manipulation, unlawful activity, disruption, anomaly, dysfunction, or other adverse market conditions of any type or description.

To the extent permitted by law and absent agreement to the contrary, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives its rights (i) to argue before any governmental authority that any review, modification, or rescission of this Agreement should be considered under any standard of review other than the “public interest” standard 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), affirmed by *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County, Washington, et al.*, 554 U.S. 527 (2008) (the “Mobile-Sierra Doctrine”), and (ii) to argue before any governmental authority that any terms of this Agreement should be modified or rescinded based on (A) any claim of fraud, duress, unfairness, bad faith, or inequity in the relative bargaining power of the Parties or (B) any claim of market manipulation, unlawful activity, disruption, anomaly, dysfunction, or other adverse market conditions of any type or description.

ARTICLE 12: REGULATORY AUTHORIZATIONS AND JURISDICTION

12.1 Compliance With Applicable Legal Authorities

The Company and the DS Supplier are subject to, and shall comply with, all

existing or future applicable federal, state and local laws, all existing or future duly-promulgated orders or other duly-authorized actions of PJM or of Applicable Legal Authorities.

12.2 FERC Jurisdictional Matters

The inclusion herein of descriptions of procedures or processes utilized by PJM or otherwise subject to the jurisdiction of FERC is intended solely for informational purposes. If anything stated herein is found by the FERC to conflict with or be inconsistent with any provision of the FPA, or any rule, regulation, order or determination of the FERC under the FPA or if any existing procedures or processes utilized by PJM are duly modified, the applicable FERC rule, regulation, order, determination or modification shall control. To the extent required under any provision of the FPA, or any rule, regulation, order or determination of the FERC under the FPA, the Company and/or the DS Supplier, if applicable, shall use reasonable commercial efforts to secure, from time to time, all appropriate orders, approvals and determinations from the FERC necessary to support this Agreement.

12.3— Energy Efficiency, Conservation, and Retail Market Programs

DS Supplier acknowledges that DS Customers may participate in energy efficiency and conservation programs offered by the Company (required by Applicable Legal Authorities or otherwise offered by the Company whether voluntarily or not), by PJM, or by other third parties and, for the avoidance of doubt, any programs offered or conducted by the Company or other entities relating to or arising from the PaPUC's Investigation of Pennsylvania's Retail Electricity Market, PaPUC Docket No. I-2011-2237952 (including legislation enacted to address the Commission's Final Order in

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Docket No. I-2011-2237952), and that such participation may reduce or change the amount of DS Supply that DS Supplier is required to provide and the amount of monies it may receive under this Agreement. The Company shall have no obligation whatsoever to DS Supplier with respect to the effect, if any, of such programs. DS Supplier is solely responsible for determining the effect, if any, of such programs on future load requirements.

ARTICLE 13: LIMITATION OF REMEDIES, LIABILITY AND DAMAGES

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13.1 Limitations on Liability

Except as set forth in this Agreement, there is no warranty of merchantability or fitness for a particular purpose, and any and all implied warranties are disclaimed. The Parties confirm that the express remedies and measures of Damages provided in this Agreement satisfy the essential purposes hereof. For breach of any provision for which an express remedy or measure of Damages is provided, such express remedy or measure of Damages shall be the sole and exclusive remedy, the obligor's liability shall be limited as set forth in such provision and all other remedies or Damages at law or in equity are waived. If no remedy or measure of Damages is expressly provided herein, the obligor's liability shall be limited to direct actual Damages only, such direct actual Damages shall be the sole and exclusive remedy and all other remedies or Damages at law or in equity are waived. Unless expressly herein provided, neither Party shall be liable for consequential, incidental, punitive, exemplary or indirect Damages, lost profits or other business interruption Damages, by statute, in tort or contract, under any indemnity provision or otherwise. It is the intent of the Parties that the limitations herein imposed on remedies and the measure of Damages be without regard to the cause or causes related

thereto, including the negligence or any Party, whether such negligence by sole, joint or concurrent, or active or passive. To the extent any Damages required to be paid hereunder are liquidated, the Parties acknowledge that the Damages are difficult or impossible to determine, or otherwise obtaining an adequate remedy is inconvenient and the Damages calculated hereunder constitute a reasonable approximation of the harm or loss.

