



## Electric Service Agreement

(Matrix OH SMB (<700,000 kWh Annually) GTC v.04.17.13)

This Electric Service Agreement (this "Agreement") is dated \_\_\_\_\_ between AEP Energy, Inc. ("AEP Energy") and \_\_\_\_\_ located at service address(es) with the account number(s) listed in Exhibit A hereto (each, a "Service Location") ("Customer") (each referred to individually as a "Party" and collectively as the "Parties").

### I. ENERGY SERVICES

During the relevant term, AEP Energy shall supply and deliver to Customer all of the retail energy requirements at each Service Location (the "Retail Energy"). The Retail Energy is delivered to the distribution system's interconnection point (each, a "Delivery Point") of the relevant electric distribution company ("EDC"), and the relevant EDC is responsible for delivery of the Retail Energy to Customer's meter at and from that point. Customer designates AEP Energy as an authorized recipient of Customer's account, billing and usage information. Customer consents to the disclosure by each EDC to AEP Energy of certain basic information about Customer including: account number, meter number, meter read data, rate class, billing and payment information, account name, service address, billing address, and telephone number. Customer understands that the failure to pay EDC charges may result in Customer being disconnected in accordance with the EDC tariff. Customer acknowledges that if it switches back to the EDC, it may or may not be served under the same rates, terms, and conditions that apply to other customers served by the EDC. Customer has the right to request from AEP Energy twice within a twelve month period up to twenty-four months of Customer's payment history without charge. Customer may be charged switching fees by the EDC.

### II. TERM OF AGREEMENT

AEP Energy shall use commercially reasonable efforts to commence service under this Agreement upon the later of \_\_\_\_\_ or the first available meter read date, as determined by the EDC, after the date hereof, and after AEP Energy receives confirmation that the EDC has completed its processing and has accepted the delivery service request (the "Start Date"). AEP Energy shall not be liable for any lost savings or lost opportunity as a result of a delay in service commencement due to actions or inactions of the EDC. The initial term of this Agreement shall continue for \_\_\_\_\_ months from the Start Date, unless sooner terminated hereunder.

### III. PRICING

AEP Energy shall sell electric supply to Customer at the terms detailed below:

Electric Supply Charge per kWh	\$
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The price listed above is inclusive of generation and transmission charges, energy losses and capacity and is applicable 24 hours a day.

### IV. BILLING and PAYMENT

**A. General Billing and Payment Terms:** AEP Energy shall provide monthly invoices through utility consolidated billing (UCB); provided, however, AEP Energy may provide monthly invoices through supplier consolidated billing (SCB) should such billing method become available. AEP Energy may estimate bills in cases where actual billing determinants are unavailable, and estimated bills shall be adjusted as soon as reasonably practicable. In the event Customer is billed by AEP Energy, Customer shall pay all amounts owing within 14 days after issuance of the invoice. In the event Customer is billed by the EDC, payment is due to the EDC by the date specified in its bill. Late payments shall incur interest charges at a rate of interest equal to a per annum rate of eighteen percent (18%) or the maximum allowed under applicable law, whichever is less. In any instance where any payment to AEP Energy is declined by the issuing institution, Customer shall be assessed a charge of \$45 or the maximum allowed under applicable law (whichever is less) per declined payment. Customer shall be liable for all costs incurred by AEP Energy, including attorneys fees, for collections on accounts greater than thirty (30) calendar days past due. AEP Energy is prohibited from disclosing Customer's account number(s) without Customer's consent except for AEP Energy's own collections and credit reporting, participation in programs funded by the universal service fund, pursuant to Section 4928.52 of the Ohio Revised Code, or assigning this Agreement another CRES provider. AEP Energy does not offer budget billing. AEP Energy's quarterly environmental disclosure statements shall be maintained and updated on its website ([AEPenergy.com](http://AEPenergy.com)), and AEP Energy shall also provide it upon request.

**B. Disputes and Adjustments of Invoices:** Customer may, in good faith, dispute in writing the correctness of any invoice. In the event that an invoice or portion thereof is disputed, payment of the undisputed portion of the invoice shall be made within normal terms, with notice of the dispute given to AEP Energy in writing and stating the amount and basis for the dispute. Upon resolution of the dispute, any required payment shall be made within five (5) business days of such resolution along with interest accrued at the per annum rate of eighteen percent (18%) or the maximum allowed under applicable law, whichever is less. If your complaint 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 for assistance at 1-800-686-7826 (toll free) or for TTY at 1-800-686-1570 (toll free) from 8:00 a.m. to 5:00 p.m. weekdays, or at [www.PUCO.ohio.gov](http://www.PUCO.ohio.gov).

