



**Energy Purchase Agreement – Electric Commodity Sales**  
(Matrix (NJ) v.01.01.25)

This Energy Purchase Agreement – Electric Commodity Sales, which comprises the below General Terms and Conditions (these “GTC”) and Schedule 1 hereto, dated and effective as of \_\_\_\_\_, 20\_\_ (collectively, this “Agreement”), is entered into by and between AEP Energy, Inc. (“AEP Energy”) and the designated customer set forth below in the signature block of this Agreement (“Customer” or “you”) (each of AEP Energy and Customer referred to individually as a “Party” and collectively as the “Parties”) and governs the purchase and sale of Retail Energy (as hereinafter defined) between the Parties for Customer’s account(s) specified on Schedule 1 hereto (each, a “Service Location”).

**General Terms and Conditions**

**I. PURCHASE AND SALE OF RETAIL ENERGY**

During the relevant Term (as hereinafter defined) and unless excused by a Force Majeure, AEP Energy shall sell to Customer the commodity portion of its retail electric requirements at each Service Location, and Customer shall exclusively purchase from AEP Energy and take delivery of, all of its retail electric generation supply requirements for each such Service Location (the “Retail Energy”). The Retail Energy will be provided to Customer’s relevant electric distribution company (each as specified on Schedule 1 hereto, the “EDC”) and transmission system interconnection point (each, a “Delivery Point”). The EDC is responsible for delivery of the Retail Energy from the Delivery Point to any Service Location, reading Customer’s meter, and responding to emergencies. Delivery and metering of the Retail Energy is subject to the terms and conditions of the applicable EDC tariffs. Customer designates AEP Energy as an authorized recipient of Customer’s account, billing, and historical and ongoing usage information and consents to the disclosure by the EDC to AEP Energy of certain information about Customer and each Service Location, including: account number, meter number, meter read data, rate class, billing and payment information, account name, service address, billing address, and telephone number. Customer is solely responsible for payment of all charges or costs related to the EDC’s services provided to Customer including delivery or distribution of the Retail Energy to Customer, switching, telecommunications, or meter or meter reading related costs, whether billed by the EDC to AEP Energy or Customer.

**II. TERM OF AGREEMENT**

AEP Energy shall use commercially reasonable efforts to begin supplying Retail Energy to Customer under this Agreement (a) upon the later of (1) Customer’s available \_\_\_\_\_ 20\_\_ enrollment date and (2) the first available enrollment date, as determined by the EDC, after the date hereof; and (b) after AEP Energy receives confirmation that the EDC has accepted the delivery service request (the “Commencement Date”); provided, however, that the Commencement Date cannot be fewer than three (3) calendar days following the date hereof. The Parties agree that the EDC determines when Customer will be switched to AEP Energy for its Retail Energy supply, and that such switch will occur in accordance with the EDC’s rules and practices regarding such switching. AEP Energy is not liable for any lost savings or lost opportunity as a result of any delay in the Commencement Date. The initial term of this Agreement will continue for \_\_\_ months from the Commencement Date (the “Initial Term” and including any Holdover Term or Renewal Term, the “Term”), unless sooner terminated hereunder.

**III. PRICING**

During the Initial Term, the price payable for Retail Energy will be:

Retail Energy Price (per kWh)	\$ _____
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and any and all applicable bypassable Reliability Must Run (RMR) charges are not included in the Retail Energy Price and will be passed through at the applicable RTO EDC zonal formula.

The Retail Energy Price listed above is inclusive of generation charges, any and all applicable bypassable costs, charges, and fees for capacity, transmission, line

losses, ancillary services (except RMR charges), renewable portfolio standards (RPS), and state sales and use taxes and is applicable twenty-four (24) hours a day but is exclusive of any and all applicable (and not expressly included) taxes, EDC delivery service charges, and other non-bypassable costs, charges, and fees. The Parties acknowledge and agree that the Retail Energy Price reflects, among other factors, Customer’s expected usage and EDC-specific pricing hereunder. The Retail Energy Price is determined by AEP Energy using each Service Location’s actual and estimated historical and forecasted load data, which is considered representative of each Service Location’s anticipated Retail Energy requirements for the Term.