13.2 Risk of Loss

Solely for purposes of determining risk of loss and for determining the indemnity obligations under Article 14 of this Agreement, the Company shall be deemed to have custody and control of the electric Energy delivered by the DS Supplier upon receipt thereof into the Company's distribution system and until delivery thereof at the retail electric meter of the Customer; and the DS Supplier shall be deemed to have custody and control of the DS Supply at all times prior to receipt thereof by the Company. The Party deemed to have custody and control of DS Supply shall be responsible for all loss or damage to property or injury or death to persons arising in connection with such DS Supply while in its custody and control and shall indemnify the other Parties with respect to same as set forth in Article 14 of this Agreement.

ARTICLE 14: INDEMNIFICATION

14.1 Indemnification

(a) Should the Company become the defendant in, or obligor for, any third party claims and/or liabilities for losses, penalties, expenses, damage to property, injury to or death of any person including a Party's employees or any third parties, that were caused by or occur in connection with an act or omission of the DS Supplier with

respect to an obligation arising under or in connection with this Agreement, or for which the DS Supplier has otherwise assumed liability under the terms of this Agreement, the DS Supplier shall defend (at the Company's option), indemnify and hold harmless the Company, its shareholders, board members, directors, officers and employees, from and against any and all such third party claims and/or liabilities, except to the extent that a court of competent jurisdiction determines that the losses, penalties, expenses or damages were caused wholly or in part by the gross negligence or willful misconduct of the Company. The Company may, at its own expense, retain counsel and participate in the defense of any such suit or action.

(b) Should the DS Supplier (the "Indemnified DS Supplier") become the defendant in, or obligor for, any third party claims and/or liabilities for losses, penalties, expenses, damage to property, injury to or death of any person including a Party's employees or any third parties, that were caused by or occur in connection with an act or omission of the Company with respect to an obligation arising under or in connection with this Agreement, or for which the Company has otherwise assumed liability under the terms of this Agreement, the Company shall defend (at the option of the Indemnified DS Supplier), indemnify and hold harmless the Indemnified DS Supplier, its shareholders, board members, directors, officers and employees, from and against any and all such third party claims and/or liabilities, except to the extent that a court of competent jurisdiction determines that the losses, penalties, expenses or damages were caused wholly or in part by the gross negligence or willful misconduct of the Indemnified DS Supplier. The Indemnified DS Supplier may, at its own expense, retain counsel and participate in the defense of any such suit or action.

(c) If either Party intends to seek indemnification under Article 14.1(a) or 14.1(b), as applicable, from the other Party, the Party seeking indemnification shall give the other Party notice of such claim within ninety (90) days of the later of the commencement of, or the Party's actual knowledge of, such claim or action. Such notice shall describe the claim in reasonable detail, and shall indicate the amount, estimated if necessary, of the claim that has been, or may be, sustained by said Party. To the extent that the other Party will have been actually and materially prejudiced as a result of the failure to provide such notice, such notice will be a condition precedent to any liability of the other Party under the provisions for indemnification contained in this Agreement. Neither Party may settle or compromise any claim without the prior consent of the other Party; provided, however, said consent shall not be unreasonably withheld, conditioned or delayed.

14.2 Survives Agreement

The obligation of a Party to defend, indemnify, and hold harmless another Party under this Article shall survive termination of this Agreement, and shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for either Party under any statutory scheme, including any workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 15: FORCE MAJEURE

15.1 Force Majeure

Notwithstanding anything in this Agreement to the contrary, the Parties shall be excused from performing their respective obligations under this Agreement (other than the obligation to make payments with respect to performance prior to the event of Force

Majeure) and shall not be liable for damages or otherwise due to their failure to perform, during any period that one Party is unable to perform due to an event of Force Majeure, provided that the Party declaring an event of Force Majeure shall: (i) act expeditiously to resume performance; (ii) exercise all commercially reasonable efforts to mitigate or limit damages to the other Party; and (iii) fulfill the requirements set forth in Article 15.2 (Notification).

15.2 Notification

A Party unable to perform under this Agreement due to an event of Force Majeure shall: (i) provide prompt written notice of such event of Force Majeure to the other Party, which shall include an estimate of the expected duration of the Party's inability to perform due to the event of Force Majeure; and (ii) provide prompt notice to the other Party when performance resumes.

ARTICLE 16: MISCELLANEOUS PROVISIONS

16.1 Notices

Unless otherwise stated herein, all notices, demands or requests required or permitted under this Agreement shall be in writing and shall be personally delivered or sent by overnight express mail or courier service. Notice may also be provided via e-mail or facsimile transmission (with the original transmitted by any of the other delivery methods specified in the previous sentence) addressed per the notification information for the DS Supplier and Company as set forth in Appendix C hereto.

