



PowerSupply Coordination® Agreement Ohio Firm Variable - This is a variable product

1. Nature of Service: This Agreement shall become effective only upon (i) execution by Buyer of the Pricing Attachment and this Agreement; and (ii) the earlier of execution of this Agreement by Direct Energy or written confirmation by Direct Energy of its acceptance of this Agreement to Buyer. Upon such effectiveness, Direct Energy will provide PSC Services and Electricity to meet Buyer's full usage requirements at Buyer's Facility(ies) and Buyer will receive and pay for PSC Services and Electricity to meet such usage requirements. Direct Energy's Environmental Disclosure Label ("EDL"), which is available on Direct Energy's website, is incorporated into, and made a part of, this Agreement. Direct Energy will deliver Electricity to the Host Utility for delivery to Buyer's Facility(ies). The Electricity provided under this Agreement will be Firm. Title to, control and possession of Electricity shall pass from Direct Energy to Buyer at the Point of Delivery. As a condition to Direct Energy's obligations hereunder, Buyer must be accepted by Direct Energy and the Host Utility to receive a consolidated utility bill for both PSC Services and Electricity provided by Direct Energy and delivery services provided by the Host Utility.

2. Qualification-Authorization to Act as Limited Agent: Without limiting Section 1, as a condition to Direct Energy's obligations hereunder, Buyer is authorizing Direct Energy to obtain all required account and usage information for all Facility(ies) from the Host Utility upon execution of this Agreement. Buyer agrees to appoint Direct Energy as its limited agent to perform the necessary tasks associated with its electric generation service and fulfill the terms of this Agreement. Buyer authorizes Direct Energy to execute a letter of authorization, as required by the Host Utility, and to obtain information from the Host Utility that includes Buyer's billing history, payment history, historical and future electricity usage, meter readings, and characteristics of electricity service. It is expressly understood that Direct Energy will not countersign this Agreement, purchase Electricity for Buyer's Facility(ies) or provide PSC Services until such condition is met.

3. Term: Direct Energy shall use reasonable efforts to commence service on the Facility(ies) meter read date in the start month stated on the Pricing Attachment. However, Buyer acknowledges that the commencement of service hereunder is dependent upon confirmation by the Host Utility of the completion of all required enrollment processes and if such enrollment processes occur after the Facility(ies) meter read date in the start month stated on the Pricing Attachment, Buyer's Facility(ies) shall be enrolled at the next available meter read date. Service shall continue through the Facility(ies) meter read date in the end month as stated in the Pricing Attachment (the "Initial Term") unless sooner terminated as provided herein. ***At the end of the Term, Direct Energy may choose to return Buyer to the Host Utility's service by providing reasonable advance notice to Buyer, or if Buyer and Direct Energy have not entered into any written modification, amendment or renewal of this Agreement and Buyer has not elected to obtain service from another supplier, this Agreement shall automatically continue on a month to month basis ("Monthly Renewal", each Monthly Renewal together with the Initial Term shall be the "Term") at the market-based costs as set forth in Section 4.***

Buyer Acknowledges
Price Terms:

Initial Here:

Date:

4. Price: Firm Costs: The price per kWh for Firm Costs shall be set forth on the Pricing Attachment, and includes applicable costs for a) Energy procured in accordance with Direct Energy's policies; b) transmission and distribution losses; c) All applicable costs for Ancillary Services; d) Capacity (as mandated by the PJM OATT and Operating Agreement, or as modified by PJM or approved by FERC); e) any applicable Network Integration Transmission Service ("NITS") charges, including Regional Transmission Expansion Planning (RTEP); f) Renewable Portfolio Standard ("RPS"); g) Reliability Must Run ("RMR") charges; h) Auction Revenue Rights; i) Marginal Loss Wholesale Credit; and j) the PSC Services fee. Any sales taxes, transactional taxes or other governmental or regulatory imposed taxes or surcharges to which Buyer may be subject and all applicable SECA or other similar FERC mandated transmission recovery charges are not included in the Price and shall be passed through to the Buyer in addition to the Price. The Price shall not include any transmission and Distribution charges for services provided by the Host Utility

If Buyer's Host Utility is AEP Ohio (Ohio Power and Columbus Southern), Dayton Power & Light, Duke Energy, Ohio Edison, The Illuminating Company, or Toledo Edison, then NITS, including RTEP and certain transmission-related ancillary services, will not be included in the price, and will be recovered by the Host Utility. If, for whatever reason, the NITS charges are not recovered by the Host Utility, then Direct Energy may commence billing Buyer for NITS charges, including RTEP, which applicable costs will be passed through to be paid by Buyer above the Price.

