

**TIME-OF-USE  
SUPPLIER MASTER AGREEMENT (SMA)  
BETWEEN  
PPL ELECTRIC UTILITIES CORPORATION  
AND  
[TOU SUPPLIER NAME]**

**DATED \_\_\_\_\_**

# TIME-OF-USE SUPPLIER MASTER AGREEMENT

## Articles and Provisions

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## TIME-OF-USE SUPPLIER MASTER AGREEMENT

THIS TIME-OF-USE SUPPLIER MASTER AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (“Effective Date”), by and between PPL Electric Utilities Corporation (the “Company” and “Buyer”), a corporation and a public utility organized and existing under the laws of the Commonwealth of Pennsylvania and \_\_\_\_\_ (“TOU Supplier”), the Company and the TOU Supplier hereinafter sometimes referred to collectively as the “Parties”, or individually as a “Party”,

### WITNESSETH:

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

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

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

**WHEREAS**, the Company has conducted and completed a successful TOU Solicitation for the provision of TOU Supply, and the TOU Supplier was one of the

winning bidders in the TOU Solicitation; and

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

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

## **ARTICLE 1 DEFINITIONS**

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

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

**Affiliate** – Shall mean, with respect to any entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such entity. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

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

**Alternative Energy Portfolio Standards or “AEPS”** – Shall have the meaning ascribed to it in the Pennsylvania Alternative Energy Portfolio Standards Act, 73 P.S. §§ 1648.1-1648.8, as amended from time to time.

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

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

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

**Bankruptcy Code** – Those laws of the United States of America related to bankruptcy, codified and enacted as Title 11 of the United States Code, entitled “Bankruptcy” and found at 11 U.S.C. § 101 et seq., as such laws may be amended, modified, replaced or superseded from time to time.

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

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

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

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

**Company** – PPL Electric Utilities Corporation.

**Costs** – With respect to the Non-Defaulting Party, brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace Transaction(s) under this Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement.

**Credit Limit** – Shall mean an unsecured line of credit pursuant to Article 6.

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

**Customer Group** – Shall have the meaning ascribed to it in Appendix C.

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

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

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

**Delivery Period** – The period of months, as specified on an executed Transaction Confirmation, where a TOU Supplier has an obligation to provide service.

**Delivery Point** – Means the applicable zone or aggregate of the Company as designated by PJM and set forth in the Transaction Confirmation.

**Early Termination** – Termination of this Agreement prior to the end of the term of all Transactions under this Agreement due to the occurrence of an Event of Default as specified in Section 5.1 of this Agreement and the declaration of Early Termination as specified in Section 5.2.

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

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

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

**Emergency** – (i) an abnormal system condition requiring manual or automatic action to maintain system frequency, or to prevent loss of firm load, equipment damage, or tripping of system elements that could adversely affect the reliability of an electric system or the safety of persons or property; or (ii) a condition that requires implementation of Emergency Operations Procedures as defined in the PJM Agreements or PJM manuals; or (iii) any other condition or situation that the Company or PJM deems imminently likely to endanger life or property or to affect or impair the Company’s electrical system or the electrical system(s) of other(s) to which the Company’s electrical system is directly or indirectly connected (a “Connected Entity”). Such a condition or situation may include, but shall not be limited to, potential overloading of the Company’s transmission and/or distribution circuits, PJM minimum generation (“light load”) conditions, or unusual operating conditions on either the Company’s or a Connected



Entity's electrical system, or conditions such that the Company is unable to accept Energy from the TOU Supplier without jeopardizing the Company's electrical system or a Connected Entity's electrical system. Other additional emergencies can only be declared by PJM, FERC, or the PaPUC.

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

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

**Excess Generation** – Energy provided by a Net Metering Customer which exceeds the consumption at the customer's premise. This energy is typically displayed as a negative load value; whereas, energy consumption by a customer is a positive value.

**FERC** – The Federal Energy Regulatory Commission or its successor.

**Final Hourly Energy Allocation or "FHEA"** – A quantity in MWh which, for any hour, is the PHEA, adjusted for any billing or metering errors found subsequent to the calculation of PHEA, of which PJM is notified within 60 days.