Such notices, demands or requests shall also be provided to such other person at such other address as a Party may designate by like notice to the other Party. Notice received after the close of the Business Day shall be deemed received on the next

Business Day.

16.2 No Prejudice of Rights

The failure of a Party to insist on any one or more instances upon strict performance of any provisions of this Agreement, or to take advantage of any of its rights hereunder, shall not be construed as a waiver of any such provisions or the relinquishment of any such right or any other right hereunder, which shall remain in full force and effect. No term or condition of this Agreement shall be deemed to have been waived and no breach excused unless such waiver or consent to excuse is in writing and signed by the Party claimed to have waived or consented to excuse.

16.3 Assignment

Parties shall not assign any of their rights or obligations under this Agreement without obtaining the prior written consent of the non-assigning Party, which consent shall not be unreasonably withheld. The Company agrees that it shall grant its consent to a proposed assignment by the DS Supplier if the proposed assignee meets all of the Company's creditworthiness requirements then in effect under this Agreement and any applicable load cap restrictions. No assignment of this Agreement shall relieve the assigning Party of any of its obligations under this Agreement until such obligations have been assumed by the assignee and all necessary consents have been obtained. Any assignment in violation of this Section 16.3 shall be void; provided, however, the Company may assign any or all of its rights and obligations under this Agreement notwithstanding anything contained herein to the contrary, without the DS Supplier's consent, to any entity succeeding to all or substantially all of the assets of the Company, if such assignee agrees, in writing, to be bound by all of the terms and conditions hereof and all necessary regulatory approvals are obtained. The DS Supplier may, with prior

written notice to the Company but without obtaining the approval of the Company, assign the accounts, revenues or proceeds under this Agreement to a third party. The Company agrees that, following receipt of such notice of the assignment of accounts, revenues or proceeds and such other documentation that the Company may reasonably request, the Company will pay amounts becoming due to the assigning DS Supplier under this Agreement directly to the designated assignee; provided, however, that nothing herein shall enlarge or expand the rights of such designated assignee beyond the rights granted to the DS Supplier and the right of such designated assignee to receive payments shall be subject to all defenses, offsets and claims of the Company arising under this Agreement.

16.4 Governing Law and Venue

To the extent not subject to the jurisdiction of the FERC, questions including those concerning the formation, validity, interpretation, execution, amendment, termination and construction of this Agreement shall be governed by the laws of the Commonwealth of Pennsylvania, without regard to principles of conflicts of law. Except for matters jurisdictional to FERC, the PaPUC or the appellate courts having jurisdiction over the PaPUC or FERC matters, all disputes hereunder shall be resolved in the Pennsylvania State court or Federal court of competent jurisdiction and within reasonably close proximity to the Company. Each Party hereby waives its respective rights to any jury trial with respect to any litigation arising under or in connection with this Agreement.

16.5 Regulatory Approvals

DS Supplier agrees to cooperate, to the fullest extent necessary, to obtain any and all required State, Federal or other regulatory approvals of the Agreement and/or

Transaction Confirmations hereunder. The commencement of the Delivery Period and the obligations hereto are subject to (i) the receipt or waiver by Company of all Company required regulatory approvals, (ii) the receipt or waiver by DS Supplier of all DS Supplier required regulatory approvals, and (iii) PaPUC approval.

16.6 Headings

The headings and subheadings contained in this Agreement are used solely for convenience and do not constitute a part of the Agreement between the Parties hereto, nor should they be used to aid in any manner in the construction of this Agreement.

16.7 Third Party Beneficiaries

This Agreement is intended solely for the benefit of the Parties hereto and nothing in this Agreement shall be construed to create any duty, or standard of care with reference to, or any liability to, any person not a Party to this Agreement.

16.8 General Miscellaneous Provisions

(a) This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties, or to impose any partnership obligation or liability upon any Party. No Party shall have any right, power, or authority to enter into any agreement or undertaking for, or on behalf of, or to act as or be an agent or representative of, or to otherwise bind, any other Party.

(b) Cancellation, expiration or Early Termination of this Agreement shall not relieve the Parties of obligations that by their nature survive such cancellation, expiration or termination, including warranties, remedies, promises of indemnity and confidentiality.

(c) Should any provision of this Agreement be held invalid or unenforceable,

such provision shall be invalid or unenforceable only to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable any other provision hereof unless it materially changes the agreement of the Parties; provided that in such event the Parties shall use commercially reasonable efforts to amend this Agreement or any Transaction in order to give effect to the original intention of the Parties.

