

**Metropolitan Edison Company,**  
**Pennsylvania Electric Company,**  
**Pennsylvania Power Company,**  
**and**  
**West Penn Power Company**

**Default Service**

**Supplier Master Agreement**

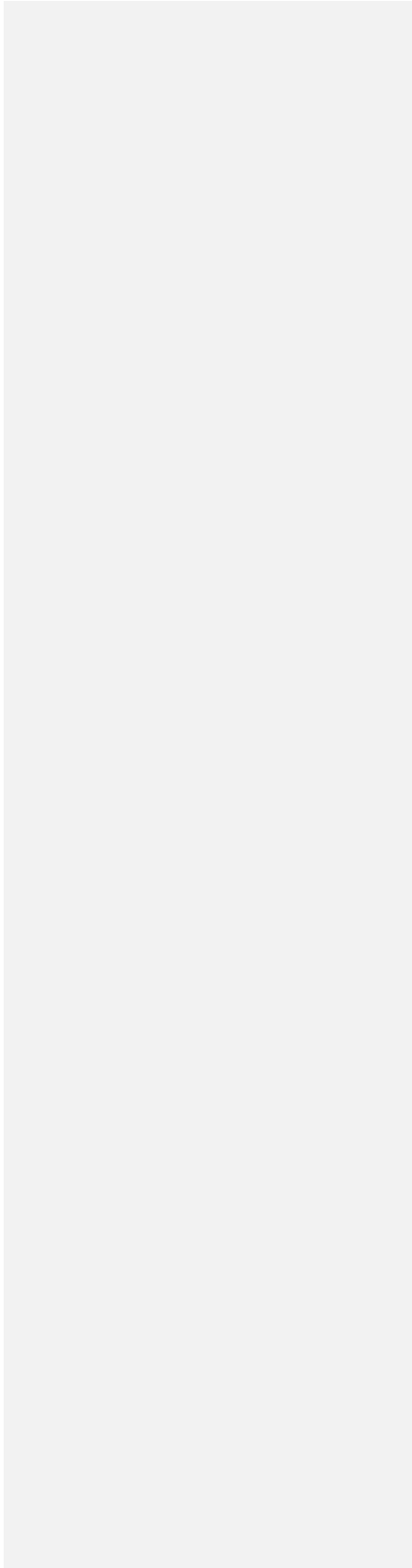
**Industrial Customer Class**

**~~Fixed Price~~(Hourly Pricing Service—Nominal 50 MW Tranche)**

**~~Metropolitan Edison Company~~**



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## DEFAULT SERVICE SUPPLIER MASTER AGREEMENT

### THIS DEFAULT SERVICE SUPPLIER MASTER AGREEMENT

(“Agreement”); made and entered into by and between ~~Metropolitan Edison—the~~  
~~(“Company—the “Company” or “Met Ed”)~~, a public utility corporation organized and existing  
under the laws of the Commonwealth of Pennsylvania and between (“DS Supplier”). The  
Company and the DS Supplier hereinafter are sometimes referred to collectively as the “Parties”,  
or individually as a “Party” and are further identified pursuant to Appendix AD of this  
Agreement.

### 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”)  
has found that, for periods further identified in Appendix AD 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.

**Allocated AECs** – Shall mean the types and amounts of AECs specified on Appendix D.

**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, ~~provided, however, that standards under the AEPS Act requiring electric energy generated only from solar photovoltaic sources shall not apply to DS Supplier obligations under this Agreement during the period January 1, 2011 to May 31, 2013.~~

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

**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 "ARR"** – The current or any successor congestion management mechanism or 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, ARRAs 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 OATT.

**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.

**Company** - Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company or West Penn Power Company as designated in Appendix D.

**Company Zone** – The zone defined by PJM for the Company and specified on Appendix D.

**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 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.

| **Delivery Period** – ~~the~~The delivery period specified in Appendix AD.

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

| **DS Load** – The aggregate load of DS Customers being provided DS Supply.

**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 retail customers in accordance with the Applicable Legal Authorities, (ii) has entered into this Agreement with the Company as a Party, and (iii) is a full member of PJM 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 AD.

| **DS Supply** – Unbundled Energy, Capacity, AECs for AEPS compliance, Ancillary Services, and Transmission Services ~~other than including~~ Network Integration Transmission Service, ~~including~~ 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. For the avoidance of doubt, 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).

**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 [www.firstenergycorp.com](http://www.firstenergycorp.com), as they may be amended from time to time.

| **DS Variable Price** – The price in dollars per MWh, set forth in Appendix D 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 in Appendix **AD** 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 OATT 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 the Regional Transmission Organization (“RTO”), 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 its 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 ~~errors found~~data received subsequent to the calculation of PMEA of which PJM is notified within 60 days.

**Force Majeure** - Means 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 Seller's supply; (ii) Seller's ability to sell DS Supply at a price greater than that received under this Agreement; (iii) curtailment by a utility transmitting DS Supply; (iv) the Company's ability to purchase DS Supply at a price lower than paid under this Agreement; (v) any change in requirements of any governmental authority; or (vi) labor stoppage or lockout.

**Forward Market Price** – The price for On-peak Energy Forwards as determined by averaging concurrent broker quotes obtained by the Company for the PJM Western 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 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.

**Guaranty** – A guaranty, 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.

~~**Independent Credit Requirement or "ICR"** – An amount per Tranche required as security under Section 6.3 of this Agreement, to reflect the risk of Energy price movements between the date of an Early Termination caused by an Event of Default by a DS Supplier and the date the final calculation of Damages owing to the Company under Section 5.2 of this Agreement is made.~~

~~**Industrial Class** – Rate Schedules GS-Large, GP and TP.~~

**Industrial Class** – As specified by Company Name in Appendix D, the following Rate Schedules: Met-Ed Schedules GS-Large, GP, and TP; Penelec Schedules GS-Large, GP, and LP; Penn Power Schedules GP, TP, and customers receiving service under Rate GS if such customers also are under Special Rule GSDS; West Penn Power Schedules Rate 30 (general power service – Large, Rate 40 (primary power service), Rate 41 (primary power service), Rate 44 (interruptible primary power service), Rate 46 (primary power service), and Rate 86 (alternative generation service).

**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 RAA or in successor, superseding or amended versions of the PJM RAA 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 (exclusive of Costs), if any, 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 6.6.~~

~~**Mark to Market Exposure Amount** – An amount calculated daily for the DS Supplier reflecting the financial exposure to the Company due to fluctuations in market prices for Energy as set forth in Section 6.5 of this Agreement and in Appendix B hereto minus amounts due pursuant to this Agreement to such DS Supplier for the delivery of DS Supply.~~

**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 Party 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 Party hereunder, 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 Party's obligations hereunder, and the resulting entity or its guarantor fails to meet the creditworthiness standards of this Agreement. Transfer of all or substantially all of the Company's generation assets does not qualify as a Merger Event.

**Minimum Rating** – A minimum senior unsecured debt rating as defined in Section 6.42(a)(i) of this Agreement.

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

**Network Integration Transmission Service or “NITS”** – “Network Integration Transmission Service” under the PJM OATT in effect as of the date of this Agreement, or its successor,

superseding or amended versions of the PJM OATT that may take effect from time to time over the term of this Agreement. In the event the PJM OATT is 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 OATT 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.

**On-Peak Energy Forward** – A standardized energy trading product representing the delivery of electric power in PJM, at the Western Hub, over a period from 7:00 a.m. up to the hour ending at 11:00 p.m. Monday through Friday, excluding NERC holidays. In the event that the PJM Western Hub price 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.

**PaPUC or “Commission”** – The Pennsylvania Public Utility Commission or its successor.

**PJM** – The Pennsylvania-New Jersey-Maryland 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 of good standing of PJM that satisfies the requirements to conduct business with PJM.

**PJM OA** – The PJM Operating Agreement or its successor.

**PJM OATT** – The prevailing PJM Open Access Transmission Tariff on file with the FERC, which sets forth the rates, terms and conditions of ~~Transmission Services other than Network Integration Transmission Service~~ transmission service over transmission facilities located in the PJM Control Area, as may be in effect on the date hereof and as modified 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 its successor.

**PJM Western Hub** – The point or location in PJM used for quantifying the value of various PJM transactions, as defined by PJM.

**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 PMEAs used for the purpose of calculating estimated payments made to DS Supplier for a given month and the FMEAs 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.

**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.

**Regional Transmission Expansion Plan (“RTEP”)** - The plan prepared by PJM pursuant to Schedule 6 of the PJM Operating Agreement for the enhancement and expansion of the Transmission System in order to meet the demands for firm transmission service in the PJM Region.

**Reliability First Corporation or “RFC”** – Regional Reliability Council and member of NERC.

**Service Territory** – The service territories of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company or Metropolitan Edison Company West Penn Power Company.

**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 in compensation for DS Supply supplied to DS Customers by the DS Supplier during the current 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~~ Shall have the meaning ascribed in Section 5.4 of this Agreement.

**Tier I Non-Solar AEC** – ~~Shall mean an AEC generated by the defaulting party due to Early Termination~~ a non-solar photovoltaic energy source that will satisfy the non-solar Tier I requirements of the AEPS Act applicable to the Company.

**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.~~

**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 ~~Mark-to-Market Exposure Amount arising~~ amount designated as the credit exposure under this Agreement; (ii) any amount(s) designated as the “Mark-to-Market Exposure Amount” arising under any other DS Supply agreements providing for “DS Supply” or similar default service; and (iii) the amount designated as the “credit 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.

**Transmission Enhancement Charges (“TEC”)** - ~~Charges the Transmission Provider shall collect from designated customers using Point-to-Point Transmission Service and Network Integration Transmission Service related to the costs of Required Transmission Enhancements under Schedule 12. “Transmission Enhancement Charges.” which is part of the PJM OATT.~~

**Transmission Services** – Those services identified in Appendix ~~EC~~ hereto as an obligation of the Seller as well as those transmission services specified in the PJM OATT ~~that are not including~~ Network Integration Transmission Service.

**Tranche** – A fixed percentage share of the Company’s DS Load for the Industrial Class ~~Fixed Price Service~~, as specified in Appendix ~~A.D.~~



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**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 electrical 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 and irrevocably waives any claim that the Company is not entitled to seek enforcement of this Agreement. However, no Customer or group of Customers may seek enforcement of this Agreement directly against the DS Supplier on their own behalf, including independently or by joining in any legal action by the Company.

The Parties acknowledge that this Agreement is a forward contract and, accordingly, ~~they~~ the Parties hereto are entitled to the protections of Section 556 of the Bankruptcy Code. The Parties, ~~therefore,~~ agree that this Agreement may be terminated by either Party upon the commencement of a proceeding by the other Party under any chapter of the Bankruptcy Code in accordance with Section 5.2 ~~hereof~~ of this Agreement.

**2.2 Parties' Obligations**

**(a) Obligations of DS Supplier**

The DS Supplier hereby agrees as follows:

- (i) To provide sufficient quantities of DS Supply on an instantaneous basis at all times to meet the DS Supplier Responsibility Share;

(ii) 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;

(iii) 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 or Default Service, before the PaPUC, FERC or any other regulatory body asserting jurisdiction;

(iv) 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;

(v) 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;

(vi) To accept assignment of and to fulfill all obligations of an LSE that are assigned to it by this Agreement;

(vii) To comply in a timely manner with all obligations under this Agreement imposed upon the DS Supplier; and

(viii) To ~~continuously~~ satisfy AEPS with respect to the DS Supplier's Responsibility Share, including (1) providing sufficient AECs for each tranche awarded via the DS Solicitation less the Allocated AECs; (2) paying any AEPS penalties, costs, charges, etc. assessed against the DS Supplier and/or the Company associated with the DS Supplier's non-performance with AEPS requirements; and (3) submitting to the Company proof of AEPS

compliance under this Agreement in such form and manner as may be required by the Company.

**(b) Obligations of the Company**

The Company hereby agrees to:

(i) Pay to the DS Supplier every month an amount due, resulting from the calculations, as detailed in Article 9 of this Agreement, subject to adjustment as expressly provided therein;

(ii) Be responsible, ~~at its sole cost~~ (as between the Company and expense, the DS Supplier) for the provision of NITSRTEP costs and TEC for its DS Customers;

(iii) 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;

(iv) 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;

(v) Comply in a timely manner with all obligations under this Agreement imposed upon the Company;

(vi) Accept the delivery of DS Supply necessary to meet the DS Load; and

~~(vii) Be responsible, at its sole cost and expense, for (1) compliance with AEPS solar photovoltaic requirements under 66 Pa. C.S. § 1648.3(b) associated with the DS Load for the period January 1, 2011 to May 31, 2013; and (2) crediting DS Supplier's AEPS obligations under Section 2.2(a)(8) with Additional AECs, if any.~~

(vii) 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 Auction Revenue Rights (ARRs) to which the Company is entitled as an LSE pursuant to the PJM Agreements, including the rights to ARRs ~~for the period January 1, 2011 through May 31, 2011,~~ provided that such rights are related to the service being provided to meet the DS Supplier Responsibility Share and such rights are for the ~~applicable term~~Delivery Period. All rights and obligations associated with such ARRs will accrue to 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 the 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.