**Force Majeure** - An event or circumstance which prevents one Party from performing its obligations under one or more transactions, including but not limited to, riots or revolutions, demands or embargoes of the United States Government, fire, flood, drought, insurrection, acts of God which are not within the reasonable control of, or the results of the negligence of the affected Party and which, by the exercise of due diligence, the Party is unable to mitigate or avoid or cause to be avoided. Notwithstanding the foregoing, under no circumstance shall an event of Force Majeure be based on: (i) the loss or failure of TOU Supplier's supply; (ii) TOU Supplier's ability to sell the TOU Supply at a price greater than that received under any Transaction; (iii) curtailment by a utility transmitting TOU Supply; (iv) the Company's ability to purchase the TOU Supply at a price lower than paid under any Transaction; (v) any change in requirements of any governmental authority; or (vi) labor stoppage or lockout.

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

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

**Guaranty** – A guaranty, suretyship, hypothecation agreement, margins or security agreement or any other document in the form attached as Exhibit 6 to this Agreement or other form approved by the Company.

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

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

**Kilowatt or “kW”** – Unit of measurement of useful power equivalent to 1000 watts.

**Load Serving Entity or “LSE”** – Shall have the meaning ascribed to it in the PJM Agreements.

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

**Margin** – The amount by which the Total Exposure Amount exceeds the TOU Supplier’s, or Guarantor’s, Credit Limit as defined in Section 6.4.

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

**Maximum Credit Limit** – The lesser of the applicable percentage of TNW or the applicable Credit Limit Cap as specified in Appendix A of this Agreement.

**Megawatt or MW** – One thousand kilowatts.

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

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

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

**Minimum Transfer Amount** - \$100,000.

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

**Net Excess Generation** – the sum of Excess Generation from all Net Metering Customers within a class that exceeds the consumptive load of TOU Customers within that class for a supply month, measured separately for On-Peak Hours and Off-Peak Hours.

**Net Metering Customer** – A TOU Customer with an approved renewable energy asset at the customer’s premise, which is receiving net metering in accordance with the provisions of 52 Pa. Code Chapter 75, Subchapter B – Net Metering, and the Company’s tariff. The renewable energy asset has the potential to produce power and offset the customer’s consumption, and in some instances, produce Excess Generation to the grid.

**Network Integration Transmission Service or “NITS”** – “Network Integration Transmission Service” under the PJM Agreements in effect as of the date of this Agreement, or its successor, superseding or amended versions of the PJM Agreements that may take effect from time to time over the term of this Agreement. In the event the PJM Agreements are modified such that “Network Integration Transmission Service” is no longer offered, Network Integration Transmission Service shall mean the type of transmission service offered under the PJM Agreements that is accorded the highest level of priority for scheduling and curtailment purposes.

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

**Non-market-based Transmission Services** – Shall mean Network Integration Transmission Services (“NITS”), Transmission Enhancement Costs, Expansion Cost Recovery Costs, Non-Firm Point-to-Point Transmission Service Credits, Regional Transmission Expansion Plan (“RTEP”), and Generation Deactivation Charges. These terms shall have the meaning ascribed to them in the PJM Agreements.

**Off-Peak Hours** – Shall mean all hours that are not On-Peak Hours.

**On-Peak Hours** – For Residential Customer Group, On-Peak Hours mean 4:00 p.m. through 8:00 p.m. from Monday through Friday, excluding weekends and PJM holidays during both the Summer season and the Winter season. For Small C&I customer Group, On-Peak Hours mean 10:00 a.m. through 4:00 p.m., Monday through Friday, excluding weekends and PJM holidays during the Summer season and 8:00 a.m. through 3:00 p.m., Monday through Friday, excluding weekends and PJM holidays during the Winter Season.

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

**PJM** – PJM Interconnection L.L.C. or its successor.

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

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

**PJM Manual 28** – The PJM governing rules regarding Operating Agreement Accounting, including market settlements, spot market settlements, and other similar accounting rules and requirements.