(d) Each of the Parties acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms. This Agreement is intended by the Parties as a final expression of their agreement. The Parties further agree that this Agreement is the complete and exclusive statement of agreement and supersedes all proposals (oral or written), understandings, representations, conditions, warranties, covenants and all other communications between the Parties relating thereto. 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. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement or any Transaction.

16.9 Taxes

As between the Parties: (i) the DS Supplier is responsible for the payment of all taxes imposed by all present and future federal, state, municipal or other taxes imposed by any taxing authority on the wholesale sales of DS Supply under this Agreement; and (ii) the Company is responsible for the payment of all taxes imposed by all present and future federal, state, municipal or other taxes imposed by any taxing authority on retail sales of DS Supply under this Agreement. Should the DS Supplier be required to remit

any Pennsylvania State sales and use taxes directly to the applicable taxing authority, other than taxes previously collected by the DS Supplier on behalf of the Company, the Company will defend and indemnify the DS Supplier for such sales and use taxes and will pay to the DS Supplier all such tax amounts upon demand. If any Transaction is exempt from the payment of any sales and use taxes, the affected DS Supplier will, if requested, provide the Company with valid tax exemption certificates. Should the Company be required to remit any sales and use taxes directly to any applicable taxing authority, other than taxes previously collected by the Company directly from the DS Supplier, the DS Supplier will defend and indemnify the Company and will pay to the Company all such tax amounts upon demand.

16.10 Audit

Each Party has the right on at least three (3) Business Days prior written notice, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made in accordance with Article 9 (Billing and Payment) of this Agreement.

16.11 Rules of Interpretation

The following principles shall be observed in the interpretation and construction of this Agreement:

- (a) Unless otherwise stated, the terms “include” and “including” when used in this Agreement shall be interpreted to mean by way of example only and shall not be considered limiting in any way;
- (b) All titles and headings used herein are for convenience and reference purposes only, do not constitute a part of this Agreement and shall be ignored in construing or interpreting the obligations of the parties under this Agreement;
- (c) References to the singular include the plural and vice versa;
- (d) References to Articles, Sections, Clauses and the Preamble are, unless the context indicates otherwise, references to Articles, Sections, Clauses and the Preamble of this Agreement;
- (e) In carrying out its rights, obligations and duties under this Agreement, each Party shall have an obligation of good faith and fair dealing; and
- (f) If any payment due under this Agreement would be, by operation of the terms and conditions of any provision hereof, due and payable on a day other than a Business Day, such payment shall be made on the next following Business Day.

16.12 Confidentiality

- (a) Each Party shall hold in confidence and not release or disclose any document or information furnished by the other Party in connection with this Agreement, unless:
 - (i) compelled to disclose such document or information by judicial, regulatory or administrative process or other provisions of law;
 - (ii) such document or information is generally available to the public;
 - (iii) such document or information was available

to the receiving Party on a non-confidential basis; (iv) such document or information was available to the receiving Party on a non-confidential basis from a third-party, provided that the receiving Party does not know, and, by reasonable effort, could not know that such third-party is prohibited from transmitting the document or information to the receiving Party by a contractual, legal or fiduciary obligation; or (v) such disclosure is made to PJM or PaPUC and is necessary in order for the Transactions contemplated by this Agreement to be consummated or to otherwise comply with the provisions of this Agreement.

(b) Notwithstanding any other provision of this Section 16.12, a Party may disclose to its employees, representatives and agents all documents and information furnished by the other Party in connection with this Agreement, provided that such employees, representatives and agents have been advised of the confidentiality provisions of this Section 16.12, and further provided that in no event shall a document or information be disclosed in violation of the standard of conduct requirements established by FERC.

(c) A Party receiving notice or otherwise concluding that any confidential document or information furnished by the other Party in connection with this Agreement is being sought under any provision of law, to the extent it is permitted to do so under any applicable law, shall: (i) promptly notify the other Party; and (ii) use reasonable efforts in cooperation with the other Party to seek confidential treatment of such confidential information.

(d) The Parties agree that monetary damages may be inadequate to compensate a Party for the other Party's breach of its obligations under this Section 16.12. Each Party accordingly agrees that the other Party shall be entitled to equitable relief, by way of injunction or otherwise, if the receiving Party breaches or threatens to breach its obligations under this Section 16.12, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law.