**IV. BILLING AND PAYMENT**

**A. General Billing and Payment Terms:** AEP Energy or the relevant EDC shall provide monthly invoices related to the sold Retail Energy, based on each Service Location’s relevant EDC’s meter read cycle, using the billing method specified to Customer, which may be: (1) as a single invoice through utility/EDC consolidated billing (UCB), (2) as a single invoice through supplier consolidated billing (SCB), or (3) as separate invoices from AEP Energy for supply-related charges and the relevant EDC for all other charges (Dual Bill). However, the relevant EDC may convert or alter the invoicing method from time to time as it so requires. AEP Energy will send SCB or Dual Bill invoices via the first available method (listed in order of priority): (1) the billing email address stated in the “Customer Information” table at the end of these GTC (unless Customer requests paper bills) or later specified by Customer in writing (including by email), (2) the billing mailing address stated in such table or later specified by Customer in writing (including by email), or (3) the physical address of any Service Location. AEP Energy may itemize or summarize invoices according to the various cost components (e.g., capacity or transmission) related to the Retail Energy. Charges hereunder will be calculated by reference to metered Retail Energy usage, provided that AEP Energy has the right to estimate invoices in cases where such actual billing determinants are unavailable. When an estimated invoice is issued, AEP Energy shall subsequently reconcile the estimated invoice and the actual metered Retail Energy usage and post any debit or credit amount to Customer’s account. Customer shall pay all amounts due according to the instructions on the relevant invoice by payment in check or wire transfer of immediately available funds or via Automated Clearinghouse. AEP Energy must receive such payment no later than the close of business on the business day following fourteen (14) calendar days from the date of the invoice. If Customer is billed by the EDC, payment is due to the EDC as specified in the EDC bill. Late payments with respect to any amounts due and payable to AEP Energy (including any outstanding late payment charges and Settlement Amount(s) (as hereinafter defined), collectively, “Account Charges”) will incur interest charges at a rate of interest equal to one and one-half percent (1.5%) per month or the maximum allowed under applicable law (whichever is less), compounded monthly, and continue to accrue until all such amounts are paid in full. In any instance where any payment is declined by the issuing institution, Customer will be assessed a charge of forty-five dollars (\$45) or the maximum allowed under applicable law (whichever is less) per declined payment. Customer is liable for all costs incurred by AEP Energy, including attorneys’ fees, in connection with the collection and enforcement of AEP Energy’s rights to past due Account Charges.

**B. Invoice Revisions:** Customer may, in good faith, reasonably dispute in writing the correctness of any invoice rendered under this Agreement with respect to amounts due to AEP Energy by (1) delivering to AEP Energy notice of the dispute, which must include the amount of, and basis for, the disputed amount and supporting documentation (the “Notice of Dispute”) and (2) making payment of the undisputed portion of the invoice within the normal terms set forth in Section IV(A). During the forty-five (45) calendar days following AEP Energy’s receipt of any Notice of Dispute (the “Dispute Period”), the Parties must expeditiously and in good faith negotiate to resolve any disputed invoice. If the Parties are unable to mutually resolve in writing such dispute during the Dispute Period, either Party may exercise

any remedy available to it at law or in equity pursuant to this Agreement. Customer must dispute charges strictly in accordance with the terms of this paragraph or it will be deemed to have waived its rights to dispute such charges. AEP Energy may at any time adjust and re-issue any previously-issued invoice to reflect Customer's actual usage and charges during the billing period covered therein, irrespective of whether Customer had previously paid the previously-issued invoice. AEP Energy has no obligation to revise any invoiced usage data after the relevant regional transmission organization ("RTO") or as applicable independent system operator ("ISO") market settlements deadline unless the RTO or ISO accommodates a commensurate resettlement of AEP Energy's related costs.

#### V. EXTENSION AND CONCLUSION OF TERM

Not less than thirty (30) calendar days prior to the then-current expiration date of the relevant Term, AEP Energy may provide written notice ("Renewal Notice") to Customer of AEP Energy's intent to extend such Term ("Renewal Term"). Any Renewal Notice will contain AEP Energy's proposed changes, amendments, deletions, or additions to the terms and conditions of this Agreement, including with regard to fees, charges, and the duration of the Renewal Term ("Renewal Amendments"). Customer has five (5) business days to reject in writing the Renewal Notice. Customer's failure to reject any Renewal Notice in writing within five (5) business days shall result in all Renewal Amendments, including the Renewal Term, being deemed to have been irrevocably and unconditionally agreed to by Customer.