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

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

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

**PJM OI** – The PJM Office of Interconnection, the system operator for the PJM Control Area or its successor.

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

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

**Preliminary Hourly Energy Allocation or "PHEA"** – A quantity in MWh which, for any hour, is the preliminary calculation of the TOU Supplier's TOU Supplier Responsibility Share for that hour.

**Price-to-Compare (“PTC”)** – shall mean the price in dollar per MWh as determined pursuant to DS Solicitations conducted prior to the applicable TOU Solicitation for the applicable period.

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

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

**Residential Customer Group** – Group of Rate Schedules that comprise the residential class for the TOU Supply and itemized in Appendix C.

**Rounding Amount** - \$100,000.

**Seasonal Multiplier** – shall mean 1.56 for the Summer Season and 1.33 for the Winter Season.

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

**Small Commercial and Industrial Customer Group** – Group of Rate Schedules that comprise the small commercial and industrial class for TOU Supply and itemized in Appendix C.

**Statement** – A monthly report prepared by the Company for the TOU Supplier indicating the amount due to the TOU Supplier or to the Company during a given Billing Month, in accordance with this Agreement.

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

**Summer Season** – Six (6) calendar months beginning with June through November of a calendar year.

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

**Termination Payment** – A payment resulting from an Early Termination that is calculated in accordance with Section 5.4.

**Tier I AEC** – Shall mean an AEC generated by a non-solar photovoltaic energy source that will satisfy the non-solar photovoltaic Tier I requirements of the AEPS Act applicable to the Company (as specified in Appendix D and Exhibit 2).

**Tier I (Solar) AEC** – Shall mean an AEC generated by a solar photovoltaic energy source that will satisfy the Tier I solar photovoltaic requirements of the AEPS Act applicable to the Company (as specified in Appendix D and Exhibit 2).

**Tier II AEC** - Shall mean an AEC generated by a non-solar photovoltaic energy source that will satisfy the Tier II requirements of the AEPS Act applicable to the Company (as specified in Appendix D and Exhibit 2).

**Time-of-Use Customer(s) (“TOU Customer(s)”)** – Retail customers who are provided TOU Service pursuant to the terms of this Agreement, the Applicable Legal Authorities and the Company’s retail tariffs.

**Time-of-Use Load (“TOU Load”)** – Shall mean the net total customer sales at the retail meter of TOU Customers, plus any transmission and distribution losses and Unaccounted for Energy, adjusted for PJM’s derating in conjunction with marginal loss implementation as appropriate, expressed in MWh or MW, as appropriate, for a particular Customer Group, as such sales vary from hour to hour, in Buyer’s Pennsylvania franchise service territory. For purposes of this Agreement, the TOU Load will be reduced by any Excess Generation purchased from net metering (customer generation), and the TOU Supplier will be responsible to make payments to the Company for Net Excess Generation that occurs during On-Peak Hours at the TOU On-Peak Price and to make payment to the Company for Net Excess Generation that occur during Off-Peak Hours at the TOU Off-Peak Price.

**Time-of-Use Off-Peak Price (“TOU Off-Peak Price”)** – The price in dollars per MWh indicated in the Transaction Confirmation as determined pursuant to the TOU Solicitation, which will be applicable during the Off-Peak hours of the Delivery Period. The TOU Off-Peak Price is determined based on the percentage discount below the generation portion of the PTC indicated by the TOU Supplier’s bid in the TOU Solicitation.

**Time-of-Use On-Peak Price (“TOU On-Peak Price”)** – The price in dollars per MWh indicated in the Transaction Confirmation as determined pursuant to the TOU Solicitation, which will be applicable during the On-Peak hours of the Delivery Period.

**Time-of-Use Service or “TOU Service”** – Electric generation service that is provided at retail pursuant to the Applicable Legal Authorities under the Company’s retail electric tariffs and under any other agreements or arrangements between the Company and Customers, to any Customer that elected to take service under a time-of-use rate.

**Time-of-Use Solicitation (“TOU Solicitation”)** – The competitive bidding processes, procedures and rules employed by the Company to competitively procure TOU Supply for purposes of this Agreement.