16.13 Federal Acquisition Regulation

If any of the following clauses prescribed by the Federal Acquisition Regulation ("FAR"), 48 Code of Federal Regulations Chapter 1, should be deemed to apply to this Agreement, the DS Supplier shall comply with the requirements of such clause(s), and shall include the terms or substance of such clause(s) in its subcontracts, as and to the extent required by the FAR:

- 1) Clean Air and Water: § 52.223-2;
- 2) Contract Work Hours and Safety Standards Act-Overtime Compensation: § 52.222-4;
- 3) Equal Opportunity: § 52.222-26;
- 4) Affirmative Action for and Employment Reports on Special Disabled and Vietnam Era Veterans: § 52.222-35 and § 52.222-37;
- 5) Affirmative Action for Handicapped Workers: § 52.222-36;
- 6) Utilization of Small Business Concerns and Small Disadvantaged Business Concerns and Small Business and Small Disadvantaged Business Subcontracting Plan: § 52.219-8 and § 52-219-9.

In case of a conflict between the provisions of the FAR and the balance of this Agreement, the requirements of the FAR shall prevail.

16.14 Binding Terms

This Agreement and the rates, terms and conditions herein shall remain in effect for the entire term hereof and each Party agrees not to seek any change to such rates, terms and conditions pursuant to the FPA, if the FPA is deemed to have jurisdiction over this Agreement, including on the grounds that they are not just and reasonable.

16.15 Amendment

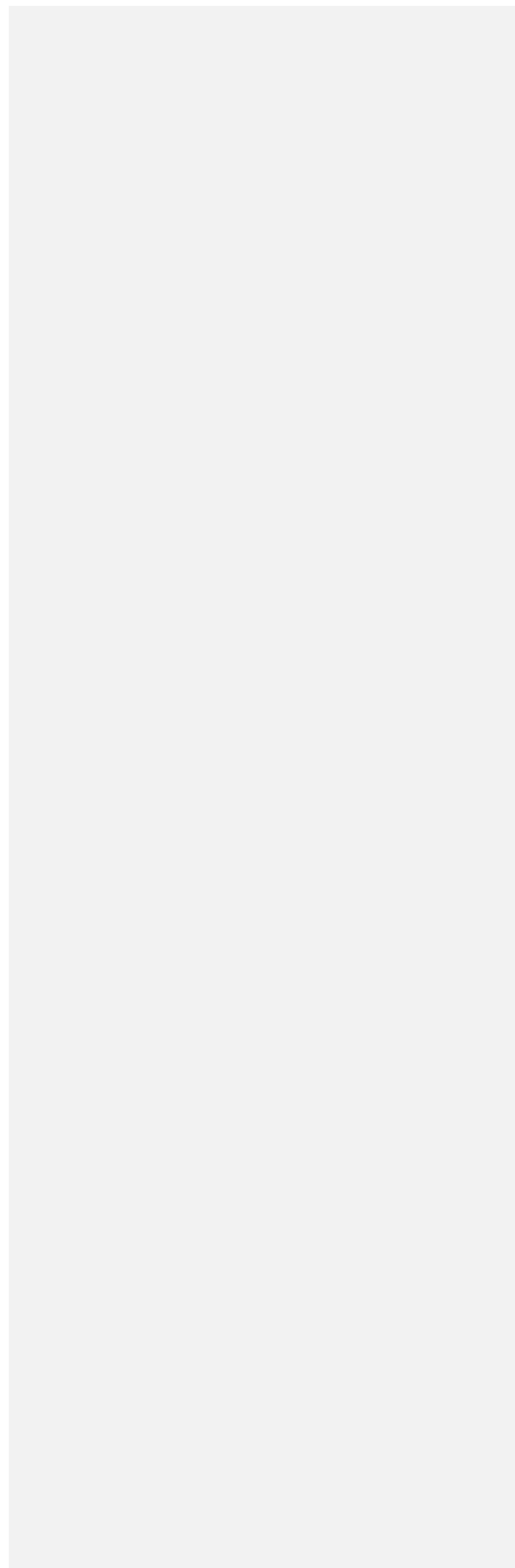
This Agreement, including the appendices hereto, cannot be amended without the written agreement of all Parties prior to such amendment becoming effective. Except as provided in Appendix C, the rates, terms and conditions contained in this Agreement are not subject to change under Sections 205 or 206 of the Federal Power Act absent the mutual written agreement of the Parties. Absent the agreement of all parties to the proposed change, the standard of review for changes to this Agreement proposed by a Party, a non-Party or the FERC acting *sua sponte* shall be the “public interest” 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), affirmed by *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County, Washington, et al.*, 554 U.S. 527 (2008) (the “Mobile-Sierra Doctrine”).