Following expiration of the Term, AEP Energy may continue to supply Retail Energy under this Agreement to any Service Location on a month-to-month holdover basis (each, a "Holdover Term"). The price payable during any Holdover Term will be the applicable RTO EDC day ahead hourly locational marginal price (LMP) plus an adder of \$0.01 per kWh, and any and all applicable bypassable costs, charges, and fees for capacity, transmission, line losses, ancillary services, renewable portfolio standards (RPS), taxes, and any other related penalties, fees, charges, expenses, and other costs to serve incurred by AEP Energy of every kind and nature will be passed through in a commercially reasonable manner to Customer with no additional mark-up. In cases where Customer's EDC does not provide interval usage data, AEP Energy will, using commercially reasonable methodologies, estimate the load weighted average of the applicable LMP. Either Party may at any time terminate the Holdover Term and return any Service Location to the EDC without penalty or prejudice.

In the event of expiration or termination as provided in this Agreement, all further obligations of the Parties under this Agreement will immediately 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 related to performance delivered prior to termination, whether or not then invoiced, including any further Account Charges. Any other obligation hereunder which by its nature survives, will survive the termination or expiration of this Agreement, including the Parties' respective obligations under the "Title, Indemnification, Warranty, and Limitation of Liability" and "Governing Law, Venue, and Waiver of Jury Trial" sections, and will apply whether in contract, equity, tort, or otherwise. Such expiration or termination will, with respect to each Service Location, be effective on the next switching date available from the EDC. If the EDC's retail customer choice program is terminated or materially changed in any manner prior to the end of the Term, AEP Energy may terminate this Agreement without penalty to either Party.

#### VI. CREDIT

Each Party represents that there is no bankruptcy, insolvency, reorganization, receivership, or other similar proceeding pending or being contemplated by it or, to its knowledge, threatened against it. Customer agrees to provide commercially reasonable credit information upon request. Should the creditworthiness or financial responsibility of Customer become unsatisfactory to AEP Energy at any time during the Term, as determined by AEP Energy in its commercially reasonable discretion, AEP Energy may require (1) additional credit information, including financial statements in accordance with the previous sentence, and (2) that Customer deliver to AEP Energy, as security, adequate assurance of performance in such form and amount as AEP Energy may in its discretion require, including a parental guaranty or letter of credit from a creditworthy entity in each case acceptable to AEP Energy, deposit, or prepayment ("Adequate Assurance of Performance"). Upon such requirement from AEP Energy, Customer has five (5) business days to provide the requested information and/or Adequate Assurance of Performance to AEP Energy.

#### VII. EVENTS OF DEFAULT

**A. Definition:** An "Event of Default" means, with respect to the Party to which the following applies (the "Defaulting Party"), the occurrence of any of the following: (1) the failure of such Party to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) business days after written notice and demand for payment; (2) any representation or warranty made by such Party herein being false or misleading in any material respect when made or ceasing to remain true (and which, if capable of being excused or remedied, is not remedied within fifteen (15) calendar days after written notice) during any Term; (3) the failure of such Party to perform any material covenant or obligation set forth in this Agreement, including any unexcused failure to deliver or take any quantity of Retail Energy under this Agreement, and such failure is not excused pursuant to Force Majeure (as hereinafter defined) or remedied within fifteen (15) calendar days after written notice; (4) either Party, or the entity providing Adequate Assurance of Performance, disaffirms, disclaims, repudiates, or rejects, in whole or in part, or challenges the validity of, this Agreement or any Adequate Assurance of Performance issued in connection with this Agreement; (5) AEP Energy's receipt of notice from Customer (other than as provided in Section VIII) or any EDC of Customer's effective or intended termination of supply with AEP Energy at any Service Location prior to the end of the Term; (6) Customer (A) files a petition or otherwise commences, authorizes, or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization, or similar law, or has any such petition filed or proceeding commenced against it, (B) makes an assignment or any general arrangement for the benefit of creditors, (C) otherwise becomes bankrupt or insolvent (however evidenced), or (D) has a liquidator, administrator, receiver, trustee, conservator, or similar official appointed with respect to it or any portion of its property or assets, regardless of whether such appointment is made in connection with a bankruptcy proceeding or reorganization for the benefit of creditors; (7) the occurrence of any event of default with respect to Customer under any other agreement between the Parties, including any other agreement for, or in support of, the purchase and sale of retail energy; or (8) the failure of Customer to deliver requested information and/or to deliver, and/or cause to be delivered, Adequate Assurance of Performance or otherwise satisfy the creditworthiness requirements under the "Credit" section.