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

**Time-of-Use Supplier Responsibility Share (“TOU Supplier Responsibility Share”)** – 100% of the Company’s TOU Load for a given Customer Group as indicated in the Transaction Confirmation which the TOU Supplier is responsible.

**Time-of-Use Supply (“TOU Supply”)** – Shall mean Full Requirements Service as detailed in Appendix C that the TOU Supplier is required to provide in order to meet the TOU Supplier’s TOU Supplier Responsibility Share.

**Total Exposure Amount** – An amount calculated daily for the TOU Supplier reflecting the total credit exposure to the Company and consisting of the sum of (i) the amount designated as the “credit exposure” under this Agreement; (ii) any amount(s) designated as the “Mark-to-Market Exposure” arising under any other agreements providing for default service on a fixed price basis minus amounts due pursuant to such transactions; and (iii) the amount designated as the “credit exposure” under any other agreements providing for default service; provided that in the event the amount calculated for any day is a negative number, it shall be deemed to be zero for such day.

**Tranche** – 100% of the Company’s TOU Load for the Customer Group as indicated in any given Transaction Confirmation.

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

**Transaction Confirmation** – Shall have the meaning ascribed to it in Appendix C and shall be in a form substantially as set forth in Exhibit 1 of this Agreement.

**Transaction Date** – Means the date that a Transaction is effective as set forth in the Transaction Confirmation.

**Unaccounted for Energy** – Means an energy accounting adjustment for settlement purposes among retail energy suppliers at the Delivery Point. Unaccounted for Energy is distributed among all retail energy suppliers at the Delivery Point on an hourly basis.

**Winter Season** – Six (6) calendar months beginning with December of one calendar year through and including May of the following calendar year.



## **ARTICLE 2**

### **GENERAL TERMS AND CONDITIONS**

#### **2.1 Capacity In Which Company Is Entering Into This Agreement**

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

The Parties acknowledge that the Agreement is a "forward contract" within the meaning of the United States Bankruptcy Code ("USBC"), that each Party hereto is a "forward contract merchant" within the meaning of the USBC, that all setoffs, netting and liquidations contemplated hereunder constitute "settlement payments" within the meaning of the USBC, that each payment or transfer of performance assurance is a "margin payment", "settlement payment" or transfer within the meaning of the USBC, and, accordingly, the Parties hereto are entitled to the protections of Section 556 of the

Bankruptcy Code. The Parties therefore agree that the Agreement may be terminated by either Party upon the commencement of a proceeding by the other Party under any chapter of the Bankruptcy Code in accordance with Section 5.2 of this Agreement.

## **2.2 Parties' Obligations**

### **(a) Obligations of TOU Supplier**

The TOU Supplier hereby agrees as follows:

- (i) To provide service on a firm and continuous basis such that the supply delivered for the term of each Transaction under the Agreement meets the terms and conditions set forth in Appendix C and the applicable Transaction Confirmation;
- (ii) To provide sufficient quantities of TOU Supply on an instantaneous basis at all times during the Delivery Period of each Transaction and supplied to the Delivery Point to meet the TOU Supplier Responsibility Share;
- (iii) To procure those services provided by the PJM OI and to perform such functions as may be required by the PJM OI that are necessary for the delivery of TOU Supply required hereunder;
- (iv) To cooperate with the Company in any regulatory compliance efforts that may be required to maintain the ongoing legitimacy and enforceability of the terms of this Agreement and to fulfill any regulatory reporting requirement associated with the provision of TOU Supply before the PaPUC, the FERC or any other regulatory body asserting jurisdiction;
- (v) To become the LSE with respect to the provision of TOU Supply for the TOU Supplier Responsibility Share and to comply with all requirements

of an LSE with respect to such TOU Supplier Responsibility Share;

- (vi) To pay to the Company adjustments pursuant to Sections 9.1(b)(ii) if applicable, as more fully described in Article 9 of this Agreement;
- (vii) To accept assignment of and to fulfill all obligations of an LSE that are assigned to it by this Agreement;
- (viii) To comply in a timely manner with all obligations under this Agreement imposed upon the TOU Supplier;
- (ix) To comply with the AEPS requirements set forth in Appendix D and Exhibit 2; and
- (x) To make payments to the Company for any Net Excess Generation due to net metering (customer generation) that occur during On-Peak Hours at the TOU On-Peak Price and to make payments to the Company for any Net Excess Generation due to net metering (customer generation) that occur during Off-Peak Hours at the TOU Off-Peak Price.