16.16 Counterparts

This Agreement including all Transaction Confirmations hereunder may be executed in counterparts, each of which will be considered an original, but all of which shall constitute one instrument.

16.17 Successors

This Agreement and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

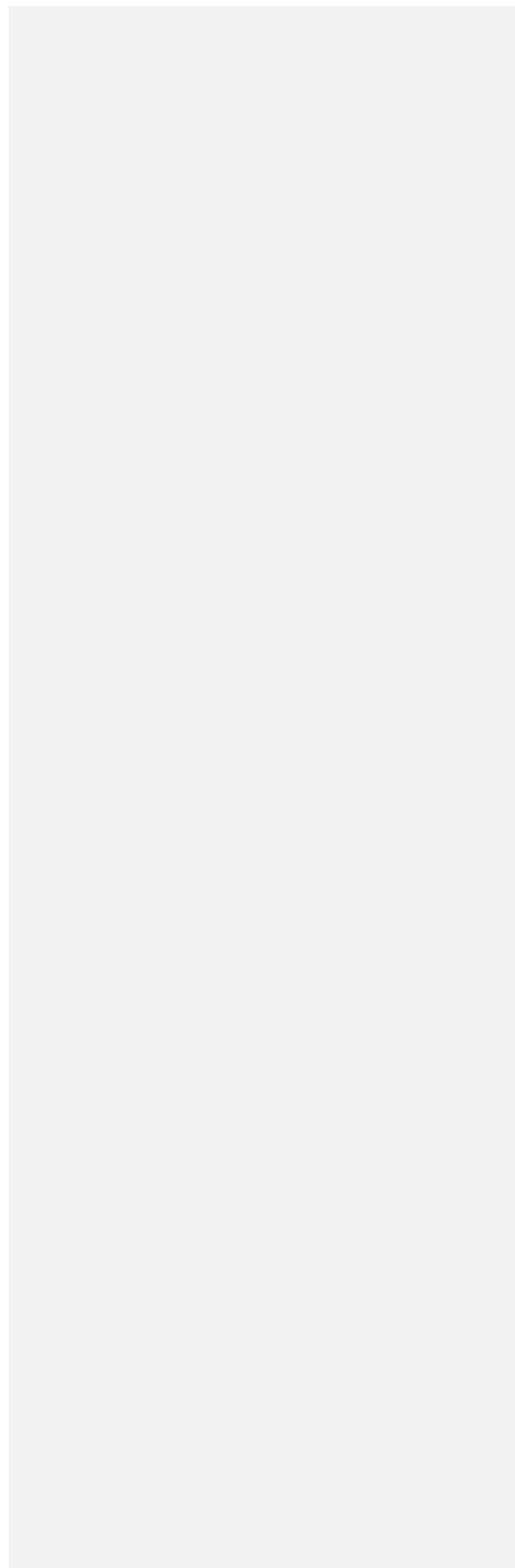


IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first set forth above.

ATTEST:

_____ By: _____

[SUPPLIER SIGNATURES APPEAR ON SUCCEEDING PAGES]



APPENDIX A

MAXIMUM UNSECURED CREDIT

Credit Rating Table

Credit Rating			Maximum Credit Limit is the lower of Tangible Net Worth (TNW) Amount and Unsecured Credit Limit Cap below:	
S&P	Fitch	Moody's	TNW Amount	Credit Limit Cap
A- or above	A- or above	A3 or above	16% of TNW	\$60,000,000
BBB+	BBB+	Baa1	10% of TNW	\$40,000,000
BBB	BBB	Baa2	8% of TNW	\$30,000,000
BBB-	BBB-	Baa3	6% of TNW	\$15,000,000
Below BBB-	Below BBB-	Below Baa3	0% of TNW	0

Credit Rating Determination Methodology

The DS Supplier or its Guarantor must have a minimum senior unsecured debt rating (or, if unavailable, corporate issuer rating) equal to the Minimum Rating.

For purposes of determining Unsecured Credit, the relevant Maximum Credit Limit for aggregate transactions shall not exceed the Maximum Credit Limit listed in the table above that corresponds to DS Supplier's (or DS Supplier's Guarantor's) lowest Credit Rating most recently published by the three credit rating agencies: S&P, Fitch and Moody's. If the DS Supplier or its Guarantor is rated by only two rating agencies, and the ratings are split, the lower rating will be used.

The relevant TNW Amount shall be calculated using the percentage listed in the Credit Rating Table that corresponds to DS Supplier's (or DS Supplier's Guarantor's) lowest Credit Rating most recently published by S&P, Fitch and/or Moody's.