## **2.5 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 the DS Supplier or by the Company in connection with the provision of DS Supply by the DS Supplier to DS Customers, if required.

Electronic information exchanged between the DS Supplier and the Company under this Agreement shall employ an identification number for the DS Supplier, assigned by the Company, which shall be consistent with the DS Supplier's Dun & Bradstreet Business number. 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.

## **2.6 Record Retention**

The Company shall retain, for a period of two (2) years following the expiration of the term of this Agreement, necessary records so as to permit the DS Supplier to confirm the validity of payments due to the DS Supplier hereunder; provided, however, that if the DS Supplier has provided notice within two (2) years of the expiration of the term of 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.

The DS Supplier shall have the right, upon reasonable notice, to inspect the books and records retained by the Company which document the payments due and owing, or owed and paid, to the DS Supplier. Such inspection must take place during regular business hours.

## **2.7 Verification**

In the event of a good faith dispute regarding any invoice issued or payment due under this Agreement, each Party shall 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. The right of verification will survive the termination of this Agreement for a period of two (2) years after termination. The Parties agree that the books and records to be inspected for performance of this paragraph shall be deemed and treated by the Parties as confidential information. Both Parties agree to use the confidential information of the other Party for the sole purpose of performance under this paragraph. Both Parties will take all precautions and actions to prevent sale, use or disclosure of the other Party's confidential information to any third party.

## **ARTICLE 3: REPRESENTATIONS AND WARRANTIES**

### **3.1 DS Supplier's Representations and Warranties**

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

a) It is a corporation, partnership, limited liability company or other legal entity, as set forth in Appendix **AD** hereto, 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 and is in good standing 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 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 an 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 an 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; and

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 the DS Supplier shall be entitled to exercise its reserved right to challenge any such protocols in the appropriate forum.

### **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 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 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. If a Party learns that any of the representations, warranties or covenants in this Agreement are no longer true during the term of this Agreement, the Party shall immediately notify the other Party in accordance with the notice provisions of Article 16.1 of this Agreement.

### **3.4 Joint Representations and Warranties**

Each Party hereby warrants, represents and covenants to the other that this Agreement is for the purchase and sale of DS Supply that will be delivered in quantities expected to be used or sold over a defined period in the normal course of business, and it is the intention at the inception and throughout the term of this Agreement that the fulfillment of the DS Supplier's obligation under Section 2.2(a)(i) hereof will result in physical delivery and not financial settlement, and that the quantity of DS Supply that the DS Supplier must deliver and that the Company must accept for delivery shall be determined by the requirements of the DS Load for which the DS Supplier is responsible under the Agreement, and, as such, that this Agreement

does not provide for an option by either Party with respect to the quantity of DS Supply to be delivered or received during performance of the Agreement.

#### **ARTICLE 4: COMMENCEMENT AND TERMINATION OF AGREEMENT**

##### **4.1 Commencement and Termination**

The term of this Agreement shall commence upon the Effective Date; provided that the provision of DS Supply by DS Supplier to DS Customers on the Company's system shall commence and continue pursuant to the Delivery Period, unless this Agreement is terminated earlier in accordance with the provisions hereof.

##### **4.2 Termination of Right to Supply DS**

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 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; (iii) the Replacement DS Supplier executes a counterpart signature page to this Agreement and agrees in writing to become a Party under this Agreement, 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.

**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 the 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 to meet the DS Supplier's DS Supplier Responsibility Share 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 standards as set forth in Article 6 of this Agreement, ~~including, without limitation, compliance with the creditworthiness~~

~~requirements to cover the Margin calculated under Section 6.7 or post any Margin due under Section 6.7 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 pay the other Party within one (1) day after notice is given by the other Party of nonpayment when payment is due;

(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 satisfy any other material obligation under this Agreement not listed above;

(xv) Makes a materially incorrect or misleading representation or warranty under this Agreement; or

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

## 5.2 Rights Upon Default

Upon and during the continuation of an Event of Default, the Non-Defaulting Party shall be entitled to:

(i) Pursue any and all available legal and equitable remedies and if the Non-Defaulting Party is the Company these remedies can include, without limitation, re-conducting the DS Solicitation to the extent necessary to replace the DS Supplier that has defaulted under this Agreement or become a Defaulting Party hereunder;

(ii) 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 the 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

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

The Non-Defaulting Party shall be entitled to elect or pursue one or more of the above remedies.

### **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 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 DS 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 costs 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 the 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 to accept DS Supply tendered by the DS Supplier necessary to meet the DS Supplier Responsibility Share of DS Load under 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 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)(viii) of this Agreement shall include, but not be limited to, the amount of all penalties, costs, 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.

#### **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 a date for Early Termination ("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)(i) by indicating yes or no on Appendix ~~AD~~. If the DS Supplier does not select subsection 5.4(a)(i) it will be deemed to be excluded from this Agreement.

(i) 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 (a) 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 (b) 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 the 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 provide commercially reasonable financial assurances of its ability and resources to pay the Termination Payment to the Non-Defaulting Party in an amount equal to the Termination Payment.

(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 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 ~~setset~~ 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.

#### **5.6 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.

### **ARTICLE 6: CREDITWORTHINESS**

#### **6.1 Applicability**

The DS Supplier agrees that it shall meet the creditworthiness standardsrequirements 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 limiting the foregoing, the DS Supplier shall, upon written request, affirmatively demonstrate to the Company, its compliance with the creditworthiness standardsrequirements set forth hereunder. The Company may establish less restrictive creditworthiness standardsrequirements 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 ~~6.6 of this Agreement~~3 below, in lieu of submitting to or being qualified under a creditworthiness evaluation. The DS Supplier shall have the opportunity to request the Company to 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 shall be completed as soon as possible, but no longer than thirty (30) days after receiving a fully documented request. The Company shall provide the rationale for its determination of the credit limit and any resulting security requirement. The Company shall perform its credit re-evaluation and associated security calculation in a non-discriminatory manner. The DS Supplier shall provide the Company, and its representatives, unrestricted access to the DS Supplier's audited financial statements for all credit re-evaluations and any resulting security calculations. However, if audited financial statements are not available, the Company may specify other types of financial statements that will be accepted.

**~~6.3 — Independent Credit Requirement (“ICR”)~~**

~~The Independent Credit Requirement per Tranche (“ICRT”) that will be required of the DS Supplier under this Agreement shall be \$750,000 per Tranche for the 12-month product and shall decline in accordance with the schedule included as part of Appendix B throughout the term hereof. The ICR under this Agreement is the ICRT times the number of Tranches shown in Appendix B hereto.~~

**~~6.4 — Independent Credit Threshold~~**

~~If the DS Supplier qualifies under the following criteria, it shall be granted an Independent Credit Threshold (“ICT”). The ICT will be used by the DS Supplier solely to partially or fully cover the aggregate ICR amounts under this Agreement and any other DS Supply agreement(s) between it and the Company. In all instances, the most current senior~~



~~unsecured debt rating (or, if unavailable, the most current corporate issuer debt rating) shall be used.~~

(a) The following ~~criteria constitute the Company's creditworthiness~~ requirements ~~shall apply to the~~ for a DS Supplier ~~or its Guarantor~~ that ~~have~~has been incorporated or otherwise formed under the laws of a state of the United States or ~~of the District of Columbia~~ ~~in order to be granted an ICT.~~ ~~If the DS Supplier cannot and may be utilized by a DS Supplier or its Guarantor that has not been incorporated or otherwise formed under the laws of the United States. In all instances, the most current senior unsecured debt rating (or, if unavailable, the most current corporate issuer rating) will be used.~~

~~(i) For the DS Supplier to be granted an unsecured line of credit, to cover the Total Exposure Amount the DS Supplier shall meet the following requirements, the posting of cash or a letter of credit in an acceptable form as defined in Section 6.9(b) below (see standard format in Appendix C) for the entire aggregate ICR amounts under this Agreement and any other DS Supply agreement(s) between it and the Company shall be required at the time of or prior to the execution of this Agreement.~~

~~(i) The DS Supplier shall:~~ (1) must be rated by at least two of the following rating agencies: Standard & Poor's Rating Services ("S&P"), Moody's Investors Service, Inc. ("Moody's"), or Fitch, Inc. ("Fitch"); and (2) must have a minimum senior unsecured debt rating (or, if unavailable, corporate issuer rating) of at least "BB-" from S&P, "Ba3" from Moody's, or "BB-" from Fitch (a "Minimum Rating"). If the DS Supplier is rated by only two rating agencies, and the ratings are split, the higher rating will be used. If the DS Supplier is rated by three rating agencies, and the ratings are split, the lower of the two highest ratings will be used; however, in the event that the two highest ratings are common, then such common rating will be

used. -The maximum level of the ~~ICT shall be credit limit to cover the Total Exposure Amount~~ will be determined based on the following table:

Credit Rating of the DS Supplier			Max. <del>Independent Credit Threshold</del> <u>Credit Limit to be calculated as the lesser of the % of TNW and credit limit cap below</u>
<del>S&amp;P</del>	<del>Moody's</del>	<del>Fitch</del>	
<del>BBB+ and above</del>	<del>Baa1 and above</del>	<del>BBB+ and above</del>	<del>16% of TNW</del>
<del>BBB</del>	<del>Baa2</del>	<del>BBB</del>	<del>10% of TNW</del>
<del>BBB-</del>	<del>Baa3</del>	<del>BBB-</del>	<del>8% of TNW</del>
<del>BB+</del>	<del>Ba1</del>	<del>BB+</del>	<del>4% of TNW</del>
<del>BB</del>	<del>Ba2</del>	<del>BB</del>	<del>3% of TNW</del>
<del>BB-</del>	<del>Ba3</del>	<del>BB-</del>	<del>2% of TNW</del>
<del>Below BB-</del>	<del>Below Ba3</del>	<del>Below BB-</del>	<del>0% of TNW</del>

<u>S&amp;P</u>	<u>Moody's</u>	<u>Fitch</u>	<u>%</u>	<u>Credit Limit Cap</u>
<u>BBB+ and above</u>	<u>Baa1 and above</u>	<u>BBB+ and above</u>	<u>16% of TNW</u>	<u>\$75,000,000</u>
<u>BBB</u>	<u>Baa2</u>	<u>BBB</u>	<u>10% of TNW</u>	<u>\$50,000,000</u>
<u>BBB-</u>	<u>Baa3</u>	<u>BBB-</u>	<u>8% of TNW</u>	<u>\$25,000,000</u>
<u>BB+</u>	<u>Ba1</u>	<u>BB+</u>	<u>4% of TNW</u>	<u>\$15,000,000</u>
<u>BB</u>	<u>Ba2</u>	<u>BB</u>	<u>3% of TNW</u>	<u>\$10,000,000</u>

<u>BB-</u>	<u>Ba3</u>	<u>BB-</u>	<u>2% of TNW</u>	<u>\$5,000,000</u>
<u>Below BB-</u>	<u>Below Ba3</u>	<u>Below BB-</u>	<u>0% of TNW</u>	<u>\$0</u>

where TNW is the Tangible Net Worth.