**(b) Obligations of the Company**

The Company hereby agrees as follows:

- (i) To pay to the TOU Supplier every month an amount due, resulting from the calculations, as detailed in Article 9 of this Agreement, subject to the adjustments as expressed therein;
- (ii) To pay to the TOU Supplier adjustments pursuant to Sections 9.1(b)(ii) if applicable, as more fully described in Article 9 of this Agreement;
- (iii) To provide to the TOU Supplier its estimated aggregate load obligation (Capacity MW value) for each Supply Day no less than five (5) calendar

days prior to the day of delivery. Further, this information will be posted in the TOU Supplier's specific PJM eMTR account, or successor system or process;

- (iv) To comply in a timely manner with all obligations under this Agreement imposed upon the Company; and
- (v) Accept the delivery of TOU Supply necessary to meet the TOU Load.

### **2.3 Congestion and Congestion Management**

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

### **2.4 PJM Services**

- (a) The TOU Supplier shall make all necessary arrangements for the delivery of TOU Supply through the PJM OI. The Company will advise the PJM

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

- (b) The Company will manage PJM load response programs in accordance with PJM Agreements as amended from time to time and the provisions of its applicable riders and retail electric service tariffs, as amended and approved by the PaPUC from time to time, or the Company customer contracts, as amended by the Company from time to time. The Company will retain all of the benefits associated with its load response programs, including but not limited to all associated wholesale revenues from PJM for Capacity, Energy and Ancillary Services. Unless specifically prohibited by its retail electric service tariffs, TOU Customers may, at their election, participate in demand response programs offered under the PJM Agreements.
- (c) TOU Supplier will be responsible for any costs regarding demand response compensation in organized wholesale energy markets.
- (d) The Company and TOU Supplier shall work with PJM to establish any PJM E-Accounts necessary for the TOU Supplier to provide Full

Requirements Service. The Company shall generate and provide to TOU Supplier PJM shortname(s) associated with supplier's unique contract type(s), as necessary. Unique shortname(s) may be generated for each differing contract type. TOU Supplier shall complete all required forms and processing to PJM to create shortname(s) within the PJM system.

- (e) Upon TOU Supplier's creation of new shortname(s), the Company shall establish PJM E-Account contract(s) for the entire duration of the Transaction(s).
- (f) The Company will complete and partially execute the PJM Declaration of Authority, Exhibit 4, and issue to the TOU Supplier to execute. The PJM Declaration of Authority will be used to allocate PJM costs, in association with the shortnames created in accordance with Section 2.4(d) above, and Appendix C.
- (g) Following the Company's establishing new contracts within the PJM eSuite system, the TOU Supplier shall review and confirm the PJM E-Account contract(s) for the entire duration of the Transaction(s).
- (h) For the period of time this Agreement is in effect, TOU Supplier shall be:
  - (i) a member in good standing of PJM; (ii) qualified as a PJM "Market Buyer" and "Market Seller" pursuant to the PJM Agreements; and (iii) qualified as a PJM "Load Serving Entity." For the period of time this Agreement is in effect, the Company shall be a member in good standing of PJM.
- (i) For the period of time this Agreement is in effect, both the Company and

TOU Supplier shall have executed the PJM Declaration of Authority (Exhibit 4), which shall remain in effect during the term of each Transaction under this Agreement. In the event PJM requires that the Declaration of Authority be amended after execution by the TOU Supplier, TOU Supplier agrees to execute a revised PJM Declaration of Authority in accordance with PJM requirements.