RMR is a cost component included in the Direct Energy Price for accounts within the AEP Ohio (Ohio Power and Columbus Southern), Duke Energy, and Dayton Power & Light Host Utilities. If Buyer's Host Utility is Ohio Edison, The Illuminating Company, or Toledo Edison, then RMR will not be included in the price, and will be recovered by the Host Utility. If, for whatever reason, the RMR charges are not recovered by the Host Utility, then Direct Energy may commence billing Buyer for RMR charges which applicable costs will be passed through to be paid by Buyer above the Price.

Without limitation on any other rights or remedies, the Price does not include (i) transmission costs and charges beyond May 31st, 2015 which arise from, or relate to, The Public Utilities Commission of Ohio **not** accepting the transmission rider proposed in docket 13-2385-EL-SSO or (ii) any other change in Law(s). Any such costs and charges are in addition to the Price and will be passed through to Buyer by Direct Energy.

The price per kWh during any Monthly Renewal will include the market-based cost for Energy as reasonably determined by Direct Energy, plus all other taxes, costs, charges or fees which are set forth in the Price section of this Agreement.

Buyer acknowledges that any costs assessed by the Host Utility or any third party as a result of the provision of service hereunder, including but not limited to switching costs, are not included in the Price and shall be the responsibility of Buyer. If Buyer changes PSC Service Provider, the Host Utility may also apply a switching fee under the incumbent Host Utility's tariff. If Buyer wishes to return to Host Utility after switching to a PSC Service Provider, Buyer may be charged a rate other than the Host Utility's regulated service commodity rate. This is a variable product.

5. Billing and Payment: Payment-in-full is due twenty (20) days from the date of the invoice. If Buyer fails to remit payment in full in any month, interest will be assessed on the late balance at the lower of one-and-one-half (1.5%) percent per month or the highest rate allowed by law. Buyer may in good faith dispute any portion of an invoice by providing Direct Energy with a written explanation specifying the amount in dispute and the reason for the dispute by the payment due date. Buyer shall remit all invoiced and undisputed amounts by the date due. In all cases, the Parties shall use good faith efforts to resolve any dispute. In the event the Parties are unable to resolve the dispute within ten (10) days of the notice date, either Party may begin legal proceedings to resolve the dispute. Any amounts determined owed, together with interest thereon as provided above, shall be paid within three (3) days of the date on which the dispute is resolved. Budget billing is not available for use with Direct Energy's commodity offer. Buyer may request up to twenty-four (24) months of payment history, up to two (2) times within a twelve (12) month period, without charge.

Buyer will receive from Direct Energy a monthly invoice following its meter read date for Direct Energy Services provided under this Agreement and the Host Utility will continue to bill Buyer directly for any transmission and Distribution charges. Buyer shall receive a separate invoice per Facility unless Buyer selects the Aggregated Billing option as described in this paragraph and reflected in a "Billing Contract Information and Section Form", which is attached hereto and made a part hereof. For the purposes of this Agreement, "Aggregated Billing" means that billing for Buyer's Facility(ies) shall may be combined into a single monthly invoice (excepting however, that an aggregated invoice may contain no more than fifty (50) Facilities. If Buyer has more than fifty (50) Facility(ies), Buyer shall receive more than one aggregated invoice). If Buyer selects Aggregated Billing, Direct Energy shall choose the day of the month on which to deliver an invoice to Buyer based upon the Facility(ies) meter read dates. In the event Buyer desires to discontinue Aggregated Billing and instead receive a separate invoice for each Facility, Buyer shall submit such request in writing to Direct Energy and Direct Energy shall separate Buyer's invoice provided that there are no outstanding invoice balance(s) on Buyer's Facility(ies). Buyer has the right to request from Direct Energy, without charge and up to two times in any twelve month period, a copy of its payment history for the previous twenty-four (24) months.