### V. RENEWAL OF AGREEMENT

Not less than forty-five (45) calendar days prior to the anticipated expiration date of the then current relevant Term, AEP Energy may provide a Renewal Notice electronically or otherwise in writing containing proposed terms and conditions. Customer's failure to reject any Renewal Notice in writing within five (5) business days shall result in such Renewal Notice being deemed to have been irrevocably and unconditionally agreed to by Customer. AEP Energy can renew this Agreement without Customer's affirmative consent even when there is a change in the rate or other terms and conditions.

If following termination or expiration of this Agreement, any of Customer's accounts remain designated by any EDC as being served by AEP Energy, AEP Energy may either (a) continue to serve such account(s) on a month-to-month holdover basis (each, a "Holdover Term") or (b) move such account(s) to the then applicable tariff service, whether default service or otherwise, or to another authorized provider of electricity required to serve as the "provider of last resort" (any of the foregoing, an "Alternative Service"). The price payable during any Holdover Term shall be the applicable EDC zone day ahead hourly index price plus an adder of \$0.01 per kWh, and charges for capacity, transmission, losses and ancillaries/renewable portfolio standards (RPS) and taxes shall be passed through with no additional mark-up. This Agreement shall continue to govern the provision of service during any Holdover Term. During a Holdover Term, AEP Energy may at any time move any account(s) to an Alternative Service without penalty or prejudice.

### VI. CREDIT

All electric service offers are subject to credit approval and shall not become a final offer until the creditworthiness of Customer has been approved by AEP Energy. Customer 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 request additional financial statements in accordance with the previous sentence, and in addition thereto, require satisfactory security, including, but not limited to, a parental guaranty, escrow account, deposit, prepayment, or letter of credit, be provided by Customer. Upon receipt of such request from AEP Energy, Customer shall have five (5) business days to provide the requested adequate security to AEP Energy. For the avoidance of doubt, AEP Energy shall in no circumstances be required to provide security or any other form of adequate assurance to Customer.

### VII. SERVICE LOCATION CLOSURE

Customer shall provide AEP Energy at least thirty (30) calendar days prior written notice prior to removing any Service Location from service hereunder as a result of ceasing operations, including, but not limited to, closing any Service Location or the sale of any Service Location to an unrelated third party, at such Service Location. Customer shall be responsible for payment of any actual damages incurred by AEP Energy, if any, relating to or arising from any such removal. Notwithstanding anything contained herein to the contrary, if Customer removes any Service Location from service hereunder as a result of relocation either outside of AEP Energy's service territory or to a AEP Energy service territory where AEP Energy charges a different price, Customer may terminate this Agreement upon providing thirty (30) calendar days prior written notice to AEP Energy. In the event Customer terminates this Agreement in accordance with the preceding sentence, Customer shall not be obligated to pay any Settlement Amount due under this Agreement.

### VIII. CONFIDENTIALITY

Both Parties agree that the terms and conditions of this Agreement shall remain confidential, except for any required disclosure to any regulatory body, governmental entity or agency having jurisdiction, or disclosure to accountants, attorneys, or other professionals acting on behalf of the disclosing Party.

### IX. NOTICES

Any notice or other document to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be delivered to any of the address specified below, any Service Location or to which bills are sent to Customer.

	<b>Billing Information:</b>	<b>Contract Notice Information:</b> <input type="checkbox"/> Same as Billing Information
<b>Address 1:</b>		
<b>Address 2:</b>		
<b>Attn:</b>		
<b>Telephone:</b>		
<b>Facsimile:</b>		

<b>Email:</b>	
<b>How would you like to receive your invoices (if billed by AEP Energy )?</b>	<input type="checkbox"/> Email (Recommended) <input type="checkbox"/> Paper Bill <input type="checkbox"/> Fax
<b>(Please choose at least one):</b>	

**AEP Energy Contact Information:** AEP Energy's (A) mailing address is 225 West Wacker Drive, Suite 700, Chicago, IL 60606; (B) website address is [AEPenergy.com](http://AEPenergy.com) ; and (C) toll-free telephone number is 866- 258-3782 (Mon. - Fri.: 8 a.m. - 10 p.m. (EPT) / Sat.: 10 a.m. - 3 p.m. (EPT) / Sun.: 5 p.m. - 10 p.m. (EPT)).