## **2.5 PJM Billing**

- (a) Buyer and Seller shall direct PJM to invoice Seller and Buyer for charges and credits relating to Seller's and Buyer's rights and obligations under this Agreement. If PJM is unable to invoice charges or credits in accordance with this Agreement, Buyer shall rectify such PJM invoice discrepancy in the invoice sent pursuant to Section 9.1 (Billing and Payment).
- (b) The Parties agree that the PJM bill may change from time to time. Allocation of any charges that are reflected in a PJM bill that are not included on or are inconsistent with this Agreement will be determined pursuant to Appendix C (TOU Supply Specifications), Section 2.4 (PJM Services), and Section 2.6 (PJM Agreement Modifications) of this Agreement.

## **2.6 PJM Agreement Modifications**

- (a) If the PJM Agreements are amended or modified so that any schedule or section references herein to such agreements is changed, such schedule or section references herein shall be deemed to automatically (and without

any further action by the Parties) refer to the new or successive schedule or section in the PJM Agreements which replaces that originally referred to in this Agreement.

- (b) If the applicable provisions of the PJM Agreements referenced herein, or any other PJM rules relating to the implementation of this Agreement, are changed materially from those in effect on the Effective Date, both Parties shall cooperate to make conforming changes to this Agreement to fulfill the purposes of this Agreement, including the TOU Supplier's responsibility for changes in PJM products and pricing during the term of each Transaction under this Agreement.

## **2.7 PJM Member Default Cost Allocation**

In the event PJM imposes a Default Allocation Assessment upon the Company relating to a default during the term of Transaction(s) under this Agreement, the Company shall invoice TOU Supplier, and TOU Supplier shall pay an amount equal to the product of (i) TOU Supplier Responsibility Share and (ii) the Default Allocation Assessment, less the amounts of any types of charges allocated to the Company under this Agreement that are used by PJM in calculating such Default Allocation Assessment.

## **2.8 Other Fines and Penalties**

If fees, fines, penalties, or costs are claimed or assessed against the Company by any Applicable Legal Authority or PJM due to non-compliance by the TOU Supplier with this Agreement, any other requirements of law or the PJM Agreements, the TOU Supplier shall indemnify and hold the Company harmless against any and all losses, liabilities, damages, and claims suffered or incurred by the Company, including claims



for indemnity or contribution made by third parties against the Company, except to the extent the Company recovers any such losses, liabilities or damages through other provisions of this Agreement.

## **2.9 Communications and Data Exchange**

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

The TOU Supplier shall be equipped with the communications capabilities necessary to comply with the communications and data exchange standards that are set by and as may, from time to time, be modified by PJM, and shall exclusively bear the costs of installing, maintaining, testing, and operating all required information technology systems that will enable it to send to and receive data from the Company and PJM and to satisfy its obligations under this Agreement, the PJM Agreements and all other relevant agreements.

## **2.10 Record Retention**

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

## **2.11 Verification**

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

# **ARTICLE 3 REPRESENTATIONS AND WARRANTIES**

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

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

- (a) It is a corporation, partnership, limited liability company or other legal entity, duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania or, if another jurisdiction, under the laws of such jurisdiction and, in such case, is duly registered and authorized to do business in such other jurisdiction and in the Commonwealth of Pennsylvania;
- (b) It has all requisite power and authority to execute and deliver this Agreement and to carry on the business to be conducted by it under this Agreement and to enter into and perform its obligations hereunder, including satisfaction of all applicable FERC requirements;
- (c) The execution and delivery of this Agreement and the performance of

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

- (d) All necessary and appropriate action that is required on the TOU Supplier's part to execute this Agreement has been completed;
- (e) This Agreement is the legal, valid and binding obligation of the TOU Supplier, enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect that affect creditors' rights in general or by general principles of equity;
- (f) There are no actions at law, suits in equity, proceedings or claims pending or, to the TOU Supplier's knowledge, threatened against the TOU Supplier before any federal, state, foreign or local court, tribunal or governmental agency or authority that might materially delay, prevent or hinder the TOU Supplier's performance of its obligations under this Agreement;