**B. Suspension and Early Termination:** If an Event of Default occurs, the Party that is not the Defaulting Party (the "Non-Defaulting Party") may, at its option and in its sole discretion, take any one or more of the following actions: (1) suspend its performance under this Agreement; (2) terminate this Agreement by sending notice to the Defaulting Party; or (3) exercise such other rights and remedies as are available to it at law or in equity pursuant to this Agreement. In the event of such suspension or termination, Customer shall pay to AEP Energy all amounts owed under this Agreement, including amounts owed for delivered performance, whether or not then invoiced. In the event of such an early termination, (i) AEP Energy shall return the relevant Service Location(s) to the EDC effective on the next switching date available from such EDC and (ii) the Defaulting Party shall also pay to the Non-Defaulting Party any damages incurred by the Non-Defaulting Party related thereto, including liquidated damages related to termination of the purchase and sale of the Retail Energy (such liquidated damages, the "Settlement Amount") calculated as follows:

(a) If AEP Energy is the Defaulting Party, the Settlement Amount is equal to (I) Retail Market Value *minus* (II) Contract Value.

(b) If Customer is the Defaulting Party, the Settlement Amount is calculated as follows:

- For purposes of calculating any Settlement Amount, Customer's "Historical Annual Usage" is equal to the number of megawatt hours (MWhs) used by Customer at the terminated Service Location(s) in the preceding twelve (12) months.

- If Customer's Historical Annual Usage is less than or equal to fifty (50) MWhs, the Settlement Amount is equal to the number of months remaining in the Term multiplied by ten dollars (\$10). For example, if this Agreement is terminated two (2) months early, two (2) months x ten dollars (\$10) per month = twenty-dollar (\$20) Settlement Amount.

- If Customer's Historical Annual Usage is greater than fifty (50) MWhs but less than or equal to two hundred-fifty (250) MWhs, the Settlement Amount is equal to the number of months remaining in the Term multiplied by fifty dollars (\$50). For

example, if this Agreement is terminated two (2) months early, two (2) months x fifty dollars (\$50) per month = one hundred-dollar (\$100) Settlement Amount.

- If Customer's Historical Annual Usage is greater than two hundred-fifty (250) MWhs but less than or equal to five hundred (500) MWhs, the Settlement Amount is equal to the number of months remaining in the Term multiplied by one hundred-fifty dollars (\$150). For example, if this Agreement is terminated two (2) months early, two (2) months x one hundred-fifty dollars (\$150) per month = three hundred-dollar (\$300) Settlement Amount.

- If Customer's Historical Annual Usage is greater than five hundred (500) MWhs, the Settlement Amount is equal to (I) Contract Value *minus* (II) Wholesale Market Value.

For the avoidance of doubt, no Settlement Amount is due to a Party under this Agreement if such Party is the Defaulting Party.

As used herein, the following terms have the following meanings:

"Contract Value" means the amount that would have been owed by Customer related to the Remaining Performance (as hereinafter defined).

"Remaining Performance" means the amount of Retail Energy expected to be supplied by AEP Energy during the remainder of the relevant Term had the Event of Default not occurred, based on Customer's historical usage in the preceding twelve (12) months.

"Retail Market Value" means what Customer is actually paying, so long as no more than is commercially reasonable, related to the Remaining Performance.

"Wholesale Market Value" means the value that AEP Energy accrues in reallocating, terminating, or liquidating any portion of any energy supply contract, hedge, or related trading position or arrangement held by or for AEP Energy, or in avoiding any cost, in the case of any cost component (e.g., capacity or transmission), related to the Remaining Performance. For the avoidance of doubt, AEP Energy is not required to enter into a replacement transaction(s) in order to determine the Wholesale Market Value.

The Non-Defaulting Party shall calculate the Settlement Amount in its commercially reasonable discretion, including, where applicable, its estimates of forward market prices. Such Settlement Amount calculation will be made available to the Defaulting Party upon written request. The Settlement Amount will be paid by the Defaulting Party to the Non-Defaulting Party within five (5) business days after notice of the Settlement Amount due and owing to the Non-Defaulting Party. The Parties acknowledge and agree that the Settlement Amount constitutes a reasonable approximation of harm or loss, is a fair and reasonable method of estimating damages that a Party will suffer or incur in such a case in the light of the anticipated or actual harm caused by the termination or suspension, the difficulties of proof of loss, and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy, and is not a penalty or punitive in any respect but is reasonable compensation for a Party's damages.

#### **VIII. SERVICE LOCATION CLOSURE**

Customer must provide AEP Energy at least thirty (30) calendar days' prior written notice prior to terminating supply to Customer at any Service Location, including as a result of ceasing operations at such Service Location, closing any Service Location, or the sale of any Service Location to an unrelated third party. Customer is responsible for payment of damages incurred by AEP Energy, if any, relating to or arising from any such termination of supply. Such damages will be calculated in the same manner as the Settlement Amount as if Customer is the Defaulting Party. If Customer does not pay AEP Energy for related damages owed in accordance with this section, AEP Energy reserves the right to adjust, in its commercially reasonable discretion, the pricing for any remaining Service Location(s) based on the remaining estimated usage. The Parties' obligations under this Agreement will continue in full force and effect for any remaining Service Location(s).