The DS Supplier ~~shall~~will be required to post cash or a letter of credit at the time of, or prior to the execution of this Agreement in an acceptable form as defined in Section 6.94(b) of this Agreement ~~below~~ (see standard format in ~~Appendix C~~Appendix A) for the ~~aggregate ICR amounts~~Total Exposure Amount under this Agreement and any other DS Supply agreementss(s) between it and the Company, ~~to the extent that the aggregate ICR exceeds the ICT at the time exceeding the credit limit;~~ or

(ii) ~~(ii) — If the~~ For a DS Supplier ~~hashaving~~ a Guarantor, the Guarantor ~~shall~~ (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 higher rating will be used. -If the Guarantor is rated by three rating agencies, and the ratings are split, the lower of the two highest ratings will be used; however, in the event that the two highest ratings are common, then such common rating will be used. The maximum level of the ~~ICT~~credit limit to cover the Total Exposure Amount that could be provided through the Guaranty (see standard format in ~~Appendix D~~) ~~shall~~Appendix B) will be determined based on the following table:

Credit Rating of the Guarantor			Max. <del>Independent Credit Threshold Credit Limit</del> to be calculated as the lesser of the % of TNW and credit limit cap below
S&P	Moody's	Fitch	
BBB+ and above	Baa1 and above	BBB+ and above	16% of TNW
BBB	Baa2	BBB	10% of TNW
BBB-	Baa3	BBB-	8% of TNW
BB+	Ba1	BB+	4% of TNW
BB	Ba2	BB	3% of TNW
BB-	Ba3	BB-	2% of TNW
Below BB-	Below Ba3	Below BB-	0% of TNW

~~The DS Supplier shall be granted an ICT of up to the amount of the Guaranty; provided that the amount of the Guaranty is below the maximum ICT shown in the table above; provided that if a Guaranty is provided for an unlimited amount, the DS Supplier will be granted an ICT of up to the maximum ICT shown in the table above. The Guaranty tendered by the DS Supplier to satisfy the ICT requirement arising under this Section 6.4 shall be a separate document from the Guaranty, if any, tendered by the DS Supplier to satisfy any requirement for a credit limit to cover the Total Exposure Amount arising under Section 6.6 of this Agreement; provided, however, that a single Guaranty may be provided if such Guaranty is for an unlimited amount. The DS Supplier shall post cash or a letter of credit in an acceptable form as defined in Section 6.9 of this Agreement for the aggregate ICR amounts under this Agreement and any other DS Supply agreement(s) between it and the Company, to the extent that the aggregate ICR~~

~~exceeds the ICT at the time of or prior to the execution of this Agreement.~~

<u>S&amp;P</u>	<u>Moody's</u>	<u>Fitch</u>	<u>%</u>	<u>Credit Limit Cap</u>
<u>BBB+ and above</u>	<u>Baa1 and above</u>	<u>BBB+ and above</u>	<u>16% of TNW</u>	<u>\$75,000,000</u>
<u>BBB</u>	<u>Baa2</u>	<u>BBB</u>	<u>10% of TNW</u>	<u>\$50,000,000</u>
<u>BBB-</u>	<u>Baa3</u>	<u>BBB-</u>	<u>8% of TNW</u>	<u>\$25,000,000</u>
<u>BB+</u>	<u>Ba1</u>	<u>BB+</u>	<u>4% of TNW</u>	<u>\$15,000,000</u>
<u>BB</u>	<u>Ba2</u>	<u>BB</u>	<u>3% of TNW</u>	<u>\$10,000,000</u>
<u>BB-</u>	<u>Ba3</u>	<u>BB-</u>	<u>2% of TNW</u>	<u>\$5,000,000</u>
<u>Below BB-</u>	<u>Below Ba3</u>	<u>Below BB-</u>	<u>0% of TNW</u>	<u>\$0</u>

The DS Supplier will be granted a credit limit equal to the lesser of (i) the amount of the Guaranty 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 Supplier's maximum credit limit. The DS Supplier will be required to post cash or letter of credit in an acceptable form as defined in Section 6.4(b) below (see standard format in Appendix A) for the Total Exposure Amount exceeding the amount of the credit limit granted to the DS Supplier; or

(iii) The posting of cash or a letter of credit in an acceptable form as defined in Section 6.4(b) of this Agreement (see standard format in Appendix A) for the Total Exposure Amount shall be required.

(b) The following standards shall apply to the DS Supplier or its Guarantor if they have not been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia. If the DS Supplier cannot meet the following requirements, the

posting of cash or a letter of credit in an acceptable form as defined in Section 6.94(b) ~~of this Agreement below~~ (see standard format in ~~Appendix C Appendix A~~) for the ~~entire aggregate ICR amounts under this Agreement and any other DS Supply agreement(s) between it and the Company~~ Total Exposure Amount shall be required ~~at the time of or prior to the execution of this Agreement as set forth in Section 6.7 of this Agreement.~~

(i) The DS Supplier shall supply such evidence of creditworthiness so as to provide the Company with comparable assurances of creditworthiness as is applicable above if the DS Supplier had been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia. The Company shall have full discretion, without liability or recourse to the DS Supplier, to evaluate the evidence of creditworthiness submitted by such DS Supplier; or

(ii) The Guarantor of the DS Supplier shall supply such evidence of creditworthiness so as to provide the Company with comparable assurances of creditworthiness as is applicable above if the Guarantor of the DS Supplier had been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia. The Company shall have full discretion, without liability or recourse to the Guarantor or the DS Supplier, to evaluate the evidence of creditworthiness submitted by such Guarantor.

      (c) If the DS Supplier or its Guarantor have not been incorporated or otherwise formed under the laws of a state of the United States or of the District of Columbia they shall, in addition to all documentation required in this Section 6.42, supply the following as a condition of being granted ~~an ICTa credit limit, up to a maximum level, for the purpose of~~ covering the Total Exposure Amount:

(i) For the DS Supplier: ~~(1)~~ a legal opinion acceptable to the Company of

counsel qualified to practice in the foreign jurisdiction in which the DS Supplier is incorporated or otherwise formed that this Agreement is, or upon the completion of execution formalities will become, the binding obligation of the DS Supplier in the jurisdiction in which it has been incorporated or otherwise formed; (2) the sworn certificate of the corporate secretary (or similar officer) of such DS Supplier 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 such DS Supplier has approved the execution of this Agreement; and (3) the sworn certificate of the corporate secretary (or similar officer) of such DS Supplier that the DS Supplier has been authorized by its governing board to enter into agreements of the same type as this Agreement. The Company shall have full discretion, without liability or obligation to the DS Supplier, to evaluate the sufficiency of the documents submitted by the DS Supplier.

(ii) For the Guarantor of the DS Supplier: (1) a legal opinion acceptable to the Company of counsel qualified to practice in the foreign jurisdiction in which the Guarantor is incorporated or otherwise formed that ~~this the~~ Guaranty is, or upon the completion of execution formalities will become, the binding obligation of the Guarantor in the jurisdiction in which it has been incorporated or otherwise formed; (2) the sworn certificate of the corporate secretary (or similar officer) of such Guarantor that the person executing the Guaranty on behalf of the Guarantor has the authority to execute the Guaranty and that the governing board of such Guarantor has approved the execution of the Guaranty; and (3) the sworn certificate of the corporate secretary (or similar officer) of such Guarantor that the Guarantor has been authorized by its governing board to enter into agreements of the same type as this Guaranty. The Company shall have full discretion, without liability or obligation to the Guarantor or the DS Supplier, to evaluate the sufficiency of the documents submitted by such Guarantor.

**6.3 ~~6.5~~ — ~~Mark to Market Credit Exposure Methodology/Security Calculation~~**

~~To calculate the daily exposure for the DS Supplier the Mark to Market (“MtM”) credit exposure methodology will be used. The “mark” for each Billing Month will be determined by the Company at the time the DS Solicitation 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 DS Solicitation is completed, the MtM credit exposure for the 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 exposures for the DS Supplier. The total MtM credit exposure will be limited to a rolling forward 24 month period starting from this Agreement’s Effective Date as applicable. The methodology for calculation of the MtM credit exposure is illustrated in the example (using hypothetical numbers) set forth in Appendix B hereto.~~

**6.6 — 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 the DS Supplier to be granted an unsecured line of credit by the Company, the DS Supplier shall: (1) be rated by at least two of the following rating agencies: S&P, Moody’s, or Fitch, and (2) have a minimum senior unsecured debt rating (or, if unavailable, corporate issuer rating) equal to the Minimum Rating. If the DS Supplier is rated by only two rating agencies, and the ratings are split, the higher rating will be used. If the DS Supplier is rated by three rating agencies, and the ratings are split, the lower of the two highest ratings will be used; provided, however, that in the event that the two highest ratings are~~



~~common, such common rating will be used. The maximum level of the credit limit to cover the Total Exposure Amount will be determined based on the following table:~~

Credit Rating of the DS Supplier			Max. Credit Limit to be calculated as the lesser of the % of TNW and credit limit cap below	
S&P	Moody's	Fitch	%	Credit Limit Cap
BBB+ and above	Baa1 and above	BBB+ and above	16% of TNW	\$75,000,000
BBB	Baa2	BBB	10% of TNW	\$50,000,000
BBB-	Baa3	BBB-	8% of TNW	\$25,000,000
BB+	Ba1	BB+	4% of TNW	\$15,000,000
BB	Ba2	BB	3% of TNW	\$10,000,000
BB-	Ba3	BB-	2% of TNW	\$5,000,000
Below BB-	Below Ba3	Below BB-	0% of TNW	\$0

~~The DS Supplier shall post cash or a~~ The credit exposure per tranche that will be required of DS Supplier under this Agreement shall be \$140,000. The credit exposure under this Agreement shall be \$140,000 times the number tranches shown in Appendix D hereto. If a DS Supplier meets the Minimum Rating listed above, no security will be required as long as the Total Exposure Amount does not exceed the maximum credit limit of the DS Supplier or its Guarantor.

If a DS Supplier meets the Minimum Rating listed above, and the Total Exposure Amount exceeds the maximum credit limit of the DS Supplier or its Guarantor, cash or letter of credit in an acceptable form as defined in Section 6.9-4(b) of this Agreement (see standard

format in ~~Appendix C~~ for the Margin due the Company as set forth in Section 6.7 of this Agreement; or

~~(ii) — If the DS Supplier has a Guarantor, 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 higher rating will be used. If the Guarantor is rated by three rating agencies, and the ratings are split, the lower of the two highest ratings will be used; provided that in the event that the two highest ratings are common, such common rating will be used. The maximum level of the credit limit to cover the Total Exposure Amount that could be provided through the Guaranty (see standard format in Appendix D) will be determined based on the following table:~~

Credit Rating of the Guarantor			Max. Credit Limit to be calculated as the lesser of the % of TNW and credit limit cap below	
S&P	Moody's	Fitch	%	Credit Limit Cap
BBB+ and above	Baa1 and above	BBB+ and above	16% of TNW	\$75,000,000
BBB	Baa2	BBB	10% of TNW	\$50,000,000
BBB-	Baa3	BBB-	8% of TNW	\$25,000,000
BB+	Ba1	BB+	4% of TNW	\$15,000,000
BB	Ba2	BB	3% of TNW	\$10,000,000
BB-	Ba3	BB-	2% of TNW	\$5,000,000
Below BB-	Below Ba3	Below BB-	0% of TNW	\$0

~~The DS Supplier shall be granted a credit limit equal to the lesser of (i) the~~

~~Appendix A), in an amount of the Guaranty as provided equal 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 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 Margin in accordance with Section 6.7 of this Agreement. The DS Supplier shall post cash or a letter of credit in an acceptable form as defined in Section 6.9(b) of this Agreement (see standard format in Appendix C) for the Margin due the Company as set forth in Section 6.7 of this Agreement; or~~

~~The posting of cash or a letter of credit as defined in Section 6.9 (b) below for the entire Total Exposure Amount above the maximum credit limit of the DS Supplier or Guarantor will be required.~~

~~**6.7 — Posting Margin and Return of Surplus Margin**~~

~~(a) — If at any time and from time to time during the term of this Agreement, the Total Exposure Amount exceeds the DS Supplier's or the Guarantor's credit limit, 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 6.9(b) of this Agreement (see standard format in Appendix C), in an amount equal to the Margin (less any 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 Margin from the Company by 1:00 p.m. New York time on a Business Day, then the DS Supplier shall post 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 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 Margin the second Business Day following the date of notice unless the Company agrees in writing to extend the period to provide Margin. The Company shall not unreasonably deny a request for a one day extension of such period. In the event that the DS Supplier fails to post Margin when due in accordance with this Section 6.7, 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, shall be returned to the DS Supplier upon receipt of a written request by the DS Supplier. The amount returned to the DS Supplier shall be the lesser of the surplus Margin then held by the Company or the Total Exposure Amount less the credit limit. 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 of the request for return of surplus Margin 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 shall 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 shall be deemed to have occurred and the DS Supplier shall be entitled to the remedies set forth in Article 5 of this Agreement.~~

#### **~~6.8 — Grant of Security Interest/Remedies~~**

~~To secure its obligations under this Agreement and to the extent that the DS Supplier posted Margin/collateral 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 from 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 Company'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 DS Supply 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 the DS Supplier:~~

~~—— Notification information for the DS Supplier is set forth on Appendix A~~

~~hereto.~~

~~If to the Company:~~

~~James Buehrle  
Credit Analyst  
—— FirstEnergy Corp.  
341 White Pond Drive  
—— Akron, OH 44320  
Telephone: (330) 315-6984  
Facsimile: (330) 436-1901  
—— Email: [buehrlej@firstenergycorp.com](mailto:buehrlej@firstenergycorp.com)~~

Copy to:

~~Bradley Bingaman — Managing Counsel, Legal  
2800 Pottsville Pike  
P.O. Box 16001  
Reading, PA 19612-6001  
Telephone: (610) 921-6203  
Facsimile: (610) 939-8655  
Email: [bbingaman@firstenergycorp.com](mailto:bbingaman@firstenergycorp.com)~~

~~Such notices, demands or requests regarding credit requirements and credit related security or deposit transfers should 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 will be deemed received on the next Business Day; provided that notice by facsimile transmission will be deemed to have been received by the recipient if the recipient confirms receipt telephonically or in writing.~~

#### **6.94 Security Instruments**

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

(a) Cash; or

(b) A standby irrevocable letter of credit acceptable to the Company issued by a bank or other financial institution with a minimum "A" senior unsecured debt rating (or, if unavailable, corporate issuer rating) from S&P or "A2" from Moody's (see standard format in Appendix CA). 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 shall have the right to draw on the existing letter of credit and to hold the amount as Marginsecurity.