If in any month Direct Energy does not receive the information necessary to invoice Buyer or uses information obtained from a third party meter reading service, Direct Energy may use either estimated data or the third party meter usage data to calculate Buyer's invoice and, upon receipt of actual data in the case of an estimated read, reconcile the amount billed on future invoices. If Buyer's Facility(ies) have any interval meters, Buyer acknowledges that the usage information for such meters contained on the Direct Energy invoice may vary from that contained upon the Host Utility bill as a result of different billing cycles being utilized for those meter reads.

In no event shall any adjustments or corrections be made to any amount billed after the lapse of the longer of twenty-four (24) months from the date of the invoice or the time frame permitted by the Regional Transmission Operator, the Independent System Operator or the Host Utility's tariff for adjustments to consumption information.

6. Credit: Direct Energy may request that Buyer provide financial information sufficient for Direct Energy to complete a credit review prior to providing service hereunder. If, prior to commencing service or at any time during the term of this Agreement, Direct Energy has good faith concerns about the creditworthiness of Buyer, Direct Energy may require that Buyer provide reasonable credit assurances, including but not limited to, an escrow account, deposit, letter of credit, or parental guaranty. If such credit assurance(s) is not provided within seven (7) days of being requested by Direct Energy, then such failure shall be deemed an Event of Default under this Agreement and Direct Energy may terminate this Agreement without any additional notice. If, as a result of the early termination due to Buyer's failure to provide the requisite credit assurance, Direct Energy incurs direct actual damages in liquidating the Electricity purchased to serve Buyer under this Agreement, Buyer agrees to be responsible for such damages. Direct Energy will calculate the amount of the damages and submit an invoice to Buyer, along with substantiation of the charges, which invoice will be due and payable pursuant to the payment terms of this Agreement.

7. Load Change Information: In order to assist Direct Energy in providing accurate expected usage information to Buyer's Host Utility, Buyer shall timely notify Direct Energy of any anticipated significant changes in its actual usage. Without limiting Buyer's obligation to provide such notice, Buyer shall give Direct Energy at least thirty (30) days' notice ("Notice of Load Change") prior to

1) removing a Facility(ies) from service hereunder as a result of i) ceasing operations at such Facility(ies), ii) closure of the Facility(ies) or iii) the sale of the Facility(ies) to an unrelated third party, and/or 2) engaging in any load usage reduction as a result of any third party arrangement(s), or programs(s). Buyer shall be responsible for payment of any Actual Damages incurred by Direct Energy, if any, as a result of any such changes.

Also, if Buyer has a change in usage of 100% or more for its Facilities, Direct Energy may pass through the resulting cost increases to Buyer. If Direct Energy elects to pass through such cost increases, Direct Energy will calculate the amount of such costs in a commercially reasonable manner and submit an invoice to Buyer, which invoice will be due and payable pursuant to the payment terms of this Agreement.

8.Change in Law: If regulatory changes shift costs from the Host Utility or ISO or RTO to Direct Energy or from Direct Energy to the Host Utility or ISO or RTO, then such costs or credits may be passed through to the Buyer, in accordance with the requirements established by the Public Utility Commission of Ohio. If any laws, orders, decisions, or regulations are passed, modified, implemented or interpreted by judicial or regulatory order administrative proceeding or legislative enactment, or if there is a change in any rate or rate class which applies to Buyer's Facilities, any of which creates additional costs not currently included in the Price or an increase in any of the cost components of the Price ("Incremental Charges"), then Direct Energy may pass through such Incremental Charges to be paid by Buyer in addition to the Price and in accordance with the payment terms in this Agreement and the requirements established by the Public Utility Commission of Ohio.

9.Limitation of Liability Disclaimer: EXCEPT WITH RESPECT TO REMEDIES OTHERWISE SPECIFICALLY PROVIDED FOR IN THIS AGREEMENT, LIABILITY IS LIMITED TO DIRECT DAMAGES AS THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE EXPRESSLY WAIVED. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR ANY BUSINESS INTERRUPTION DAMAGES. EACH PARTY AGREES THAT IT HAS A DUTY TO MITIGATE DAMAGES AND COVENANTS THAT IT WILL USE COMMERCIALY REASONABLE EFFORTS TO MINIMIZE ANY DAMAGES IT MAY INCUR AS A RESULT OF THE OTHER PARTY'S PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT. TO THE MAXIMUM EXTENT POSSIBLE UNDER LAW, ARTICLE 2 OF THE UNIFORM COMMERCIAL CODE SHALL APPLY TO ELECTRICITY SOLD HEREUNDER. DIRECT ENERGY MAKES NO REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT, AND EXPRESSLY DISCLAIMS AND NEGATES ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE..