#### **IX. RELATIONSHIP OF PARTIES**

The relationship between the Parties is that of independent contractors for the sale and purchase of Retail Energy. Nothing in this Agreement establishes a joint venture, fiduciary relationship, partnership, other joint undertaking, or any other relationship or imposes a trust or partnership duty, obligation, or liability on either Party. Customer acknowledges that, other than those representations contained in this Agreement, it has not relied on any representation, communication (written or oral), or omission by AEP Energy in entering into this Agreement, including in evaluating the advantages or disadvantages of any specific product or service, predictions about savings, future energy prices, or any other matter. Customer

acknowledges that the EDC's standard offer service rates generally change from time to time and therefore AEP Energy does not provide any guarantee of savings in comparison to the EDC's standard offer service rates. If Customer received price comparison(s) in connection with this Agreement, by entry into this Agreement, Customer understands and agrees that it has been informed, prior to its entry into this Agreement, that no guarantee of savings is being provided. If a property management company or agent ("Agent") is acting and executing on behalf of the owner of any Service Location (the "Owner"), Agent represents and warrants that it has the full and complete authority to execute and bind the Owner to this Agreement and that the term of such authorization from the Owner does not expire or terminate prior to the end of the Term.

#### **X. ASSIGNMENT**

This Agreement will bind and inure to the benefit of each Party's successors and permitted assigns. No Party may assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent must not be unreasonably withheld, conditioned, or delayed; provided, however, that without such consent, but with prior notice, either Party may assign its rights and obligations under this Agreement to an entity in control of, controlled by, or under common control with such Party (an "Affiliate") or transfer this Agreement to any successor acquiring all or substantially all of the assets of such Party, or with respect to AEP Energy all or substantially all of the retail electric supply business of AEP Energy, so long as (1) with respect to Customer, such Affiliate or successor, as applicable, (A) is reasonably determined in writing by AEP Energy to be of similar or greater credit quality than Customer and able to perform Customer's obligations hereunder and (B) delivers such enforceability assurances as AEP Energy reasonably requests and (2) with respect to AEP Energy, such Affiliate or successor is contractually obligated to continue to supply Customer at the Retail Energy pricing specified herein. Any assignment or transfer of this Agreement in contravention of this section is null and void and will constitute an Event of Default at the election of the non-breaching Party.

#### **XI. FORCE MAJEURE**

Neither Party will be required to perform or fulfill its obligations (other than such Party's obligation to make payment(s) then due or becoming due with respect to delivered performance prior to a Force Majeure) under this Agreement so long as and to the extent a Party (the "Claiming Party") is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Claiming Party gives notice to the other Party as soon as practicable after it has actual, or reasonably should have had constructive, knowledge of such Force Majeure. "Force Majeure" means an event or circumstance that (A) prevents the Claiming Party from performing its obligations; (B) cannot be reasonably overcome or avoided; (C) is beyond the Claiming Party's reasonable control; and (D) does not result from the Claiming Party's fault, negligence, or particular economic circumstances. Notwithstanding the foregoing in this section, in no event will Force Majeure be, or will the applicable Party's performance be excused, based on economic hardship of either Party, including a Party's ability to purchase or sell, as applicable, Retail Energy at a price more advantageous than the price hereunder, or with respect to Customer, the loss or failure of Customer's facilities, the loss of business by Customer, or Customer's inability to use Retail Energy purchased hereunder. If the Force Majeure continues for more than thirty (30) calendar days, then the non-Claiming Party may terminate this Agreement by giving the other Party notice of the early termination, without such termination constituting an Event of Default.

#### **XII. REGULATORY EVENT**

If any new, or any change in any existing, law, statute, rule, regulation, order, decision (including any judgment or judicial decision), decree, tariff, charge, or rate class, or process, practice, procedure, protocol, design, or structure, or other event, including any change in any formula rate calculation or charge (e.g., any increase in the rate for network integration transmission service or capacity by the EDC, RTO, or ISO, as applicable), or any change in any interpretation or application of any of the foregoing, by any governmental authority, court, EDC, ISO, RTO, or other regulated service provider materially alters to the detriment of AEP Energy its costs to perform or its economic returns under this Agreement (a "Regulatory Event"), AEP Energy may pass through such cost or economic effect to Customer to eliminate the impact of such Regulatory Event, and all other terms and conditions of this Agreement will remain in full force and effect. For the purposes of a Regulatory Event, "material" means a change that results in an

increase in the relevant Retail Energy pricing hereunder for the remainder of the relevant Term by \$0.10 per MWh or more.