- (g) It has entered into this Agreement and all Transactions under this Agreement with a full understanding of the material terms and risks of the same, and it is capable of assuming those risks;
- (h) It is in good standing as an LSE in PJM, is a signatory to all applicable PJM Agreements, and is in compliance with, and will continue to comply with, all obligations, rules and regulations, as established and interpreted by the PJM OI, that are applicable to LSEs as defined by the PJM Agreements; provided that the TOU Supplier shall not be obligated to become an LSE in PJM until the date it begins providing TOU Supply;
- (i) It has made its trading and investment decisions (including regarding the suitability thereof) based upon its own judgment and any advice from such advisors as it has deemed necessary and not in reliance upon any view expressed by the Company;
- (j) It will comply with any and all information and data transfer protocols that may be adopted by the Company or that are set by, and from time to time modified by, the PaPUC; provided that TOU Supplier shall be entitled to exercise its reserved right to challenge any such protocols in the appropriate forum;
- (k) It is not bankrupt or insolvent and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt or insolvent;

- (l) No Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;
- (m) It is not relying upon the advice or recommendations of the other Party in entering into this Agreement, it is capable of understanding, understands and accepts the terms, conditions and risks of this Agreement, and the other Party is not acting as a fiduciary for or advisor to it in respect of this Agreement; and
- (n) It has entered into this Agreement and all Transactions under this Agreement in connection with the conduct of its business and it has the capacity or ability to provide or take delivery of TOU Supply as required by this Agreement; and it is an “eligible contract participant” as defined in Section 1a(18) of the Commodity Exchange Act.

### **3.2 Company’s Representations and Warranties**

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

- (a) The Company is an electric utility corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania;
- (b) The Company has all requisite power and authority to carry on the business to be conducted by it under this Agreement and to enter into and

perform its obligations hereunder;

- (c) The execution and delivery of this Agreement and the performance of the Company's obligations hereunder have been duly authorized by all necessary action on the part of the Company and do not and will not conflict with, or constitute a breach of or default under, any of the terms, conditions, or provisions of the Company's certificate of incorporation or bylaws or other constituent instruments or any indenture, mortgage, other evidence of indebtedness, or other agreement or instrument or any statute or rule, regulation, order, judgment, or decree of any judicial or administrative body to which the Company is a party or by which the Company or any of its properties is bound or subject;
- (d) All necessary and appropriate action that is required on the Company's part to execute this Agreement has been completed;
- (e) This Agreement is the legal, valid and binding obligation of the Company, enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws from time to time in effect that affect creditors' rights in general or by general principles of equity and the Commission's power under section 508 of the Public Utility Code, 66 Pa.C.S. § 508, to amend or modify the contracts of public utilities;
- (f) The ability of the Company to pay any and all amounts due and payable under this Agreement, or upon any potential breach thereof, is not conditioned upon any governmental or administrative appropriation by the

Commission, the Commonwealth of Pennsylvania or any other governmental authority;

- (g) There are no actions at law, suits in equity, proceedings or claims pending or, to the Company's knowledge, threatened against the Company before any federal, state, foreign or local court, tribunal or governmental agency or authority that might materially delay, prevent or hinder the Company's performance of its obligations under this Agreement;
- (h) It has entered into this Agreement and all Transactions under this Agreement with a full understanding of the material terms and risks of the same, and it is capable of assuming those risks;
- (i) It is in good standing with PJM, is a signatory to all applicable PJM Agreements, and is in compliance with, and will continue to comply with, all obligations, rules and regulations applicable to Company, as established and interpreted by the PJM OI;
- (j) The Company's performance under this Agreement is not contingent upon the performance of Customers or the ability of Customers to pay rates;
- (k) The Company shall have sole responsibility for metering and billing with respect to TOU Customers;
- (l) The Company shall be responsible for electric distribution services and the TOU Supplier shall not be responsible for distribution charges;
- (m) It has made its trading and investment decisions (including regarding the suitability thereof) based upon its own judgment and any advice from such advisors as it has deemed necessary and not in reliance upon any view

expressed by the TOU Supplier;

- (n) It is not bankrupt or insolvent and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt or insolvent;
- (o) No Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;
- (p) It is not relying upon the advice or recommendations of the other Party in entering into this Agreement, it is capable of understanding, understands and accepts the terms, conditions and risks of this Agreement, and the other Party is not acting as a fiduciary for or advisor to it in respect of this Agreement; and
- (q) It has entered into this Agreement and all Transactions under this Agreement in connection with the conduct of its business and it has the capacity or ability to provide or take delivery of TOU Supply as required by this Agreement; and it is an “eligible contract participant” as defined in Section 1a(18) of the Commodity Exchange Act.