10. Termination: This Agreement may be terminated at any time after the date hereof, (i) by mutual consent in writing by the parties, (ii) by either party if there has been an Event of Default that is not cured within fifteen (15) calendar days of the defaulting party's receipt of written notice from the non-defaulting party, (iii) by Direct Energy if Buyer fails to provide the credit assurance requested, pursuant to Section 6 within seven (7) days of being requested by Direct Energy; (iv) during a Monthly Renewal pursuant to Section 3, by either party upon providing the other party with thirty (30) days' prior written notice, or (v) if a listed Buyer Facility is not served by the Host Utility, pursuant to Section 11 below.

In the event this Agreement is terminated by Buyer prior to the expiration of the Initial Term and where permitted by applicable law (and such termination is not the result of an uncured breach of Direct Energy pursuant to subsection (ii) of Section 10 above) or if Direct Energy terminates this Agreement pursuant to subsections (ii) or (iii) above, the following calculation of Direct Energy's damages shall apply and serve as Direct Energy's exclusive remedy (except in the case of a breach of the confidentiality obligations set forth in Section 17): if Buyer's historical load profile for the 12 months prior to the date of termination was (A) under 100,000 kWh, Buyer shall pay to Direct Energy an amount equal to the lesser of (i) \$200 or (ii) the maximum extent permitted by applicable law; and (B) equal to or over 100,000 kWh, Buyer shall pay to Direct Energy an amount equal to, at Direct Energy's election, the greater of (i) \$200 or (ii) any Actual Damages. Buyer understands and acknowledges that, to the extent that Buyer's historical load profile for the 12 months prior to the date of termination is equal to or over 100,000 kWh, Direct Energy will incur substantial damages as a result of Buyer's breach, and is entitled to be paid the Actual Damages incurred as a result of such breach.

11. Cancellation or Transferring Service as a Result of Relocating: Notwithstanding herein, either party may terminate this Agreement, if the aggregate demand of all of Buyer's Facility(ies) is less than 700,000kwh annually and Buyer relocates to a new service location that is: (a) outside the stated Host Utility's service territory; (b) not served by the Host Utility stated in the Agreement or (c) outside Direct Energy's service territory. Buyer must provide Direct Energy with 30 days' advance notice prior to relocation, If this Agreement is cancelled due to Buyer relocation, pursuant to the preceding conditions, Buyer will not be charged an early cancellation fee.

Before Buyer relocates, Buyer must first contact Direct Energy Customer Service at Customer Services Manager, 1001 Liberty Avenue, Pittsburgh, PA 15222, Phone: (888) 925-9115; Fax: (866) 421-0257; [Email: CustomerRelations@directenergy.com](mailto:CustomerRelations@directenergy.com), and then the Host Utility at the toll-free telephone number set forth below. However, if Buyer relocates within the Host Utility's service territory, Buyer's service will transfer and this Agreement will automatically continue for the remainder of the Initial Term, if any, and automatic Renewal Period of the Agreement. Thus, Buyer will continue to receive Direct Energy's service at Buyer's new location pursuant to this Agreement. If Buyer relocates within Host Utility's service territory, Buyer must: (a) call the Host Utility at the telephone number below to inform the utility of your request to transfer your electricity service to the new location; (b) obtain

new account information from the Host Utility; and (c) contact Direct Energy Customer Service to provide your new account information and location to complete the transfer of service. Buyer must provide written proof of new location outside the Host Utility service territory to Direct Energy at Customer Services Manager, 1001 Liberty Avenue, Pittsburgh, PA 15222. If Buyer service transfers as provided in this paragraph, Buyer grants the Host Utility the right to provide Direct Energy with each account and meter number for your new service location(s). If requested by Direct Energy, Buyer shall also provide Direct Energy with this information. If service does not transfer to Buyer's new service location, this Agreement will be cancelled and Buyer will be served under the Host Utility's regulated service commodity rate unless Buyer selects another Electricity supplier. If this Agreement is cancelled pursuant to the preceding sentence and if the aggregate demand of all of Buyer's Facility(ies) is less than 700,000kwh annually, Buyer will not be charged an early cancellation fee.