### **XIII. FORWARD CONTRACT**

The Parties agree that (A) this Agreement constitutes a "forward contract" within the meaning of Section 101(25) of Title 11 of the United States Code (as amended, the "Bankruptcy Code"), and for all purposes under the Bankruptcy Code; (B) AEP Energy constitutes a "forward contract merchant" within the meaning of Section 101(26) of the Bankruptcy Code and for all purposes under the Bankruptcy Code; (C) AEP Energy is acting as a "forward contract merchant" in connection with this Agreement; and (D) all payments made by Customer to AEP Energy hereunder are "settlement payments" within the meaning of Section 101(51A) of the Bankruptcy Code and for purposes of all forward contract provisions in the Bankruptcy Code.

### **XIV. CONFIDENTIALITY**

Both Parties agree to keep confidential the terms and conditions of this Agreement and each proposed or consummated transaction hereunder, including price, product specifications, and quantity information, except for any required disclosure to any regulatory body, governmental entity, or agency having jurisdiction, any disclosure reasonably necessary to enforce the terms of this Agreement, or any disclosure to any accountant, attorney, or other professional acting on behalf of or representing the receiving Party, any ABC (as hereinafter defined), or any affiliated or third-party agent, advisor, or contractor implementing this Agreement or the purposes hereof.

### **XV. REPRESENTATIONS AND WARRANTIES**

As a material inducement to entering into this Agreement, each Party 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) its execution, delivery, and performance of this Agreement have been duly authorized by all necessary actions and/or approvals and will not violate or conflict with any of its governing documents, any provision of any contract to which it is a party, or applicable law; (C) it has read, fully understands, and is willing to act in full compliance with (and as it deems appropriate, has obtained independent counsel regarding), the contents of this Agreement and regards it to be fair, reasonable, and not unconscionable, and this Agreement constitutes a legal, valid, binding, and enforceable obligation of such Party; and on behalf of Customer only, (D) it is a commercial end user of Retail Energy and it is entering into this Agreement for purposes related to its business. Customer agrees and acknowledges that any agent, broker, consultant, or other third party involved in any solicitation or transaction hereunder ("ABC") serves as an agent of Customer during such sales process and may receive a commission to be paid by AEP Energy from payments received from Customer hereunder.

### **XVI. TITLE, INDEMNIFICATION, WARRANTY, AND LIMITATION OF LIABILITY**

Title to and control and possession of the Retail Energy will pass from AEP Energy to Customer at the Delivery Point. AEP Energy shall have and assume responsibility for any injury, loss, expense, penalty, liability, damage, or loss (each, a "Liability") with respect to, and shall defend, indemnify, and hold harmless Customer against all claims and Liabilities, including attorneys' fees (collectively, "Claims"), arising from, the Retail Energy prior to its delivery to the relevant Delivery Point, and Customer shall have and assume responsibility for any Liability with respect to, and shall defend, indemnify, and hold harmless AEP Energy against all Claims arising from, the Retail Energy at and after the relevant Delivery Point, in each case, with respect to each Party, to the extent permissible by law and except to the extent such Claims and/or Liabilities arise out of the indemnified Party's negligence or breach of this Agreement. AEP Energy warrants good title to all Retail Energy delivered hereunder at the Delivery Point free and clear of any liens or other encumbrances or title defects. THIS IS AEP ENERGY'S ONLY WARRANTY CONCERNING THE RETAIL ENERGY PROVIDED HEREUNDER AND IS MADE EXPRESSLY IN LIEU OF (AND AEP ENERGY EXPRESSLY DISCLAIMS) ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, OR OTHERWISE. EXCEPT AS PART OF ANY PAYMENT OF THE SETTLEMENT AMOUNT OR OTHERWISE AS EXPRESSLY PERMITTED IN ACCORDANCE WITH THE TERMS HEREOF, NEITHER PARTY WILL BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY

SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, LOST PROFITS, OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT OR OTHERWISE. IN ADDITION, AEP ENERGY'S AGGREGATE LIABILITY UNDER THIS AGREEMENT IS LIMITED TO AN AMOUNT EQUAL TO THE TOTAL OF THE AEP ENERGY CHARGES CONTAINED IN THE FIRST TWO INVOICES REFLECTING THE ENERGY COST SPECIFIC TO CUSTOMER'S METER READS AS THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE EXPRESSLY WAIVED. THE PARTIES AGREE THAT ARTICLE 2 OF THE UNIFORM COMMERCIAL CODE ("UCC") APPLIES TO THE TERMS OF THIS TRANSACTION AS IF THE RETAIL ENERGY SOLD HEREUNDER WERE A "GOOD," NOTWITHSTANDING WHETHER THE RETAIL ENERGY SOLD HEREUNDER MEETS THE DEFINITION OF A "GOOD" UNDER THE UCC OF THE GOVERNING LAW.