Minimum Rating – The lowest credit rating for a DS Supplier, as set forth in this Appendix A, that can obtain unsecured credit.

APPENDIX B**BUYER'S EXPOSURE CALCULATION INFORMATION**

Disclaimer: The prices that appear in this Appendix are purely hypothetical and are not based on or derived from any actual source for forward pricing. They are solely for purposes of illustration. Capitalized terms not defined herein shall have the meaning in the Agreement.

As set forth in Article 6 (Creditworthiness) of the Agreement, the DS Supplier's credit exposure (the "Mark-to-Market (MtM) Exposure Amount") is an amount calculated each Trading Day for the DS Supplier that reflects the financial exposure to the Buyer due to fluctuations in Forward Market Prices for Energy. The MtM Exposure Amount will be equal to 1.1 times the sum of the MtM credit exposures for each applicable month. The Total Exposure Amount is the sum of the calculated Buyer's Exposure for all Transactions under this Agreement and all other transactions under all supplier master agreements executed between the Parties pursuant to the PaPUC Orders to serve Buyer's DS Load. For Fixed Price Default Supply, the Buyer's Exposure during the term of a Transaction shall be calculated by determining the MtM Exposure Amount, then subtracting the sum of any unpaid or unbilled amounts owed by Buyer to DS Supplier pursuant to a Transaction.

This Appendix B explains the methodology and data sources that the Buyer will use to calculate the MtM Exposure Amount and Total Exposure Amount.

On a Transaction Date, the Buyer's Exposure for a Fixed Price Transaction shall be deemed equal to zero. To the extent that the calculations of the Total Exposure Amount for a given Trading Day result in a negative number, the Total Exposure Amount for such date shall be deemed equal to zero.

Calculation of the MtM Exposure Amount and Total Exposure Amount

For each Transaction, on each Trading Day subsequent to the Transaction Date, the MtM credit exposures will be calculated, with respect to each month remaining in the Delivery Period, as the sum of the following:

- the relevant month On-Peak Energy Forward Price minus the relevant month On-Peak Initial Mark Price, multiplied by the relevant month On-Peak Estimated Energy Quantity;
- the relevant month Off-Peak Energy Forward Price minus the relevant month Off-Peak Initial Mark Price, multiplied by the relevant month Off-Peak Estimated Energy Quantity

where,

“Affiliate” means, with respect to any entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such entity. 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.

“Buyer’s Exposure” during the term of a Transaction, for Fixed Price Transactions, shall be deemed equal to the positive difference between: (i) the MtM Exposure Amount pursuant to a Transaction under this Agreement and (ii) the sum of any unpaid or unbilled amounts owed by Buyer to DS Supplier pursuant to a Transaction under this Agreement. With respect to the preceding sentence, “unbilled amounts owed by Buyer” shall consist of a good faith estimate by Buyer as to any amounts which will be owed by Buyer for service already rendered by DS Supplier under a Transaction. Buyer’s Exposure for a Variable Price Transaction, during the first month of the term of a Transaction, shall be equal to Two Hundred Fifty Thousand Dollars (US\$250,000.00) per Tranche. Thereafter, Buyer’s Exposure for a Variable Price Transaction shall be calculated on the first Business Day of each month during the term of a Transaction and shall be deemed equal to the product of: (i) Two Hundred Fifty Thousand Dollars (US\$250,000.00) per Tranche; (ii) the ratio of the Current Capacity PLC Per Tranche to the MW-Measure; (iii) the number of Tranches awarded to the DS Supplier per the Transaction Confirmation; and (iv) the ratio of the calendar days remaining in the Delivery Period to the total calendar days in the Delivery Period.

“Capacity Peak Load Contribution” or “Capacity PLC” means the aggregation of retail customer peak load contributions, as determined by the Buyer in accordance with the PJM Agreements and reported by Buyer to PJM pursuant to Buyer’s retail load settlement process, and used by PJM in determining the DS Supplier’s capacity obligation for each Transaction.

“Current Capacity PLC Per Tranche” is the Capacity PLC of a Tranche as of the Business Day the Buyer’s Exposure is calculated for a Fixed Price Transaction or Variable Price Transaction.

“Fixed Price Transaction” means a Transaction Confirmation that is not a Variable Price Transaction, and as shown on such confirmation where the DS Fixed Price Percentage is 100%.

“MW-Measure” means the Current Capacity PLC Per Tranche as of the Transaction Date.