12. Effect of Termination: In the event of termination as provided in this Agreement, all further obligations of the Parties under this Agreement shall terminate without further liability of the Parties, except for the payment by the owing Party of any sums due and owing to the other Party for services rendered prior to the termination date, any Actual Damages (in the event of termination under subsections (ii) or (iii) of Section 10 above), any damages due Direct Energy pursuant to the calculation set forth in the second paragraph of Section 10 above, any confidentiality obligation of either Party which has arisen hereunder and any other obligation hereunder which by its nature survives the termination of this Agreement. Furthermore, Buyer's failure to pay Host Utility charges may result in Buyer being disconnected in accordance with such Host Utility's tariff, and if Buyer switches back to Host Utility, Buyer may or may not be served under the same rates, terms and conditions that apply to other customers served by the Host Utility.

13. Special Right to Rescind: If the aggregate demand at all of Buyer's Facility(ies) is less than 700,000 kWhs annually, Buyer's Host Utility will send Buyer a written notice confirming Buyer's decision to enroll with Direct Energy. Buyer has the right to rescind enrollment, without an early cancellation fee within seven (7) business days after the postmark on the utility enrollment confirmation notice ("Rescission Period"). Buyer can do this by contacting the Host Utility at the toll-free telephone number set forth below or in writing at the address provided on the Host Utility website. If Buyer intends to rescind enrollment during the Rescission Period, Buyer also agrees to contact Direct Energy first by contacting Customer Services Manager, 1001 Liberty Avenue, Pittsburgh, PA 15222, Phone: (888) 925-9115; Fax: (866) 421-0257; [Email: CustomerRelations@directenergy.com](mailto:CustomerRelations@directenergy.com) immediately prior to calling Host Utility to initiate rescission. Thereafter, Buyer may cancel service under this Agreement at any time during the Initial Term, subject to paying Direct Energy an early cancellation fee set forth in Section 10. Buyer agrees to pay any such fee to Direct Energy immediately, but in any event no later than ten (10) days after the date you receive an oral or written notice requesting payment. During the Renewal Period, there is no early cancellation fee. If you are relocating, please refer to Section 11. Otherwise, to cancel your service, Buyer must contact Direct Energy by telephone or in writing using the contact information set forth herein.

14. Applicable Law: As to all matters of construction and interpretation, this Agreement shall be construed, interpreted, and governed under and by the laws of the State of Ohio without regard to its choice of law provisions.

15. Parties, Assignment: This Agreement shall inure to and benefit the parties hereto and their permitted successors and assigns. Neither party may assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the above, Direct Energy may, without the consent of Buyer, assign its rights and obligations under this Agreement for the limited purpose of securing credit and financing or to any person or entity succeeding to all or substantially all of the assets of Direct Energy. Further, either party may, without the need for consent from the other party, transfer or assign this Agreement to an Affiliate of such party provided that such Affiliate has substantially equivalent financial capability to that of the assigning party and that such assignee shall agree to be bound by the terms and conditions hereof.

16. Notices and Correspondence: Any notice or other document to be given or served hereunder or under any document or instrument executed pursuant hereto, including without limitation any termination or disconnection notices, shall be in writing and shall be delivered to either the address specified below or the address to which bills are sent to Buyer. Notice sent by facsimile or other electronic means shall be deemed to have been received by the close of the business day on which it was transmitted or such earlier time as is confirmed by the receiving party. Notice delivered by mail shall be deemed to have been received at the end of the third business day after the date of mailing by prepaid first class mail, except that when there is a strike affecting delivery of mail, all notices shall be delivered by courier or by facsimile or other electronic means.

Direct Energy: Attn: Customer Service Manager

1001 Liberty Avenue, Pittsburgh, PA 15222

Phone: (888) 925-9115; Fax: (866) 421-0257; Monday through Friday from 8:00AM – to 6:00PM (EPT) Eastern Time

For non-emergency or after-hours, leave a message.

If you have a complaint that is not resolved after you have called your electric supplier and/or your electric utility, or for general utility information, residential and business customers may contact the public utilities commission of Ohio (PUCO) for assistance at 1-800-686-7826 (toll free) from eight a.m. to five p.m. EST weekdays, or at <http://www.puco.ohio.gov>. Hearing or speech impaired customers may contact the PUCO via 7-1-1 (Ohio relay service).