### **XVII. NOTICES**

Any notice served hereunder from AEP Energy to Customer, must be in writing and sent to any of Customer's notice or billing or email addresses specified in writing by Customer from time to time, or to the address of any Service Location. Any notice served hereunder from Customer to AEP Energy must be in writing and delivered to AEP Energy, Inc., Attn: Contract Management, 1 Riverside Plaza, 20th Floor, Columbus, OH 43215 or such other address specified in writing by AEP Energy from time to time as the notice address. In the absence of proof of actual receipt, notice will be deemed to have been received (A) if by email, on the close of the business day on which it was transmitted, (B) if by overnight mail or courier, on the next business day after it was sent, or (C) if by first class mail, on the fifth (5<sup>th</sup>) business day after mailing, each as established by business records or any other commercially reasonable evidence.

Customer is responsible for communicating to AEP Energy each change to Customer's billing, notice, or email address, ownership, business name, telephone number, contact person, or meter number(s) for each Service Location as soon as practicable and in no event later than fifteen (15) calendar days after such change takes effect. Customer affirms its agreement that AEP Energy and entities calling on AEP Energy's behalf may make calls to the number(s) Customer has provided, or will provide during the Term, regarding Customer's account(s), including about amounts due. By providing AEP Energy Customer's email address, Customer agrees to receive notices electronically, where permitted under applicable law.

**AEP Energy Contact Information:** AEP Energy's (A) mailing address is 1 Riverside Plaza, 20th Floor, Columbus, OH 43215; (B) website address is [AEPenergy.com](http://AEPenergy.com); and (C) toll-free telephone number is 866-258-3782 (Mon. - Fri.: 8 a.m. - 7 p.m. (EPT)).

### **XVIII. GOVERNING LAW, VENUE, AND WAIVER OF JURY TRIAL**

This Agreement, with respect to any Service Location, is governed by, and construed and enforced exclusively in accordance with, the laws of the state where such Service Location is located, without regard to its choice of law provisions. Each Party expressly waives its rights as a consumer under any law granting consumers special rights and protections. Any action, suit, or proceeding directly or indirectly arising out of, or in connection with, this Agreement (each, an "Action") must be litigated exclusively in any federal court, if it has jurisdiction over the matter, or any state court, if there is no federal jurisdiction, located within the state where any Service Location that is a subject of such Action is located, in the plaintiff Party's sole discretion, and the Parties expressly consent and irrevocably submit to the jurisdiction of said courts for purpose of any such Actions and covenant not to sue in any other court. The Parties agree not to raise, and waive, any objections or defenses based upon venue or forum non conveniens. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION.

Any Action must be brought in the plaintiff or claimant Party's individual capacity and not as a plaintiff, class member, or representative class member in any purported class action, collective action, or representative action or proceeding. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT TO ASSERT ANY CLAIMS AGAINST THE OTHER PARTY AS A REPRESENTATIVE OR MEMBER IN ANY CLASS ACTION, COLLECTIVE ACTION, OR REPRESENTATIVE ACTION OR PROCEEDING. TO THE EXTENT EITHER PARTY IS SO PERMITTED TO PROCEED, (A) THE PREVAILING PARTY IS NOT ENTITLED TO RECOVER ATTORNEYS' FEES OR COSTS ASSOCIATED WITH SUCH ACTION; AND (B) THE PARTY WHO INITIATES OR

PARTICIPATES AS A NAMED REPRESENTATIVE OF ANY PURPORTED CLASS MUST NOT SUBMIT A CLAIM OR OTHERWISE PARTICIPATE IN ANY RECOVERY SECURED THROUGH SUCH ACTION. Nothing in this Agreement shall impair Customer's right to make an informal or a formal complaint to the applicable state commission.