If the credit rating of a bank or other financial institution from which the 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 Company. The Company shall have no obligation under this Agreement or otherwise to make or grant such extension.

#### **6.105 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 may re-evaluate the creditworthiness of the DS Supplier whenever it becomes aware of a 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 ICT or its credit limit adversely changes, the Company will require additional security from the DS~~



~~Supplier in accordance with Sections 6.4 and 6.6 of this Agreement. The Company shall not require any additional security from a DS Supplier due to an adverse change in such DS Supplier's credit standing provided that the DS Supplier continues to meet the Company's minimum standard for an unsecured line of credit. When an adverse change in a DS Supplier's credit standing causes the DS Supplier to no longer qualify for an unsecured line of credit from the Company, the Company shall be entitled to require additional security, prepayment, or a deposit in accordance with Sections 6.2 and 6.3 of this Agreement. The additional security shall be in a form acceptable to the Company, as specified in Section 6.94 of this Agreement and must be posted as set forth in Section~~

~~6.6.7 of this Agreement.~~

#### ~~6.11~~ **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 DS Supply agreement(s) between the Company and the DS Supplier for the provision of DS Supply after both of the following events occur:

- (a) Written Notice of Default has been 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.

**6.127 Interest on Cash Held by Company**

The Company shall 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 shall prepare a statement of interest amounts due to the DS Supplier. The statement shall 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 5<sup>th</sup> day of each calendar month. \_\_\_\_\_

**6.138 Confidentiality**

Information supplied by the DS Supplier in connection with the creditworthiness process shall be deemed confidential and not subject to public disclosure, unless an Applicable Legal Authority requires disclosure of the information. If information must be disclosed, then the confidentiality of the information shall be maintained consistent with the Applicable Legal Authority's rules and regulations pertaining to confidentiality. The DS Supplier shall be given prompt notice of any request received by the Company from a third party to obtain confidential information related to the DS Supplier's creditworthiness.

**6.9 ~~6.14~~—No Endorsement of DS Supplier**

The Company's determination that the 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.

**6.1510 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 is entered into after the effective date of this Agreement, the Company will calculate the Margin applicable to all such agreements as set forth herein.

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

**7.1 DS Supply 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 an LSE under the PJM Agreements.

**-7.2 Data Transmission**

**(a) Energy**

The procedures for transmitting load obligation data for the DS Supplier Responsibility Share of hourly Energy obligations shall be as set forth by PJM.

**(b) Capacity**

The procedures for transmitting load obligation data for the DS Supplier Responsibility Share of daily Capacity obligations shall be as set forth by PJM.

**(c) Transmission**

The procedures for transmitting load obligation data for the DS Supplier Responsibility Share data of the Transmission Services obligations shall be as set forth by PJM.

**(d) Ancillary Services**

The procedures for transmitting data regarding the DS Supplier's

Ancillary Services obligations shall be as set forth by PJM.

**(e) AEPS Requirements**

The Company will determine and submit to PJM-EIS load data needed for AEPS compliance reporting. This load data will be placed in the Company's Generation Attribute Tracking System ("GATS") account. The Company, at its discretion, may send a separate communication via email regarding the quantity of this load to the DS Supplier.

**7.3 Energy Scheduling & Delivery**

The Parties acknowledge and agree that Company is not providing and will not provide load-forecasting services to or for the benefit of the DS Supplier under this Agreement. The DS Supplier shall schedule Energy resources to meet its obligations with PJM as provided for in the PJM Agreements, procedures, and manuals. The Company, through an e-schedule, shall provide PJM and the DS Supplier with the data regarding the DS Supplier Responsibility Share of the Energy obligations, as set forth by PJM. The Energy obligations for each DS Supplier will be determined based on its DS Supplier Responsibility Share of the DS Load. The total preliminary Energy obligation will be equal to the total Energy loads for the DS Customers, as calculated by the Company, including losses and unaccounted for energy. The delivery point for the Company's supply shall be the ~~"Met-Ed-Company's"~~ "zone" as defined by PJM, and shown on Appendix D.

**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 DS Supplier's load allocation for the PJM load obligations shall be determined by the Company based upon the DS Supplier

Responsibility Share and shall be transmitted by the Company to PJM. The reconciled total DS Energy obligation shall be equal to the difference between the reconciled total Energy obligations for the Company's zone reduced by wholesale load and the reconciled total Energy obligations of the EGSs active in the Company's service territory. For the purposes of the settlement process, the delivery point will be the ~~"Met-Ed-Company's "zone"~~ as defined by PJM, and shown on Appendix D.

Any adjustments for billing and metering errors reported subsequent to the calculation of FMEA will be proportionally allocated by the Company to all DS Suppliers with whom the Company has executed DS Supply contracts.

## **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 shall 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 shall prepare a Statement of amounts due to the DS Supplier. ~~The~~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 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 for each hour of the Billing Month.

(b) The Statement shall be sent to the DS Supplier within six (6) 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 19<sup>th</sup> 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 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 shall 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**

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 shall 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 or before the first Business Day after the 19<sup>th</sup> day of each calendar month.

(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 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 Supplier, to disconnect (or otherwise curtail, interrupt or reduce deliveries from) the DS Supplier 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 shall have any liability to the other Party for the occurrence of

such events, except for the Company's obligation to pursue in good faith efforts for the resumption of the disrupted service as set forth in Section 10.3 below. In no event shall 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 PJM Member, the Company is bound by all PJM Agreements including, without limitation, 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 safety, reliability and overall integrity of the PJM system. The DS Supplier acknowledges and agrees that it shall cooperate with the Company so that the Company will be in compliance with all PJM Emergency Operations Procedures (as defined in the PJM Agreements), 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 for it to comply with said directives.

### **ARTICLE 11: DISPUTE RESOLUTION**

#### **11.1 Informal Resolution of Disputes**

The Company and the DS Supplier shall use good faith and reasonable commercial efforts to informally resolve all disputes arising out of the implementation of this Agreement. Any dispute between the Company and the DS Supplier under this Agreement may be referred to a designated senior representative of each of the Parties for resolution on an informal basis as promptly as practicable.

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

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 of competent jurisdiction, or with a federal court of competent jurisdiction situated in the Commonwealth of Pennsylvania. The Parties’ 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 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 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) and affirmed by *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County, Washington, et al.*, 554 U.S. ~~527~~, 128 S. Ct. 2733 (June 26, 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 ~~and~~, Conservation, and Retail Market Programs**

DS Supplier acknowledges that DS Customers may participate in energy efficiency and conservation programs offered by the Company (~~as~~ required by Applicable Legal Authorities or otherwise), 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, 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. DS Supply does not include the load which DS Supplier may have served in the absence of such programs, and 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 LIABILITY**

### **13.1 Limitations on Liability**

Except to the extent expressly set forth in this Agreement, each Party shall be liable to the other only for direct damages incurred as a result of such Party's failure to comply with this Agreement and no Party shall have any liability to the other Party for consequential,

indirect, special or punitive damages, including lost profits or lost revenues, arising out of such Party's failure to comply with its obligations under this Agreement.

### **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 DS Supply 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 such 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 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, 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.

#### **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 Worker's 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 Section 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 ~~as follows:~~

~~If to the DS Supplier:~~

~~Notification~~notification information for the DS Supplier ~~is also and~~

Company as set forth ~~on~~in Appendix AD hereto.

~~If to the Company:~~

~~Dean Stathis — Director Regulated Commodity Sourcing  
2800 Pottsville Pike  
P.O. Box 16001  
Reading, PA 19612 6001  
Telephone: (610) 921 6766  
Facsimile: (610) 939 8542  
Email: [dstathis@firstenergycorp.com](mailto:dstathis@firstenergycorp.com)~~

~~Copy to:~~

~~William Ridmann — VP Rates & Regulatory Affairs  
76 South Main Street  
Akron, Ohio 44308 1890  
Telephone: (330) 761 4154  
Facsimile: (330) 761 4281  
Email: [wridman@firstenergycorp.com](mailto:wridman@firstenergycorp.com)~~

~~and~~

~~Bradley Bingaman — Managing Counsel, Legal  
2800 Pottsville Pike  
P.O. Box 16001  
Reading, PA 19612 6001  
Telephone: (610) 921 6203  
Facsimile: (610) 939 8655  
Email: [bbingaman@firstenergycorp.com](mailto:bbingaman@firstenergycorp.com)~~

Such notices, demands or requests should 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 (a) any necessary regulatory approval(s) and (b) the prior written consent of the non-assigning Party, which consent shall not be unreasonably withheld; provided that 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 Article 6 of this Agreement. 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, 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. The Company further agrees that, in the event necessary regulatory approvals to effectuate an assignment have been sought in good faith but that action by the regulatory body is pending, the Company shall accept the performance of the proposed assignee as a Party to this Agreement, as co-obligor with the Party proposing to assign its interest, until such approvals are obtained; provided that, in the event the regulatory body declines to grant its approval (or, in the discretion of the Company, in the event the application seeking approval is still pending without action by the regulatory body after ninety (90) days), the request for approval of the assignment shall be deemed to have been rejected.

#### **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. Any lawsuit arising in connection with this Agreement shall be brought only in the state or federal courts of Pennsylvania.

#### **16.5 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.

#### **16.6 Third Party Beneficiaries**

This Agreement is intended solely for the benefit of the Parties hereto. 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.

#### **16.7 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.

(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.

#### **16.8 Taxes**

All present and future federal, state, municipal or other taxes imposed by any taxing authority by reason of the provision of DS Supply to DS Customers by the DS Supplier under this Agreement shall be the liability of the DS Supplier, except for Pennsylvania State Sales and Use Taxes, which will be the Company's responsibility. 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. The DS Supplier shall pay all such taxes to the applicable taxing authority to the extent required or permitted by law. If any transaction is exempt from the payment of any such taxes, the affected DS Supplier will, if requested, provide the Company with valid tax exemption certificates. Should the Company be required to remit any such 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.

#### **16.9 Use of the Word "Including"**

The word "including", when following any general statement or term, is not to be construed as limiting the general statement or term to the specific items or matters set forth or to similar items or matters, but rather as permitting the general statement or term to refer to all other items or matters that could reasonably fall within its broadest possible scope.

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

#### **16.11 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 Federal Power Act, if the Federal Power Act is deemed to have jurisdiction to this Agreement, including on the grounds that they are not just and reasonable.

**16.12 Amendment**

This Agreement, including the appendices hereto, cannot be amended without the written agreement of the Parties prior to such amendment becoming effective.