“Off-Peak Estimated Energy Quantity” is the estimate of the energy quantity (in MWh) to be supplied in the relevant month and will be calculated, from Transaction Confirmation information, by multiplying the relevant month Off-Peak Estimated Energy Quantity Per MW-Measure, by the number of Tranches awarded to the DS Supplier, and the ratio of the current Capacity PLC Per Tranche to the MW-Measure.

“Off-Peak Estimated Energy Quantity Per MW-Measure” means the estimation of Energy, inclusive of electrical line losses, in the Off-Peak Hours for each of the twelve (12) calendar months, as set forth in the Transaction Confirmation.

“Off-Peak Hours” means those hours which are not On-Peak Hours.

“Off-Peak Initial Mark Price” means the Off-Peak Energy Forward Price as of the Transaction Date.

“Off-Peak/On-Peak Price Ratio” means the relevant monthly ratio of off-peak pricing to on-peak pricing of the PJM Western Hub day-ahead prices as set forth by Buyer each October based on the previous 36-month period ending in September. The historical on-peak prices used for the ratio will be the PJM Western Hub day-ahead price for the On-Peak Hours. The historical off-peak prices used for the ratio will be the PJM Western Hub day-ahead prices for the Off-Peak Hours. For each month of the 36-month period, the monthly on-peak and off-peak prices will be summed and respectively divided by the amount of On-Peak Hours and Off-Peak Hours in that month. This calculated off-peak average price will be divided by the on-peak average price to determine the individual monthly ratios. Such monthly ratios for the same months within the 36-month period will then be summed and divided by three (3) to come up with the rolling three year monthly ratio average.

“On-Peak Estimated Energy Quantity” is the estimate of the energy quantity (in MWh) to be supplied in the relevant month and will be calculated, from Transaction Confirmation information, by multiplying the relevant month On-Peak Estimated Energy Quantity Per MW-Measure, by the number of Tranches awarded to the DS Supplier, and the ratio of the Current Capacity PLC Per Tranche to the MW-Measure.

“On-Peak Estimated Energy Quantity Per MW-Measure” means the estimation of Energy, inclusive of electrical line losses, in the On-Peak Hours for each of the twelve (12) calendar months, as set forth in the Transaction Confirmation.

“On-Peak Hours” means Hour Ending (“HE”) 0800 through HE 2300 EPT, Monday through Friday, excluding Saturday, Sunday and PJM holidays.

“On-Peak Initial Mark Price” means the On-Peak Energy Forward Price as of the Transaction Date.

“Pricing Agent” is the independent consultant to provide pricing services with respect to the Fixed Price Transactions under this Agreement. The Pricing Agent shall provide to the

Buyer the On-Peak Initial Mark Price and the Off-Peak Initial Mark Price. In addition, on each Business Day, the Pricing Agent shall provide to the Buyer the On-Peak Energy Forward Price and the Off-Peak Energy Forward Price. To the extent that information and/or quotes are not available to determine an On-Peak Energy Forward Price or Off-Peak Energy Forward Price for a given month the Pricing Agent shall be permitted to use information and/or quotes relevant to such month for which information/and quotes are available in order to provide the Buyer the required On-Peak Energy Forward Price and Off-Peak Energy Forward Price for such month.

“Reference Market-Maker” means any broker in energy products or exchange that is not an Affiliate of Buyer or DS Supplier.

“Trading Day” means any day except a Saturday, Sunday or a designated holiday by a non-affiliated entity providing forward energy market prices for purposes of Appendix B, as selected by Buyer in its reasonable discretion.

“Transaction Date” means the date that a Transaction is executed as set forth in the Transaction Confirmation.

“Variable Price Transaction” means a Transaction Confirmation for Full Requirements Service with spot energy pricing, as shown on such confirmation.

For the current month of each Trading Day MtM credit exposures calculation, the On-Peak Estimated Energy Quantity and Off-Peak Estimated Energy Quantity will be calculated for the month, as described above, and prorated for the remaining On-Peak Hours and Off Peak Hours remaining in the month as follows:

- On-Peak Hours remaining in the current month (including the first calendar day following the Trading Day) divided by total On-Peak Hours in the current month
- Off-Peak Hours remaining in the current month (including the first calendar day following the Trading Day) divided by total Off-Peak Hours in the current month

Parameters

In calculating the MtM Exposure Amount for each Transaction, the following parameters are set on the Transaction Date:

- On-Peak Initial Mark Price
- Off-Peak/On-Peak Price Ratio
- Off-Peak Initial Mark Price
- MW-Measure: initial Capacity PLC Per Tranche