**X. EVENTS OF DEFAULT**

**A. Definition:** An "Event of Default" shall mean, with respect to the applicable Party to whom the following applies (the "Defaulting Party"), 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 of payment.

**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; or (2) terminate this Agreement by sending at least fourteen (14) calendar day written notice to the Defaulting Party providing the termination date for this Agreement (the "Early Termination Notice"). In the event of such suspension or an early 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, the Defaulting Party shall pay to the Non-Defaulting Party as liquidated damages a settlement amount (the "Settlement Amount") as follows:

If Customer is the Defaulting Party, the Settlement Amount shall equal the greater of (1) Energy Margin, plus Supply Termination Costs, plus Enforcement Costs or (2) zero. If AEP Energy is the Defaulting Party, the Settlement Amount shall equal the greater of (1) Market Value less Contract Value, plus Enforcement Costs or (2) zero.

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

"Contract Value" means the amount that would have been owed by Customer under this Agreement for the Remaining Performance had this Agreement not been terminated early.

"Enforcement Costs" means any attorneys' fees, expenses, and costs incurred by the Non-Defaulting Party in connection with enforcing its rights under this Agreement.

"Market Value" means the amount a bona fide third party retail customer would pay for the Remaining Performance at retail market prices as of the termination date.

"Remaining Performance" means the remaining performance, including kWhs, under this Agreement for the remainder of the relevant Term had it not been terminated early, based on historical usage.

"Energy Margin" means the amount of AEP Energy 's forecasted retail margin under this Agreement, determined based on the differential between wholesale and retail market prices at the time of this Agreement or any extension hereof, allocable to the Remaining Performance.

"Supply Termination Costs" means any loss or cost that AEP Energy would incur in terminating or liquidating the portion of any supply contracts, hedges, or related trading positions or arrangements held by AEP Energy allocable to the Remaining Performance, whether or not such action is taken.

AEP Energy shall calculate the Settlement Amount in its commercially reasonable discretion, including where applicable AEP Energy estimates of market prices and forward market prices. Such calculation shall be included in any Early Termination Notice provided by AEP Energy or, if the termination date selected by AEP Energy is after the date of the Early Termination Notice or the Early Termination Notice is delivered by Customer, AEP Energy shall provide such calculation to Customer within a reasonable period following the termination date. The Settlement Amount shall be paid by the Party that owes it within five (5) business days after such notice is received. The Parties acknowledge and agree that the Settlement Amount constitutes a reasonable approximation of harm or loss, and is not a penalty or punitive in any respect. Each Party agrees that it has a duty to mitigate damages and to use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

**XI. RESCISSION**

Customer may, without penalty, rescind this Agreement by calling or written notice to the EDC within seven (7) calendar days following the postmark date on the EDC's confirmation notice.

**XII. FORCE MAJEURE**

"Force Majeure" shall mean an event which prevents the claiming party (the "Claiming Party") from performing its obligations and is not within the reasonable control of, or the result of the negligence of, the Claiming Party, such as, but not limited to, acts of God; fire; flood; terrorism; breach by the EDC; electric grid interruption; earthquake; war; riot; or requirements, actions or failure to act on the part of governmental authorities. The non-Claiming Party shall not be

required to perform its obligations to the Claiming Party for the period of the Force Majeure. If the Force Majeure continues for a period in excess of thirty (30) calendar days (an "Extended Force Majeure Event"), the performing Party may terminate this Agreement by providing the other Party written notice of the early termination, without the termination for an Extended Force Majeure Event constituting an Event of Default.

**XIII. GOVERNING LAW AND WAIVER OF JURY TRIAL**

This Agreement shall be governed by the laws of the state where such Service Location is located, without regard to its choice of law provisions. Any action arising out of this Agreement shall be filed in a state or federal court located in the state where such Service Location is located. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE RIGHT TO TRIAL BY JURY OF ANY SIZE IS IRREVOCABLY WAIVED.

**XIV. RELATIONSHIP OF PARTIES**

AEP Energy is an independent contractor, and nothing in this Agreement establishes a joint venture, fiduciary relationship, partnership or other joint undertaking. AEP Energy is not acting as Customer's consultant or advisor, and Customer shall not rely on AEP Energy in evaluating the advantages or disadvantages of any specific product or service, predictions about future energy prices or any other matter.