**16.13 Counterparts**

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

|

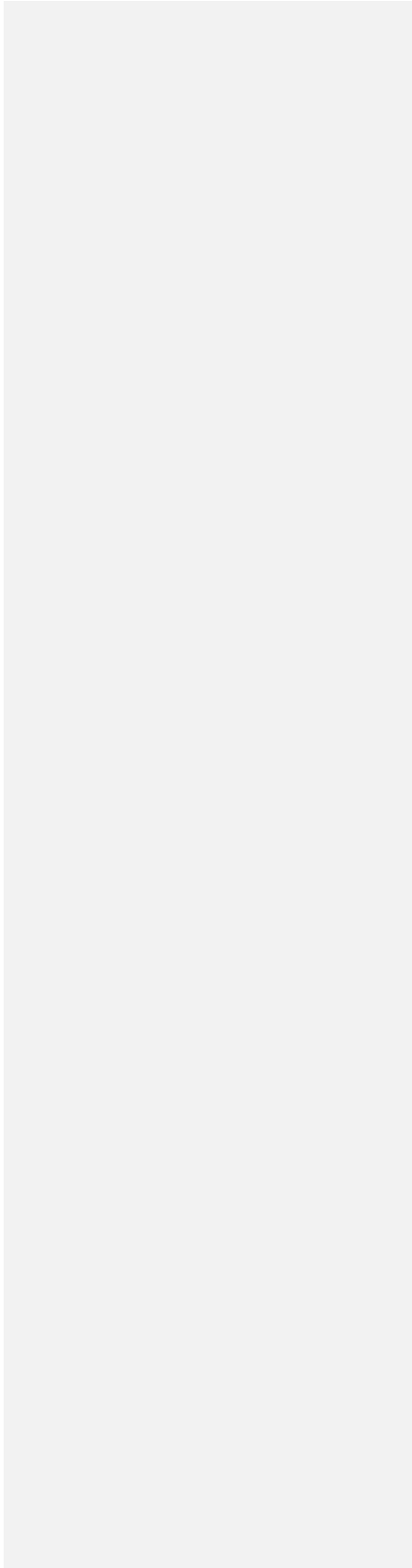
**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

| **ATTEST:** ~~Metropolitan Edison~~ [Insert Company Name]

By: _____	By: _____
Name: [Insert Name]	Name: [Insert Name]
Title: [Insert Title]	Title: [Insert Title]
Date: _____	Date: _____

|

**Default Service Supplier Master Agreement  
Industrial Customer Class**





~~Fixed Price(Hourly Pricing Service—Nominal 50 MW Tranche)~~  
~~Metropolitan Edison Company~~  
~~[Month Year] Procurement~~

|

| **IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

| **ATTEST:** \_\_\_\_\_ **[Insert DS Supplier Name]**

By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Name: <b>[Insert Name]</b>	Name: <b>[Insert Name]</b>
Title: <b>[Insert Title]</b>	Title: <b>[Insert Title]</b>
Date: _____	Date: _____

**Default Service Supplier Master Agreement**  
**Industrial Customer Class**  
**~~Fixed Price(Hourly Pricing Service—Nominal 50 MW Tranche)~~**  
**~~Metropolitan Edison Company~~**  
**~~[Month Year] Procurement~~**

**APPENDIX A — ~~TRANSACTION TERMS FOR INDUSTRIAL CLASS FIXED PRICE SERVICE~~**

~~DATED [Insert Date] (“Effective Date”)~~

~~BY AND BETWEEN,~~

~~Company Name: Metropolitan Edison Company~~

~~AND~~

~~DS Supplier Name: [Insert DS Supplier Name]~~

~~DS Supplier Responsibility Share: 100%~~

~~Delivery Period: 00:01a.m. on January 1, 2011 to midnight December 31, 2011~~

~~DS Fixed Price = [Insert price \$xx.xx/MWh] as bid by DS Supplier~~

~~Subsection 5.4(a)(i) notional quantity Applicable [Insert Yes or No]~~

**Address for Notices**

The address for any notices to [Insert DS Supplier Name] provided pursuant to Section 6.8 and 16.1 of the DS Supplier Master Agreement shall be the following:

For Credit Related Issues, Section 6.8:

[Insert Company Name]

Name: [Insert Name]

Address: [Insert Address]

Phone: [Insert Phone]

Fax: [Insert Fax]

Email: [Insert Email]

For Notices, Section 16.1:

[Insert Company Name]

Name: [Insert Name]

Address: [Insert Address]  
Phone: [Insert Phone]  
Fax: [Insert Fax]  
Email: [Insert Email]

**APPENDIX B—CREDIT INFORMATION**

**Schedule for ICRT**

MONTH	12-MONTH DS (\$/tranche)
January-2011	750,000
February-2011	750,000
March-2011	660,000
April-2011	660,000
May-2011	500,000
June-2011	500,000
July-2011	375,000
August-2011	375,000
September-2011	375,000
October-2011	275,000
November-2011	275,000
December-2011	275,000
January-2012	
February-2012	
March-2012	
April-2012	
May-2012	
June-2012	
July-2012	
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March-2014	
April-2014	
May-2014	
June-2014	
July-2014	
August-2014	
September-2014	
October-2014	
November-2014	
December-2014	

*The total MtM credit exposure will be limited to a rolling forward 24-month period, starting from this Agreement's Effective Date as applicable.*

### **~~MTM Exposure Amount Calculation Information~~**

~~Table 1 contains the illustrative marks<sup>†</sup> for each month of the DS Solicitation period. Monthly marks are provided for January 2011 through December 2011. For the months, two month blocks or quarterly blocks where broker quotes are available, broker quotes will be used for those months. For all the remaining months (including any months for which brokered quotes are only available as part of a “package” of several months), the Company will be using a proprietary method that reflects forward market conditions.~~

~~The mark for each Billing Month is the mark that is calculated on the date that the DS Solicitation closes and will not change over the life of the contract. After the close of the DS Solicitation Forward Market Prices will change. In addition, the on peak and off peak loads used to calculate the M~~T~~M Exposure Amount will be adjusted monthly to reflect the most current changes.~~

~~Forward Market Prices for the months, two month blocks or quarterly blocks where broker quotes are available will be equal to the broker quotes. In case quotes for a component of a block and for the block are both available, the Company reserves the right not to use both the component of a block and the block if they are inconsistent with each other. However, when this inconsistency occurs, the Company must use either the component or the block. Forward Market Prices for the months, two month blocks or quarterly blocks where broker quotes are unavailable will be equal to the last available broker quotes or in case they have not been quoted on the broker sheets since the DS Solicitation closed, they will be equal to the marks set at the close of the DS Solicitation.~~

~~<sup>†</sup> Illustrative marks represent PJM Western Hub on-peak prices.~~



## **MtM Calculation Example**

### **Parameters**

On the closing day of the DS Solicitation, the following parameters are set

1. The expected On Peak Load per tranche.
2. The expected Off Peak Load per tranche.
3. A table of monthly on-peak forward prices (to be used as the inception price for each month of the supply period).
4. A table of monthly on and off peak energy prices to determine the ratio of off peak price to on peak prices.

Indicative on-peak and off-peak loads per tranche will be made available 14 days prior to the DS Solicitation.

The following example uses hypothetical On Peak and Off Peak Loads per Tranche.

All Energy prices are based on the PJM Western Hub

**EXAMPLE***Table 1—Initial Data—Example is for a 12-month Supply Period***Broker Sheets (Quotes from DS Solicitation Closing Day)**

<b>Broker</b>	<b>Bid/Offer</b>	<b>Jan-11</b>	<b>Feb-11</b>	<b>Mar-11</b>	<b>Apr-11</b>	<b>May-11</b>	<b>June-11</b>	<b>July-11</b>
Broker-1	Bid	\$53.75	\$53.75	\$50.75	\$50.25	\$48.00	\$50.00	\$50.00
Broker-1	Offer	\$54.00	\$54.00	\$51.25	\$50.50	\$48.75	\$50.50	\$50.50
Broker-2	Bid	\$53.00	\$53.00	\$50.00		\$47.25	\$49.25	\$49.25
Broker-2	Offer	\$53.75	\$53.75	\$51.00		\$48.50	\$50.25	\$50.25
Broker-3	Bid	\$53.25	\$53.25	\$50.25	\$49.75	\$47.50	\$49.50	\$49.50
Broker-3	Offer	\$53.75	\$53.75	\$51.00	\$50.25	\$48.50	\$50.25	\$50.25
<b>Average</b>	<b>Mid</b>	<b>\$53.58</b>	<b>\$53.58</b>	<b>\$50.71</b>	<b>\$50.19</b>	<b>\$48.08</b>	<b>\$49.96</b>	<b>\$49.96</b>

<b>Broker</b>	<b>Bid/Offer</b>	<b>Aug-11</b>	<b>Sep-11</b>	<b>Oct-11</b>	<b>Nov-11</b>	<b>Dec-11</b>
Broker-1	Bid	\$60.25	\$60.25	\$45.75	\$43.50	\$43.50
Broker-1	Offer	\$60.75	\$60.75	\$46.25	\$44.00	\$44.00
Broker-2	Bid		\$59.50	\$45.00		\$42.75
Broker-2	Offer		\$60.50	\$46.00		\$43.75
Broker-3	Bid	\$59.75	\$59.75	\$45.25	\$43.00	\$43.00
Broker-3	Offer	\$60.50	\$60.50	\$46.00	\$43.75	\$43.75
<b>Average</b>	<b>Mid</b>	<b>\$60.21</b>	<b>\$60.21</b>	<b>\$45.71</b>	<b>\$43.56</b>	<b>\$43.46</b>

**Table 2—Ratio of Off-Peak to On-Peak Price**

<b>Month</b>	<b>Ratio of Off-Peak to On-Peak Price</b>
January	.75
February	.75
March	.71
April	.62
May	.56
June	.52
July	.50
August	.52
September	.63
October	.61
November	.62
December	.72

**Table 3—Data set on the Closing Day of the DS Solicitation Energy (MWh/tranche)**

	<b>On-Peak Volume<sup>1</sup></b>	<b>Off-Peak Volume<sup>2</sup></b>	<b>On-Peak Price<sup>3</sup></b>	<b>Off-Peak Price<sup>4</sup></b>
Jan-11	8,873	4,428	\$53.58	\$25.72
Feb-11	10,385	5,674	\$53.58	\$24.65
Mar-11	10,868	5,675	\$50.71	\$25.86
Apr-11	7,011	3,458	\$50.19	\$30.62
May-11	6,659	2,291	\$48.08	\$28.85
June-11	6,783	3,864	\$49.96	\$29.98
July-11	8,820	7,009	\$60.21	\$35.97
Aug-11	8,272	5,182	\$60.21	\$43.95
Sep-11	6,878	3,870	\$45.71	\$45.16
Oct-11	6,311	3,545	\$43.56	\$31.08
Nov-11	4,103	1,495	\$43.46	\$26.14
Dec-11	4,053	1,250	\$43.46	\$24.77

<sup>1</sup>-On-peak volumes will be adjusted monthly.

<sup>2</sup>-Off-peak volumes will be adjusted monthly.

<sup>3</sup>-Forward price (if available). If not available, adjusted average price will be used.

<sup>4</sup>-On-peak price multiplied by the off-peak/on-peak ratio.

**EXAMPLE**

**Table 4—Data on Day 1 of the Supply Period**

**Broker sheets on day 1 of the Supply Period**

<b>Broker</b>	<b>Bid/Offer</b>	<b>Jan-11</b>	<b>Feb-11</b>	<b>Mar-11</b>	<b>Apr-11</b>	<b>May-11</b>	<b>June-11</b>	<b>July-11</b>
Broker-1	Bid	\$53.75	\$54.75	\$50.75	\$50.25	\$48.00	\$53.00	\$53.00
Broker-1	Offer	\$54.00	\$55.00	\$51.25	\$50.50	\$48.75	\$53.50	\$53.50
Broker-2	Bid	\$53.00	\$54.00	\$50.00		\$47.25	\$52.25	\$52.25
Broker-2	Offer	\$53.75	\$54.75	\$51.00		\$48.50	\$53.25	\$53.25
Broker-3	Bid	\$53.25	\$54.25	\$50.25	\$49.75	\$47.50	\$52.50	\$52.50
Broker-3	Offer	\$53.75	\$54.75	\$51.00	\$50.25	\$48.50	\$53.25	\$53.25
<b>Average</b>	<b>Mid</b>	<b>\$53.58</b>	<b>\$54.58</b>	<b>\$50.71</b>	<b>\$50.19</b>	<b>\$48.08</b>	<b>\$52.96</b>	<b>\$52.96</b>

<b>Broker</b>	<b>Bid/Offer</b>	<b>Aug-11</b>	<b>Sep-11</b>	<b>Oct-11</b>	<b>Nov-11</b>	<b>Dec-11</b>
Broker-1	Bid	\$60.25	\$60.25	\$45.75	\$43.50	\$43.50
Broker-1	Offer	\$60.75	\$60.75	\$46.25	\$44.00	\$44.00
Broker-2	Bid		\$59.50	\$45.00		\$42.75
Broker-2	Offer		\$60.50	\$46.00		\$43.75
Broker-3	Bid	\$59.75	\$59.75	\$45.25	\$43.00	\$43.00
Broker-3	Offer	\$60.50	\$60.50	\$46.00	\$43.75	\$43.75
<b>Average</b>	<b>Mid</b>	<b>\$60.21</b>	<b>\$60.21</b>	<b>\$45.71</b>	<b>\$43.56</b>	<b>\$43.46</b>

Note: For a monthly forward price from a broker to be included, both Bid and Offer must be available.

**EXAMPLE****Table 5—Data set on the Closing Day of the DS Solicitation Energy (MWh/Tranche)**

	-On Peak Load per Tranche (MWh)	-Off Peak Load per Tranche (MWh)	Incepti on-On- Peak	Current Day 1 On- Peak Prices	Change in-On- Peak Price	Change in-Off- Peak Price <sup>5</sup>	MtM
Jan 11	8,873	4,428	\$53.58	\$53.58	\$-	\$-	
Feb 11	10,385	5,674	\$53.58	\$54.58	\$1.00	\$0.80	\$14,924
Mar 11	10,868	5,675	\$50.71	\$50.71	\$-	\$-	
Apr 11	7,011	3,458	\$50.19	\$50.19	\$-	\$-	
May 11	6,659	2,291	\$48.08	\$48.08	\$-	\$-	
June 11	6,783	3,864	\$49.96	\$52.96	\$3.00	\$1.56	\$26,377
July 11	8,820	7,009	\$49.96	\$52.96	\$3.00	\$1.50	\$36,974
Aug 11	8,272	5,182	\$60.21	\$60.21	\$-	\$-	
Sep 11	6,878	3,870	\$60.21	\$60.21	\$-	\$-	
Oct 11	6,311	3,545	\$45.71	\$45.71	\$-	\$-	
Nov 11	4,103	1,495	\$43.56	\$43.56	\$-	\$-	
Dec 11	4,053	1,250	\$43.46	\$43.46	\$-	\$-	
						<b>Total</b>	<b>\$78,275</b>

Note: Inception on peak price is equal to on peak price set on the closing day of the DS Solicitation.