**XIX. SEVERABILITY AND WAIVER**

If any provision in this Agreement is determined or rendered void, unlawful, or otherwise unenforceable for any reason whatsoever, (A) the remaining provisions will remain in force and not otherwise be affected, and (B) such provision will be deemed amended to the extent necessary to make it valid while still giving effect to the agreement of the Parties. The rights and remedies of the Parties under this Agreement and at law are cumulative. No waiver of any breach of this Agreement will operate as a waiver of any other or subsequent breach. No delay, failure, or single or partial exercise by AEP Energy in enforcing any part of this Agreement will be deemed a waiver of or will prejudice any of its rights or remedies hereunder.

**XX. ENTIRE AGREEMENT, AMENDMENT, AND MISCELLANEOUS**

This Agreement sets forth all understandings between the Parties regarding the subject matter hereof, and any prior contracts, understandings, and representations, oral or written, relating to such subject matter are merged into, and superseded by, this Agreement. Except as to any Renewal Amendment, no waiver, alteration, amendment, or modification of any of the provisions of this Agreement will be binding unless in writing and signed by a duly authorized representative of each Party. No failure to enforce will be deemed to constitute an amendment hereto. The words "include" and "including" are deemed to be followed by the phrase "without limitation." The word "or" is not exclusive. The headings and subheadings contained in this Agreement are used solely for convenience, do not constitute a part of this Agreement, and must not be used to construe or interpret the provisions of this Agreement. This Agreement must be considered for all purposes as prepared through the joint efforts of the Parties, simply construed according to its fair meaning, and not construed against a Party as a result of the manner in which this Agreement was negotiated, prepared, drafted, or executed. This Agreement confers no rights or remedies whatsoever upon any person or

entity other than the Parties and shall not create, or be interpreted as creating, any standard of care, duty, or liability to any person or entity not a Party. This Agreement is effective only upon Customer's execution and AEP Energy's subsequent execution or performance of this Agreement.

**XXI. REGULATORY DISCLOSURE(S)**

AEP ENERGY'S NEW JERSEY THIRD PARTY ELECTRIC POWER SUPPLIER LICENSE NUMBER IS ESL-0160. Contact us with any questions between the hours of 8AM – 7PM EST on Monday through Friday, except holidays. Our toll-free number is 1-866-258-3782. AEP Energy can be reached by mail at AEP Energy, 1 Riverside Plaza, 20th Floor, Columbus, OH 43215, or visit [AEPenergy.com](http://AEPenergy.com). For emergencies relating to your service, such as power outage, please call the following utility numbers as applicable: Jersey Central Power & Light ("JCP&L"): 800-662-3115; Public Service Electric & Gas ("PSE&G"): 800-436-7734; Atlantic City Electric: 800-833-7476; Rockland Electric Company ("O&R"): 877-434-4100. The toll-free customer service telephone number for each utility is: JCP&L: 800-662-3115; PSE&G: 800-436-7734; Atlantic City Electric: 800-642-3780; O&R: 877-434-4100. The BPU's Division of Customer Assistance toll free number is 1-800-624-0241 and their website address is <http://www.state.nj.us/bpu>.

**XXII. COUNTERPARTS AND ELECTRONIC SIGNATURES**

This Agreement may be executed in one or more counterparts, each of which will be considered an original, all of which together will constitute one and the same agreement, and any of which may be executed and evidenced by signature transmitted by email or other electronic means as though it were an original. Each Party agrees that the Parties may execute this Agreement using electronic means, including the use of electronic signatures, whether digital or encrypted, by the Parties, which the Parties agree are intended to authenticate such writing and will have the full force and legal effect as if the electronic signatures were traditional hand-written signatures. Each Party agrees not to contest, or assert any defense to, the validity, admissibility, or enforceability of either Party's electronic signature on the grounds that such signature is in electronic form or was executed or evidenced by email or other electronic means or an electronic record was used in its formation.

Customer Information		
	<p><b>Billing Information:</b></p> <input type="checkbox"/> Please send paper invoices.	<p><b>Contract Notice Information:</b></p> <input type="checkbox"/> Same as Billing Information
Address 1:		
Address 2:		
Attn:		
Telephone:		
Email:		

Each of the Parties has caused this Agreement to be executed by a duly authorized representative, who, by applying his or her signature, represents and warrants full right, power, and authority to sign on behalf of the relevant Party named below, effective as of the date first written above.

**AEP Energy, Inc.**

**Customer:**

Signature: \_\_\_\_\_  
 Name: Brian P. Whitlatch  
 Title: Sr. Vice President, Customer Solutions

Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

**Schedule 1**

Customer: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

Service Location Address(es)

Utility/EDC

Account Number(s)

_____	_____	_____
_____	_____	_____
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