**XV. CHANGES IN LAW OR REGULATION**

In the event that any change in any statute, rule, regulation, order or other law, or procedure, tariff, rate class or other process or charge, promulgated by any governmental authority or EDC, Independent Service Operator ("ISO"), Regional Transmission Operator ("RTO") or other regulated service provider, alters to the detriment of AEP Energy its costs to perform or its economic returns under this Agreement (a "Negative Change in Regulation"), AEP Energy may revise the pricing under this Agreement to eliminate the impact of such Negative Change in Regulation. Before any such price revision, AEP Energy shall provide written notice to Customer of the Negative Change in Regulation, the resulting price revisions, and the date upon which such revised pricing shall be effective. Customer shall pay the revised price described in such notice, and all other terms and conditions of this Agreement shall remain in full force and effect. Capacity and transmission charges may be changed based on adjustments by the applicable Regional Transmission Organization (RTO) and/or EDC to Customer's peak load contribution (PLC).

**XVI. SEVERABILITY**

The various provisions of this Agreement are severable. Any provision or section of this Agreement declared or rendered void, unlawful, or otherwise unenforceable shall not otherwise affect the lawful obligations that arise under this Agreement.

**XVII. INDEMNITY**

AEP Energy shall defend, indemnify, and hold Customer harmless against all claims and liabilities resulting from AEP Energy's negligence or breach of this Agreement and arising prior to the delivery of the Retail Energy to the relevant Delivery Point, except to the extent such claims and liabilities arise out of Customer's negligence or breach of this Agreement. Customer shall assume full responsibility for any damages or losses relating to the delivery of the Retail Energy at and after its delivery to the relevant Delivery Point and shall defend, indemnify, and hold AEP Energy harmless against all claims and liabilities arising at and after the delivery of the Retail Energy to the relevant Delivery Point, except to the extent such claims and liabilities arise out of AEP Energy's negligence or breach of this Agreement.

**XVIII. ASSIGNMENT**

This Agreement shall be binding on and inure to the benefit of each Party's successors and permitted assigns. Neither Party shall assign this Agreement or its rights without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, either Party may (a) assign its rights and obligations under this Agreement to an affiliate without consent of the other Party, subject to the affiliate's ability to comply with the "Credit" section of this Agreement and such affiliate agrees to be bound by the terms and conditions hereof, (b) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets, subject to the assignee's ability to comply with the "Credit" section of this Agreement; or (c) assign this Agreement for financing purposes; provided, however, that in each such case, other than an assignment for financing purposes, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such enforceability assurances as the non-transferring Party may reasonably request. Creditworthiness under this section is to be reasonably determined by the non-transferring Party.

**XIX. WARRANTY, DISCLAIMER AND LIMITATION OF LIABILITY**

AEP Energy warrants title to all Retail Energy delivered hereunder and sells such Retail Energy to Customer free from liens and adverse claims. THIS IS AEP ENERGY 'S ONLY WARRANTY CONCERNING THE SERVICES PROVIDED HEREUNDER AND IS MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES AND REPRESENTATIONS, EXPRESSED 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 IN ACCORDANCE WITH THE TERMS HEREOF, NEITHER PARTY SHALL BE RESPONSIBLE UNDER ANY CIRCUMSTANCES FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES. IN ADDITION, AEP ENERGY 'S AGGREGATE LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO AN

AMOUNT EQUAL TO THE TOTAL OF THE FIRST TWO AEP ENERGY 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. TO THE MAXIMUM EXTENT POSSIBLE UNDER LAW, ARTICLE 2 OF THE UNIFORM COMMERCIAL CODE SHALL APPLY TO THE RETAIL ENERGY SOLD HEREUNDER.

**XX. ENTIRE AGREEMENT; AMENDMENT**

This Agreement constitutes the entire understanding of the Parties with respect to the subject matter hereof. This Agreement may only be amended by a written instrument executed by both Parties. This Agreement is effective only upon Customer's execution and AEP Energy's subsequent execution or performance of this Agreement.

**XXI. COUNTERPARTS**

This Agreement may be executed in one or more counterparts and each executed counterpart shall be considered an original.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by a duly authorized representative in duplicate, effective as of the date first written above.

**AEP Energy, Inc.**

Signature: \_\_\_\_\_

Name: James C. Petersen

Title: Chief Operating Officer and President of Energy Supply

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

**Customer:**

Signature: \_\_\_\_\_

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

Title: \_\_\_\_\_

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

Exhibit A

Service Address(es)

Utility(ies)

Account Number(s)

**NOTE: This contract should ONLY be used with commercial customers in the State of Ohio that consume LESS than 700,000 kWhs (aggregate) per year AND are NOT part of a national account involving multiple facilities in one or more states.**