*The total MtM credit exposure will be limited to a rolling forward 24 month period starting from this Agreement's Effective Date, as applicable.*

<sup>5</sup> Change in on peak price multiplied by ratio of off peak price to on peak price.

~~APPENDIX C~~ - LETTER OF CREDIT DOCUMENTATION

Sample DS Letter of Credit

[Insert Date]

Letter of Credit No. [Insert Credit No]

To: ~~Metropolitan Edison~~ [Insert Company] (~~Beneficiaries~~ [Name] (“Beneficiary”))

1. We hereby establish in your favor this irrevocable transferable Letter of Credit (this “Letter of Credit”) for the account of ~~Metropolitan Edison Company~~ [Insert Applicant Name] (the “Applicant”), in the aggregate amount of \$[Insert Amount], effective immediately and available to you at sight upon demand at our counters at [Insert DateLocation] and expiring 364 days from date of issuance or any extension thereof (in the form of Annex 5), unless terminated earlier or automatically extended, in accordance with the provisions hereof or otherwise extended.
2. This Letter of Credit is issued at the request of the Applicant, and we hereby irrevocably authorize you to draw on us, in accordance with the terms and conditions hereof, up to the maximum amount of this Letter of Credit, subject to reduction as provided in paragraph 11 hereof. This Letter of Credit may be drawn upon an Event of Default under the DS Supplier Master Agreement(s) between the Applicant and you, dated [Insert Date].
3. A partial or full drawing hereunder may be made by you on any Business Day on or prior to the expiration of this Letter of Credit by delivering, by no later than 11:00 A.M. (New York, NY time<sup>1</sup>) on such Business Day to [Insert Bank] , [Insert Address] (i) a notice

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

executed by you in the form of Annex 1 hereto, appropriately completed and duly signed by an Authorized Officer of ~~each of the Beneficiaries~~ Beneficiary and (ii) your draft in the form of Annex 2 hereto, appropriately completed and duly signed by an Authorized Officer of ~~each of the Beneficiaries~~ Beneficiary. Authorized Officer shall mean President, Treasurer, any Vice President or any Assistant Treasurer.

4. We may, but shall not be obligated to, accept any request to issue a substitute Letter of Credit. Such request shall be in an Availability Certificate in the form of Annex 3 hereto by you to us for exchange for a new Letter of Credit in the amount set forth in an Availability Certificate, which amount shall not exceed the present value of this letter of credit. Upon acceptance by us of any such request to issue a substitute Letter of Credit for exchange, the new Letter of Credit shall be issued in the amount as set forth in the Availability Certificate.
5. We hereby agree to honor a drawing hereunder made in compliance with the terms and provisions of this Letter of Credit by transferring in immediately available funds the amount specified in the draft delivered to us in connection with such drawing to such account at such bank in the United States as you may specify in your draft delivered to us pursuant to Paragraph 3 hereof, by 3:00 P.M. (New York, NY time) on the date of such drawing, if delivery of this requisite document is made prior to 11:00 AM (New York, NY time) on a business day pursuant to Paragraph 3 herein above, but at the opening of business on the first Business Day next succeeding the date of such drawing if delivery of the requisite document is made on or after 11:00 AM (New York, NY time) on any Business Day pursuant to Paragraph 3 herein above.



6. If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you prompt notice (not exceeding three (3) Business Days following the date of receipt of the documents) that the demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefore and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effected in conformity with this Letter of Credit, you may attempt to correct any such non-conforming demand for payment to the extent that you are entitled to do so, provided, however, in such event a conforming demand for payment must be timely made in accordance with the terms of this Letter of Credit.
7. This Letter of Credit will automatically terminate and be delivered to us for cancellation on the earliest of (i) the making by you of the drawings in an amount equal to the maximum amount available to be made hereunder, (ii) the date we issue a new letter of credit in exchange for this Letter of Credit in accordance with paragraph 4 herein above, (iii) the date we receive from you a Certificate of Expiration in the form of Annex 4 hereto, or (iv) will be automatically extended without written amendment for successive additional one (1) year periods from the current or any future extended expiry date, unless at least ninety (90) days prior to such date of expiration, we give written notice to Beneficiaries/Beneficiary by registered or certified mail, return receipt requested, or by overnight courier, at the address set forth above, or at such other address of which prior written notice has been provided to us, that we elect not to renew this irrevocable standby Letter of Credit for such additional one (1) year period.
8. As used herein:

“Availability Certificate” shall mean a certificate substantially in the form of Annex 3 hereto, appropriately completed and duly signed by your authorized officer.

“Business Day” shall mean any day on which commercial banks are not authorized or required to close in New York, New York and any day on which payments can be effected on the Fed wire system.

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

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

10. We certify that as of [Insert Date] we [Insert Bank] satisfy the senior unsecured debt rating of “A” from Standard & Poor’s Rating Service or “A2” from Moody’s Investor Service Inc.
11. The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid through us referencing this Letter of Credit No. [Insert Credit No]. Partial drawings are permitted hereunder.
12. Faxed document(s) are acceptable. Presentation by fax must be made to fax number [Insert Fax] confirmed by telephone to [Insert Phone].
13. In the event of act of God, riot, civil commotion, insurrection, war, terrorism or by any strikes or lock outs, or any cause beyond our control, that interrupts our business, and causes the place for presentation of this letter of credit to be closed for business on the last day of presentation, the expiration date of this letter of credit shall be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.
14. This original letter of credit has been sent to the CompanyBeneficiary located at [Insert Address] above (as per Applicant’s instructions). The aggregate amount paid to the Company[Insert Beneficiary Name], during the validity of this Letter of Credit will not exceed the amount of this Letter of Credit. Any demands or communications in the form of the attached Annexes (except for Annex 5) or other communications directed to us under this Letter of Credit must be signed by an Authorized Officer of ~~the EDC:~~[Insert Beneficiary Name]. Acceptance or rejection of any amendments to this Letter of Credit or any extensions pursuant to Annex 5 must be signed by an Authorized Officer of ~~each of the Beneficiaries~~ [Insert Beneficiary Name].

Very truly yours,

(Bank)

By: \_\_\_\_\_  
Name: [Insert Name]  
Title: [Insert Title]  
Date: [Insert Date]

By: \_\_\_\_\_  
Name: [Insert Name]  
Title: [Insert Title]  
Date: [Insert Date]

*Annex 1 to Letter of Credit*

DRAWING UNDER LETTER OF CREDIT NO. [Insert Credit No.]

[Insert Date]

To: [Insert Bank]  
[Insert Address]

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

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

1. Capitalized terms used herein that are defined herein shall have the meanings ascribed thereto in the Letter of Credit.
2. "Pursuant to Paragraph 2 of the Letter of Credit No. [Insert Credit No.], dated [Insert Date], the undersigned is entitled to make a drawing under the Letter of Credit in the aggregate amount of \$[Insert Dollars], inasmuch as there is an Event of Default under any DS Supplier Master Agreement between the Applicant and us.
3. We acknowledge that, upon your honoring the drawing herein requested, the amount of the Letter of Credit available for drawing shall be automatically decreased by an amount equal to this drawing.

Very truly yours,

~~The Metropolitan Edison~~ [Insert Company Name]

By: \_\_\_\_\_  
Name: [Insert Name]  
Title: [Insert Title]  
Date: [Insert Date]

By: \_\_\_\_\_  
Name: [Insert Name]  
Title: [Insert Title]  
Date: [Insert Date]

*Annex 2 to Letter of Credit*

DRAWING UNDER LETTER OF CREDIT NO. [Insert Credit No.]

[Insert Date]

ON [Business Day immediately succeeding date of presentation]

| PAY TO: ~~The Metropolitan Edison~~ [Insert Company Name]

\$ [Insert Dollars]

FOR VALUE RECEIVED AND CHARGE TO ACCOUNT OF LETTER OF CREDIT NO.  
[Insert Credit No.]

OF

[Insert Bank]  
[Insert Address]

The [Insert Company]

By: \_\_\_\_\_  
Name: [Insert Name]  
Title: [Insert Title]  
Date: [Insert Date]

By: \_\_\_\_\_  
Name: [Insert Name]  
Title: [Insert Title]  
Date: [Insert Date]

*Annex 3 to Letter of Credit*

AVAILABILITY CERTIFICATE  
UNDER LETTER OF CREDIT NO. [Insert Credit No.]

[Insert Date]

To: [Insert Bank]  
[Insert Address]  
Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

Each of the undersigned hereby requests that, in exchange for the above-referenced Letter of Credit, a new Letter of Credit be issued in the aggregate amount of \$[Insert Dollars] (the “New Amount”) and to expire on [Insert Date], but otherwise in the form of this Letter of Credit.

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

\_\_\_\_\_  
Beneficiaries  
Beneficiary  
Addresses

Very truly yours,

~~The Metropolitan Edison~~ [Insert Company Name]

By: \_\_\_\_\_  
Name: [Insert Name]  
Title: [Insert Title]  
Date: [Insert Date]

By: \_\_\_\_\_  
Name: [Insert Name]  
Title: [Insert Title]  
Date: [Insert Date]

APPLICANT NAME  
By: \_\_\_\_\_  
Name: [Insert Name]  
Title: [Insert Title]  
Date: [Insert Date]

Agreed and Accepted: [Insert Bank]  
By: \_\_\_\_\_  
Name: [Insert Name]  
Title: [Insert Title]  
Date: [Insert Date]





*Annex 4 to Letter of Credit*

CERTIFICATE OF EXPIRATION  
OF LETTER OF CREDIT NO. [Insert Credit No.]  
[Insert Date]

To: [Insert Bank]  
[Insert Address]

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

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

~~The Metropolitan Edison~~ [Insert Company Name]

By: \_\_\_\_\_  
Name: [Insert Name]  
Title: [Insert Title]  
Date: [Insert Date]

By: \_\_\_\_\_  
Name: [Insert Name]  
Title: [Insert Title]  
Date: [Insert Date]

cc: [Insert Applicant Name]

*Annex 5 to Letter of Credit*

NOTICE OF EXTENSION  
OF LETTER OF CREDIT NO. [Insert Credit No.]

[Insert Date]

To: ~~The Metropolitan Edison~~ [Insert Company Name]

Re: Our Letter of Credit no. [Insert Credit No.] presently in the aggregate amount of USD [Insert Amount] issued for the account of ~~Metropolitan Edison~~ [Insert Company Name] and expiring on [Insert Date].

On the expiration date of the Letter of Credit no. [Insert Credit No.], we will issue a new Letter of Credit No. [Insert Credit No.] to expire on [Insert Date]. This new Letter of Credit No. [Insert Credit No.] will, aside from the expiration date be in the amount and form of our Letter of Credit No. [Insert Credit No.].

Very truly yours,

BANK [Insert Bank]

By: \_\_\_\_\_  
Name: [Insert Name]  
Title: [Insert Title]  
Date: [Insert Date]

cc: [Insert Applicant Name]

*Annex 6 to Letter of Credit*

NOTICE OF TRANSFER  
OF LETTER OF CREDIT NO. [Insert Credit No.]

[Insert Date]

To: [Insert Bank]  
[Insert Address]

To Whom It May Concern:

Re: Credit [Insert Credit No.]

Issued by: [Insert Name]

Advice No.: [Insert Advise No.]

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

[Insert Transferee Name]  
(Name of Transferee)

[Insert Address]  
(Address)

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

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

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

Enclosed is a certified check in the amount of \$ [Insert Amount] in payment of your transfer commission and in addition we agree to pay to you on demand any expenses that may be incurred by you in conjunction with this transfer.

Very Truly Yours,

**[Insert Signature of Company]**  
(Signature of the Company)

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

(Name of authenticating party)

**[Insert Signature of Authenticating Party]**  
(Authorized signature of authenticating party)  
Name: **[Insert Name]**  
Title: **[Insert Title]**

## APPENDIX ~~DB~~ - GUARANTY

GUARANTY (this “Guaranty”), dated as of [Insert Date], made by \_\_\_\_\_ (the “Guarantor”), a corporation organized and existing under the laws of [Insert Law References] in favor of ~~Metropolitan Edison~~ [Insert Company Name] (the “Guaranteed Party”), a corporation organized and existing under the laws of the Commonwealth of Pennsylvania.