In the event of an emergency or other distribution service needs, Buyer must contact its Host Utility for the subject Facility(ies) at the emergency number provided on the bill received from the Host Utility.

Buyer: To the address specified upon the Pricing Attachment.

Host Utilities:

American Electric Power Company Columbus Southern - Phone: 1-800-672-2231; <https://www.aepohio.com/>

American Electric Power Company Ohio Power - Phone: 1-800-672-2231; <https://www.aepohio.com/>

Duke Energy Ohio - Phone: 1-800-544-6900; <https://www.duke-energy.com/home>

Dayton Power & Light - Phone: 1-800-253-5801; <https://www.dpandl.com/>

The Illuminating Company - Phone: 1-800-589-3101;
https://www.firstenergycorp.com/content/customer/illuminating_company.html

Toledo Edison - Phone: 1-800-447-3333; https://www.firstenergycorp.com/content/customer/toledo_edison.html

Ohio Edison - Phone: 1-800-633-4766; https://www.firstenergycorp.com/content/customer/ohio_edison.html

17. Confidentiality: Neither Party will disclose the terms of this Agreement, or any information of the other Party which it knows or reasonably should know to be confidential or proprietary (other than to the party's employees, lenders, counsel, consultants, agents or accountants who have agreed to keep such terms confidential) except when disclosure may be required by law, is required to carry out the terms of this Agreement or with the prior written consent from the other party. The parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with this confidentiality obligation. This provision shall survive the termination of this Agreement for a period of two (2) years.

18. Representations and Warranties: As a material inducement to entering into this Agreement, each party, with respect to itself, hereby represents and warrants to the other party as follows:

- a. it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary to perform this Agreement;
- b. the execution and delivery of this Agreement are within its powers, have been duly authorized by all necessary actions and/or board approvals, and do not violate any of the terms or conditions in its governing documents or any contract to which it is a party or any law applicable to it;
- c. this Agreement constitutes a legal, valid and binding obligation of such party enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization, and other laws affecting creditors' rights generally and with regard to equitable remedies, subject to the discretion of the court before which proceedings to obtain same may be pending;
- d. there are no bankruptcy, insolvency, reorganization, receivership or other similar proceedings pending or being contemplated by it or, to its knowledge, threatened against it;
- e. if it is a property management company or other agent acting on behalf of the owner of the Facility(ies), it has the authority to execute and bind the Facility(ies) to this Agreement for the term stated in the Pricing Attachment and that the term of its agreement with the owner of the Facility(ies) is equal to or greater than the term of this Agreement; and
- f. the Facility(ies) to be provided the services described herein are not contractually bound by another agreement for Electricity services that will overlap with the term stated in the Pricing Attachment and meet the qualifications of this Agreement as set forth in Section 2 herein and
- g. Buyer is the intended end-user customer for all Electricity purchased under this Agreement, has entered into this Agreement for non-speculative purposes, and will not resell any of the Electricity purchased under this Agreement.

Each party covenants that it shall cause its respective representations and warranties to remain true and correct throughout the term of this Agreement.

19. Miscellaneous:

- a. Waiver: No waiver by either party of any default or defaults by the other party under this Agreement shall operate as a waiver of any future default or defaults, whether of a like or different character or nature. No delay or failure by Direct Energy in enforcing any part of this Agreement shall be deemed a waiver of any of its rights or remedies.
- b. Counterparts: This Agreement may be executed in one or more than one counterpart, and each executed counterpart shall be considered an original, provided that such counterpart is delivered to the other party by facsimile, mail, courier or electronic mail, all of which together shall constitute one and the same Agreement.
- c. Severability: The various provisions of this Agreement are severable. The invalidity, illegality or unenforceability of any

- portion or provision shall not affect the validity, legality or enforceability of any other portion or provision of this Agreement.
- d. Entire Agreement: This Agreement and the Pricing Attachment contain the entire understanding of the parties with respect to the subject matter contained herein. There are no promises, covenants or understanding other than those expressly set forth herein. This Agreement may only be amended by a written instrument

20. Definitions: As used herein, unless the context clearly indicates otherwise, the following terms shall have the meaning set forth below:

- a. "Actual Damages" means the total amount of the loss that the non-defaulting party (or, in the event of a termination without cause, the non-terminating party) (as applicable, the "Damaged Party") would experience as a result of termination. As to each terminated transaction, Actual Damages shall be deemed to equal: (A) where Direct Energy is the Damaged Party, the positive difference, if any, between the contract price as defined in the Price section of the Agreement of the Electricity for the remaining term of such terminated transaction and the market price of the Electricity for the remaining term of such terminated transaction, in each case as determined by Direct Energy in a commercially reasonable manner; and (B) where Buyer is the Damaged Party, the positive difference, if any, between the market price of the Electricity for the remaining term of such terminated transaction and the contract price as defined in the Price section of the Agreement of the Electricity for the remaining term of such terminated transaction, in each case as determined by Direct Energy in a commercially reasonable manner. For the avoidance of doubt, "contract price" shall include the PSC Services fee for purpose of the above calculations.
- b. "Ancillary Services" means wholesale electric services and products required to facilitate delivery of Energy to the Host Utility.
- c. "Distribution" means all delivery service for Energy and applicable Ancillary Services provided by the Host Utility.
- d. "Electricity" means the combination of Energy and Ancillary Services which are provided by Direct Energy under this Agreement.
- e. "Energy" means electrical energy, as measured in kilowatt hours (kWh) or megawatt hours (MWh).
- f. "Event of Default" means: (a) the failure of a Party to make, when due, any payment that is required under this Agreement; (b) any representation or warranty made by a Party that proves to be false or misleading in any material respect; (c) the failure of a Party to perform its obligations under this Agreement, except to the extent such failure is excused by a Force Majeure event; (d) Buyer's failure to cooperate with Direct Energy as reasonably required in order for Direct Energy to perform its obligations under this Agreement. If an Event of Default has occurred, (a) the non-defaulting Party shall have the right to setoff and net against any undisputed amounts owed by the defaulting Party to the non-defaulting Party under this Agreement, and (b) Direct Energy shall additionally have the right to setoff and net against any deposit or security provided by Buyer pursuant to Agreement any amounts, charges or damages owed by Buyer to Direct Energy.
- g. "Facility(ies)" means the electric account meter(s) located at the service addresses for which Buyer has the authority to purchase Electricity under this Agreement and which are set forth on the Pricing Attachment.
- h. "FERC" means the Federal Energy Regulatory Commission
- i. "Firm" means that parties may only suspend performance hereunder to the extent that such performance is prevented for reasons of Force Majeure.
- j. "Force Majeure" means any "Act of God" or other unexpected and disruptive event beyond the reasonable control of either party that interferes with either party's ability to perform its obligations under this Agreement, except for the obligation to pay monies due. Any party which is unable to perform its obligations hereunder as a result of a Force Majeure event shall provide written notice to the other party of the existence of such event and exercise due diligence to remove such event with all reasonable dispatch. It is expressly understood by the parties that the ability of Direct Energy to sell the products and services provided hereunder at a price greater than the Price paid by Buyer shall not constitute an event of Force Majeure. Conversely, the ability of Buyer to purchase the products and services provided hereunder for an amount less than the Price shall not constitute an event of Force Majeure.
- k. "Host Utility" means any investor-owned utility, municipal utility, public utility, or other provider of electric lines whose system is directly interconnected with and which provides Distribution to Buyer's Facility(ies).
- l. "Point(s) of Delivery" shall mean the points where Energy is delivered to the Host Utility.
- m. "Power Supply Coordination (PSC) Services" are the services provided by Direct Energy to match the Facility(ies) load, as described in this Agreement. As described in Section 4 herein, the fee for PSC Services is included in the Price to be paid by Buyer.
- n. "PJM" means the Pennsylvania New Jersey Maryland Interconnection, L.L.C
- o. "Reliability Must Run ("RMR") is a unit that must run for operational or reliability reasons, regardless of economic considerations. Also called a reliability agreement.
- p. "Renewable Portfolio Standard ("RPS") is a regulation that requires the increased production of energy from renewable energy sources.
- q. "RTEP" is PJM's Regional Transmission Expansion Plan which identifies transmission system additions and improvements needed to keep electricity flowing to the millions of people throughout PJM's region.