Terms not defined herein take on the meaning given to them in the DS Supplier Master Agreement(s) dated [Insert Date]. -Guarantor enters into this Guaranty in consideration of, and as an inducement for Guaranteed Party having entered into or entering into the “Agreements” with [Insert Name] (Name), a [Insert State] (State) corporation (the “DS Supplier”), which may involve the extension of credit by the Guaranteed Party. Guarantor, subject to the terms and conditions hereof, hereby unconditionally and absolutely guarantees to the Guaranteed Party the full and prompt payment when due, subject to an applicable grace period and upon demand in writing from the Guaranteed Party to the Guarantor’s attention at the address for Guarantor set forth in Section 11 hereof of any and all amounts payable by the DS Supplier to the Guaranteed Party arising out of the Agreement(s), and,

1. The Guarantor, as primary obligor and not merely as surety, hereby irrevocably and unconditionally guarantees the full and prompt payment when due (whether by acceleration or otherwise) of the principal and interest on any sums due and payable by the DS Supplier as a result of an Event of Default under the Agreement(s) (including, without limitation, indemnities, damages, fees and interest thereon, pursuant to the terms of the Agreement(s)). Notwithstanding anything to the contrary herein, the maximum aggregate liability of the Guarantor under this Guaranty shall Option 1 (in no event exceed [Insert Limit Amount].) Option 2 (in no event exceed the lesser of [Insert Limit Amount] or the sum of the Total Exposures Amounts under the Agreement(s).) All such principal, interest, obligations and liabilities, collectively, are the “Guaranteed Obligations”. This Guaranty is a guarantee of payment and not of collection.
2. The Guarantor hereby waives diligence, acceleration, notice of acceptance of this Guaranty and notice of any liability to which it may apply, and waives presentment and all demands whatsoever except as noted herein, notice of protest, notice of dishonor or nonpayment of any such liability, suit or taking of other action by any Guaranteed Party against, and any other notice to, any party liable thereon (including the Guarantor or any other guarantor), filing of claims with a court in the event of the insolvency or bankruptcy of the DS Supplier, and any right to require a proceeding first against the DS Supplier.
3. The Guaranteed Party may, at any time and from time to time, without notice to or consent of the Guarantor, without incurring responsibility to the Guarantor and without impairing or releasing the obligations of the Guarantor hereunder, upon or without any terms or conditions: (i) take or refrain from taking any and all actions with respect to the Guaranteed Obligations, any Document or any person (including the DS Supplier) that

the Guaranteed Party determines in its sole discretion to be necessary or appropriate; (ii) take or refrain from taking any action of any kind in respect of any security for any Guaranteed Obligation(s) or liability of the DS Supplier to the Guaranteed Party; or (iii) compromise or subordinate any Guaranteed Obligation(s) or liability of the DS Supplier to the Guaranteed Party including any security therefore.

4. Subject to the terms and conditions hereof, the obligations of the Guarantor under this Guaranty are absolute and unconditional and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by: (i) any extension, renewal, settlement, compromise, waiver, consent, discharge or release by the DS Supplier concerning any provision of the Agreement(s) in respect of any Guaranteed Obligations of the DS Supplier; (ii) the rendering of any judgment against the DS Supplier or any action to enforce the same; (iii) the existence, or extent of, any release, exchange, surrender, non-perfection or invalidity of any direct or indirect security for any of the Guaranteed Obligations; (iv) any modification, amendment, waiver, extension or supplement to any of the Agreement(s) or the Guaranteed Obligations agreed to from time to time by the DS Supplier and the Guaranteed Party; (v) any change in the corporate existence (including its constitution, laws, rules, regulations or powers), structure or ownership of the DS Supplier or the Guarantor, or any insolvency, bankruptcy, reorganization or other similar proceedings affecting the DS Supplier or its assets, the Guarantor or any other guarantor of any of the Guaranteed Obligations; (vi) the existence of any claim, set-off or other rights which the Guarantor may have at any time against the DS Supplier, the Guaranteed Party or any other corporation or person, whether in connection herewith or in connection with any unrelated transaction; provided that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim; (vii) the invalidity, irregularity or unenforceability in whole or in part of the Agreement(s) or any Guaranteed Obligations or any instrument evidencing any Guaranteed Obligations or the absence of any action to enforce the same, or any provision of applicable law or regulation purporting to prohibit payment by the DS Supplier of amounts to be paid by it under the Agreement(s) or any of the Guaranteed Obligations; and (viii) except for a failure to comply with any applicable statute of limitations, any other act or omission to act or delay of any kind of the DS Supplier, any other guarantor, the Guaranteed Party or any other corporation or person or any other event, occurrence or circumstance whatsoever which might, but for the provisions of this paragraph, constitute a legal or equitable discharge of the Guarantor's obligations hereunder.
5. The Guarantor hereby irrevocably waives (a) any right of reimbursement or contribution, and (b) any right of salvage against the DS Supplier or any collateral security or guaranty or right of offset held by the Guaranteed Party therefore.
6. The Guarantor will not exercise any rights, which it may acquire by way of subrogation until all Guaranteed Obligations to the Guaranteed Party pursuant to the Agreement(s) have been paid in full.

7. Subject to the terms and conditions hereof, this Guaranty is a continuing one and all liabilities to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon. Except for a failure to comply with any applicable statute of limitations, no failure or delay on the part of the Guaranteed Party in exercising any right, power or privilege hereunder, and no course of dealing between the Guarantor and the Guaranteed Party, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights, powers and remedies herein expressly provided are cumulative and not exclusive of any rights, powers or remedies, which the Guaranteed Party would otherwise have. No notice to or demand on the Guarantor in any case shall entitle the Guarantor to any other or further notice of demand in similar or other circumstances or constitute a waiver of the rights of the Guaranteed Party to any other or further action in any circumstances without notice or demand.
8. This Guaranty shall be binding upon the Guarantor and upon its successors and assigns and shall inure to the benefit of and be enforceable by the Guaranteed Party and its successors and assigns; provided, however, that the Guarantor may not assign or transfer any of its rights or obligations hereunder without the prior written consent of the Guaranteed Party. The assignment rights of the Guaranteed Party will be in accordance with the terms of the underlying Agreement(s).
9. Neither this Guaranty nor any provision hereof may be changed, waived, discharged or terminated except upon written agreement of the Guaranteed Party and the Guarantor.
10. The Guarantor agrees that its liability as guarantor shall continue and remain in full force and effect in the event that all or any part of any payment made hereunder or any obligation or liability guaranteed hereunder is recovered (as a fraudulent conveyance, preference or otherwise) rescinded or must otherwise be reinstated or returned due to bankruptcy or insolvency laws or otherwise.
11. All notices and other communications hereunder shall be made at the addresses by hand delivery, by the next day delivery service effective upon receipt or by certified mail return receipt requested (effective upon scheduled weekday delivery day) or telefacsimile (effective upon receipt of evidence, including telefacsimile evidence, that telefacsimile was received)

If to the Guarantor:

[Insert Guarantor]

If to the Guaranteed Party:

[Insert Guaranteed Party]

12. If claim is ever made upon the Guaranteed Party for repayment or recovery of any amount or amounts received in payment or on account of any of the Guaranteed Obligations and the Guaranteed Party repays all or part of such amount by reason of (a) any judgment, decree or order of any court or administrative body having jurisdiction over such payee or any of its property, or (b) any settlement or compromise of any such claim effected by such payee with any such claimant (including the Guarantor), then and in such event the Guarantor agrees that any such judgment, decree, order, settlement or compromise shall be binding upon it, notwithstanding any revocation hereof or the cancellation of the Agreement(s) or other instrument evidencing any liability of the Guarantor, and the Guarantor shall be and remain liable to the Guaranteed Party hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by any such payee.
13. The Guarantor hereby certifies that it satisfies the Minimum Rating as defined in the Agreement(s).
14. This Guaranty shall remain in full force and effect until all Guaranteed Obligations have been fully and finally performed, at which point it will expire. The Guarantor may terminate this Guaranty upon thirty (30) days prior written notice to the Guaranteed Party which termination shall be effective only upon receipt by the Guaranteed Party of alternative means of security or credit support, as specified in the Agreement(s) and in a form reasonably acceptable to the Guaranteed Party. Upon the effectiveness of any such expiration or termination, the Guarantor shall have no further liability under this Guaranty, except with respect to the Guaranteed Obligations entered into prior to the time the expiration or termination is effective, which Guaranteed Obligations shall remain guaranteed pursuant to the terms of this Guaranty until finally and fully performed.
15. The Guarantor represents and warrants that: (i) it is duly organized and validly existing under the laws of the jurisdiction in which it was organized and has the power and authority to execute, deliver, and perform this Guaranty; (ii) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over the Guarantor is required on the part of the Guarantor for the execution, delivery and performance of this Guaranty except for those already made or obtained; (iii) this Guaranty constitutes a valid and legally binding agreement of the Guarantor, and is enforceable against the Guarantor, except as the enforceability of this Guaranty may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditor's rights generally and by general principles of equity; and (iv) the execution, delivery and performance of this Guaranty by the Guarantor have been and remain duly authorized by all necessary corporate or comparable action and do not contravene any provision of its [insert appropriate corporate organizational document, such as Declaration of Trust, Limited Liability Agreement, Articles of Incorporation or by-laws] or any law, regulation or contractual restriction binding on it or its assets.



16. This Guaranty and the rights and obligations of the DS Supplier and the Guarantor hereunder shall be construed in accordance with and governed by the laws of the Commonwealth of Pennsylvania. The Guarantor and Guaranteed Party jointly and severally agree to the exclusive jurisdiction of State and federal courts located in the Commonwealth of Pennsylvania over any disputes arising or relating to this Guaranty and waive any objections to venue or inconvenient forum. The Guarantor and Guaranteed Party each hereby irrevocably waive any and all rights to trial by jury with respect to any legal proceeding arising out of or relating to this Guaranty.
17. This writing is the complete and exclusive statement of the terms of this Guaranty and supersedes all prior oral or written representations, understandings, and agreements between the Guaranteed Party and the Guarantor with respect to subject matter hereof. The Guaranteed Party and the Guarantor agree that there are no conditions to the full effectiveness of this Guaranty.
18. Every provision of this Guaranty is intended to be severable. If any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable. This Guaranty may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.
19. No Trustee or shareholder of Guarantor shall be held to any liability whatsoever for any obligation under this Guaranty, and such Guaranty shall not be enforceable against any such Trustee in their or his or her individual capacities or capacity. This Guaranty shall be enforceable against the Trustees of Guarantor only as such, and every person, firm, association, trust or corporation having any claim or demand arising under this Guaranty and relating to Guarantor, its shareholders or Trustee shall look solely to the trust estate of Guarantor for the payment or satisfaction thereof.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed and delivered as of the date first above written to be effective as of the earliest effective date of any of the Agreement(s).

(GUARANTOR)  
 [Insert Guarantor]

Accepted and Agreed to:  
 [Insert Name]

By:  
 Name: [Insert Name]  
 Title: [Insert Title]

By: ~~Metropolitan Edison~~ [Insert Company Name]  
 Name: [Insert Name]  
 Title: [Insert Title]

**APPENDIX E - SAMPLE C - PJM INVOICE EDC/SUPPLIER BILLING  
RESPONSIBILITY**

<i>PJM Master List- Billing Line Items</i>		
ID #	Charges	
1000	Amount Due for Interest on Past Due Charges	Supplier
1100	Network Integration Transmission Service	EDC
1102	Network Integration Transmission Service (exempt)	EDC
1104	Network Integration Transmission Service Offset	EDC
1108	Transmission Enhancement	Supplier
1110	Direct Assignment Facilities	Supplier
1120	Other Supporting Facilities	Supplier
1130	Firm Point-to-Point Transmission Service	Supplier
1135	Neptune Voluntary Released Transmission Service (Firm)	N/A
1140	Non-Firm Point-to-Point Transmission Service	Supplier
1145	Neptune Voluntary Released Transmission Service (Non-Firm)	N/A
1146	Neptune Default Released Transmission Service (Non-Firm)	N/A
1147	Neptune Unscheduled Usage Billing Allocation	N/A
1200	Day-ahead Spot Market Energy	Supplier
1205	Balancing Spot Market Energy	Supplier
1210	Day-ahead Transmission Congestion	Supplier
1215	Balancing Transmission Congestion	Supplier
1218	Planning Period Congestion Uplift	Supplier
1220	Day-ahead Transmission Losses	Supplier
1225	Balancing Transmission Losses	Supplier
1230	Inadvertent Interchange	Supplier
1240	Day-ahead Economic Load Response	Supplier
1241	Real-time Economic Load Response	Supplier
1245	Emergency Load Response	Supplier
1250	Meter Error Correction	EDC
1250	Emergency Energy	Supplier
1301	PJM Scheduling, System Control and Dispatch Service - Control Area Administration	Supplier
1302	PJM Scheduling, System Control and Dispatch Service - FTR Administration	Supplier
1303	PJM Scheduling, System Control and Dispatch Service - Market Support	Supplier
1304	PJM Scheduling, System Control and Dispatch Service - Regulation Market Administration	Supplier
1305	PJM Scheduling, System Control and Dispatch Service - Capacity Resource/Obligation Mgmt.	Supplier
1306	PJM Scheduling, System Control and Dispatch Service - Advanced Second Control Center	Supplier
1308	PJM Scheduling, System Control and Dispatch Service Refund - Control Area Administration	Supplier
1309	PJM Scheduling, System Control and Dispatch Service Refund - FTR Administration	Supplier
1310	PJM Scheduling, System Control and Dispatch Service Refund - Market Support	Supplier
1311	PJM Scheduling, System Control and Dispatch Service Refund - Regulation Market Administration	Supplier
1312	PJM Scheduling, System Control and Dispatch Service Refund - Capacity Resource/Obligation Mgmt.	Supplier
1314	Market Monitoring Unit (MMU) Funding	Supplier
1315	FERC Annual Charge Recovery	Supplier
1316	Organization of PJM States, Inc. (OPSI) Funding	Supplier
1317	North American Electric Reliability Corporation (NERC)	Supplier
1318	Reliability First Corporation (RFC)	Supplier
1320	Transmission Owner Scheduling, System Control and Dispatch Service	Supplier
1330	Reactive Supply and Voltage Control from Generation and Other Sources Service	Supplier
1340	Regulation and Frequency Response Service	Supplier
1350	Energy Imbalance Service	Supplier
1360	Synchronized Reserve	Supplier
1365	Day-ahead Scheduling Reserve	Supplier
1370	Day-ahead Operating Reserve	Supplier
1371	Day-ahead Operating Reserve for Load Response	Supplier
1375	Balancing Operating Reserve	Supplier
1376	Balancing Operating Reserve for Load Response	Supplier
1377	Synchronous Condensing	Supplier
1378	Reactive Services	Supplier
1380	Black Start Service	Supplier
1400	Load Reconciliation for Spot Market Energy	Supplier
1410	Load Reconciliation for Transmission Congestion	Supplier
1420	Load Reconciliation for Transmission Losses	Supplier
1430	Load Reconciliation for Inadvertent Interchange	Supplier
1440	Load Reconciliation for PJM Scheduling, System Control and Dispatch Service	Supplier
1441	Load Reconciliation for PJM Scheduling, System Control and Dispatch Service Refund	Supplier
1445	Load Reconciliation for FERC Annual Charge Recovery	Supplier
1446	Load Reconciliation for Organization of PJM States, Inc. (OPSI) Funding	Supplier
1447	Load Reconciliation for North American Electric Reliability Corporation (NERC)	Supplier
1448	Load Reconciliation for Reliability First Corporation (RFC)	Supplier
1450	Load Reconciliation for Transmission Owner Scheduling, System Control and Dispatch Service	Supplier
1460	Load Reconciliation for Regulation and Frequency Response Service	Supplier
1470	Load Reconciliation for Synchronized Reserve	Supplier
1480	Load Reconciliation for Synchronous Condensing	Supplier
1490	Load Reconciliation for Reactive Services	Supplier
1500	Financial Transmission Rights Auction	Supplier
1600	RPM Auction	Supplier
1610	Locational Reliability	Supplier
1650	Non-Unit Specific Capacity Transaction	Supplier
1650	Demand Resource and I/R Compliance Penalty	Supplier
1651	Capacity Resource Deficiency	Supplier
1652	Generation Resource Rating Test Failure	Supplier
1653	Qualifying Transmission Upgrade Compliance Penalty	Supplier
1654	Peak Season Maintenance Compliance Penalty	Supplier
1655	Peak-Hour Period Availability	Supplier
1720	RTO Start-up Cost Recovery	Supplier
1730	Expansion Cost Recovery	Supplier
1900	Unscheduled Transmission Service	Supplier
1910	Rampup Phase Angle Regulators	EDC
1920	Station Power	Supplier
1930	Generation Deactivation	Supplier
1950	Virginia Retail Administrative Fee	N/A
1980	Miscellaneous Bilateral	Supplier
1995	PJM Annual Membership Fee	Supplier
1999	PJM Customer Payment Default	Supplier

**PJM Master List - Billing Line Items**

ID #	Credits	
2100	Network Integration Transmission Service	EDC
2102	Network Integration Transmission Service (exempt)	EDC
2104	Network Integration Transmission Service Offset	EDC
2106	Non-Zone Network Integration Transmission Service	EDC
2108	Transmission Enhancement	Supplier
2110	Direct Assignment Facilities	Supplier
2120	Other Supporting Facilities	EDC
2130	Firm Point-to-Point Transmission Service	EDC
2132	Internal Firm Point-to-Point Transmission Service	EDC
2135	Neptune Voluntary Released Transmission Service (Firm)	N/A
2140	Non-Firm Point-to-Point Transmission Service	Supplier
2142	Internal Non-Firm Point-to-Point Transmission Service	Supplier
2145	Neptune Voluntary Released Transmission Service (Non-Firm)	N/A
2146	Neptune Default Released Transmission Service (Non-Firm)	N/A
2210	Transmission Congestion	Supplier
2217	Planning Period Excess Congestion	Supplier
2218	Planning Period Congestion Uplift	Supplier
2220	Transmission Losses	Supplier
2240	Day-ahead Economic Load Response	Supplier
2241	Real-time Economic Load Response	Supplier
2245	Emergency Load Response	Supplier
2250	Emergency Energy	Supplier
2320	Transmission Owner Scheduling, System Control and Dispatch Service	EDC
2330	Reactive Supply and Voltage Control from Generation and Other Sources Service	Supplier
<del>2340</del>	<del>Regulation and Frequency Response Service</del>	<del>Supplier</del>
2350	Energy Imbalance Service	Supplier
2360	Synchronized Reserve	Supplier
2365	Day-ahead Scheduling Reserve	Supplier
2370	Day-ahead Operating Reserve	Supplier
2371	Day-ahead Operating Reserve for Load Response	Supplier
2375	Balancing Operating Reserve	Supplier
2376	Balancing Operating Reserve for Load Response	Supplier
2377	Synchronous Condensing	Supplier
2378	Reactive Services	Supplier
2380	Black Start Service	Supplier
2420	Load Reconciliation for Transmission Losses	Supplier
2500	Financial Transmission Rights Auction	Supplier
2510	Auction Revenue Rights	Supplier
2600	RPM Auction	Supplier
2620	Interruptible Load for Reliability	Supplier
2630	Capacity Transfer Rights	Supplier
2640	Incremental Capacity Transfer Rights	Supplier
2650	Non-Unit Specific Capacity Transaction	Supplier
2660	Demand Resource and ILR Compliance Penalty	Supplier
2661	Capacity Resource Deficiency	Supplier
2662	Generation Resource Rating Test Failure	Supplier
2663	Qualifying Transmission Upgrade Compliance Penalty	Supplier
2664	Peak Season Maintenance Compliance Penalty	Supplier
2665	Peak-Hour Period Availability	Supplier
2720	RTC Start-up Cost Recovery	Supplier
2730	Expansion Cost Recovery	Supplier
2910	Ramapo Phase Angle Regulators	N/A
2930	Generation Deactivation	Supplier
2950	Virginia Retail Administrative Fee	N/A
2980	Miscellaneous Bilateral	Supplier
2996	Annual PJM Cell Tower	Supplier
2997	Annual PJM Building Rent	Supplier

**Finalized PJM Billing Statement Line Items**

<u>ID #</u>	<u>CHARGES</u>	<u>EDC or Supplier</u>
<u>1100</u>	<u>Network Integration Transmission Service</u>	<u>Supplier</u>
<u>1108</u>	<u>Transmission Enhancement</u>	<u>EDC</u>
<u>1730</u>	<u>Expansion Cost Recovery</u>	<u>EDC</u>
<u>1930</u>	<u>Generation Deactivation</u>	<u>Supplier</u>
<u>Other</u>	<u>Other charges that are the responsibility of a Load Serving Entity as defined by PJM</u>	<u>Supplier</u>

**Finalized PJM Billing Statement Line Items**

<u>ID #</u>	<u>CREDITS</u>	<u>EDC or Supplier</u>
<u>Other</u>	<u>Credits that a Load Serving Entity is entitled to, as defined by PJM</u>	<u>Supplier</u>

**APPENDIX D – TRANSACTION CONFIRMATION FOR INDUSTRIAL HOURLY PRICING SERVICE**

This Transaction Confirmation is being provided pursuant to and in accordance with the “Default Service Supplier Master Agreement” (the “Agreement”) dated [Insert Date] (the “Effective Date”) between Company and DS Supplier. Terms used but not defined herein shall have the meanings ascribed to them in the Agreement.

**Confirmation Effective Date:** [Insert Date]

**Class:** Industrial

BY AND BETWEEN,

**Company Name:** [Insert Company Name]

\_\_\_\_\_  
AND

**DS Supplier Name:** [Insert DS Supplier Name]

**Company Zone:** [Insert Company’s PJM Zone]

**DS Supplier Responsibility Share:** [Insert Tranches won / Insert Total Tranches]

**Delivery Period:** 00:01 a.m. on [Insert Start Date] to midnight [Insert End Date]

**DS Fixed Price** = [Insert price \$xx.xx/MWh] as bid by DS Supplier

**DS Variable Price** = The DS Variable Price is the Real Time hourly total LMP for the Company Zone, plus a fixed adder of \$5.00/MWh.

**Corrections to DS Variable Price and DS Fixed Price:** In the event that PJM changes the location or mechanism by which the LMP for the Company Zone is calculated, the Company will recalculate a new DS Variable Price for this Agreement. The PMEA/FMEA Adjustment Amount shall reflect any changes to these prices.

**Allocated AECs:**

[For West Penn: [#] Tier I non-solar AECs and [#] Tier I solar AECs]

[For Met-Ed/Penelec/Penn Power: Tier I solar AECs equal to 100% of AEPS solar photovoltaic requirements associated with the DS Supplier Responsibility Share]

**Subsection 5.4(a)(i) Notional Quantity Applicable – [Insert Yes or No]**

**Address for Notices**

The address for any notices provided pursuant to Section 6 and 16.1 of the DS Supplier Master Agreement shall be the following:

For Credit Related Issues:

If to the Supplier:

[Insert Company Name]

[Insert Name]

[Insert Address]

Telephone: [Insert Phone]

Facsimile: [Insert Fax]

Email: [Insert Email]

If to the Company:

FirstEnergy Corp.

James Buehrle – Credit Analyst

341 White Pond Drive

Akron, OH 44320

Telephone: (330) 315-6984

Facsimile: (330) 436-1901

Email: [buehrlej@firstenergycorp.com](mailto:buehrlej@firstenergycorp.com)

Copy to:

FirstEnergy Corp.

Tori Giesler

P.O. Box 16001

Reading, PA 19612-6001

Telephone: (610) 921-6658

Facsimile: (610) 939-8655

Email: [tgiesler@firstenergycorp.com](mailto:tgiesler@firstenergycorp.com)

For Notices, Section 16.1:

If to the Supplier:

Insert Company Name  
Insert Name  
Insert Address  
Telephone: Insert Phone  
Facsimile: Insert Fax  
Email: Insert Email

If to the Company:

FirstEnergy Corp.  
Dean Stathis – Director Regulated Commodity Sourcing  
P.O. Box 16001  
Reading, PA 19612-6001  
Telephone: (610) 921-6766  
Facsimile: (610) 939-8542  
Email: dstathis@firstenergycorp.com

Copy to:

FirstEnergy Corp.  
William Ridmann – VP Rates & Regulatory Affairs  
76 South Main Street 8<sup>th</sup> Floor  
Akron, OH 44308  
Telephone: (330) 761-4154  
Facsimile: (330) 761-4281  
Email: wrridman@firstenergycorp.com

and

FirstEnergy Corp.  
Tori Giesler  
P.O. Box 16001  
Reading, PA 19612-6001  
Telephone: (610) 921-6658  
Facsimile: (610) 939-8655  
Email: tgiesler@firstenergycorp.com

Please confirm that the terms stated herein accurately reflect the agreement reached on the date above between Seller and Buyer by returning an executed copy of the Transaction Confirmation. The signatories to this confirmation must have the authority to enter into this Transaction.

[Insert Company Name]

[Insert DS Supplier Name]

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

Name: [Insert Name] Name: [Insert Name]

Title: [Insert Title] Title: [Insert Title]

Date: \_\_\_\_\_ Date: \_\_\_\_\_