### **3.3 Survival of Obligations**

All representations and warranties contained in this Article must be maintained up through the termination or expiration of all Transactions under this Agreement. If a Party learns that any of the representations, warranties or covenants in this Agreement are no longer true during the term of any Transaction under this Agreement, the Party shall immediately notify the other Party via facsimile, with a hard copy of the notice delivered



by overnight mail, and Company may, in its reasonable discretion treat such occurrence as an Event of Default hereunder.

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

This Agreement is for the purchase and sale of TOU Supply over a defined period(s) in accordance with the terms hereunder, and the quantity of TOU Supply that TOU Supplier must deliver and Company must receive, or that the TOU Supplier must make payment to the Company for if such quantity is negative due to Net Excess Generation related to net metering, will be determined by the requirements of the applicable TOU Load, and, as such, the Agreement does not provide for an option by either Party with respect to such quantity of TOU Supply during performance of the Agreement. This Agreement has been drafted to effectuate Company's and TOU Supplier's specific intent so that in accordance with Accounting Standards Codification 815 ("ASC 815"), as amended, Company would be able to elect to use accrual accounting for its purchases under this Agreement, while TOU Supplier would be able to elect to use either accrual or mark-to-market accounting for its sales under the Agreement. If either Company or TOU Supplier determines, in good faith, that the intended accounting treatment has become jeopardized, due to a change in interpretations of ASC 815, as amended, or otherwise, then Company and TOU Supplier agree to meet and use their best efforts to reform the Agreement so that, with the minimum changes possible, the Agreement again qualifies for the intended accounting treatments.

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

### **4.1 Commencement and Termination**

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

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

The TOU Supplier agrees that termination of this Agreement for reason of an Event of Default shall terminate any right of the TOU Supplier to provide TOU Supply to the TOU Customers and nullify any of the entitlements to which the TOU Supplier became entitled as a result of being selected as a winning bidder in the TOU Solicitation.

### **4.3 Survival of Obligations**

Termination of this Agreement for any reason shall not relieve the Company or the TOU Supplier of any obligation accrued or accruing prior to such termination. Applicable provisions of this Agreement shall continue in effect after termination to the extent necessary to provide for final billings including, without limitation, Article 4 (Commencement and Termination of Agreement), Article 5 (Breach and Default), Article 11 (Dispute Resolution), Article 13 (Limitations of Remedies, Liabilities and Damages), Article 14 (Indemnification) and Article 16 (Miscellaneous Provisions).

#### **4.4 Mutual Termination**

The Company and the TOU Supplier may agree at any time during the term of this Agreement to terminate their respective rights and obligations hereunder on such terms and under such conditions that they mutually deem to be appropriate as set forth in a mutual termination agreement acceptable in form and substance to the Company and the TOU Supplier (“Mutual Termination Agreement”); provided that Company may enter into such a Mutual Termination Agreement, which will discharge the terminating TOU Supplier (the “Terminating TOU Supplier”) with respect to liabilities arising after the effective date of the Mutual Termination Agreement if the following conditions precedent are met: (i) the Terminating TOU Supplier identifies a replacement TOU Supplier willing to assume all obligations of the Terminating TOU Supplier hereunder for the remaining term of Transactions under this Agreement (the “Replacement TOU Supplier”); (ii) the Replacement TOU Supplier demonstrates its compliance with Article 6 of this Agreement, “Creditworthiness”, as of the effective date of the Mutual Termination Agreement, that determination to be made in the reasonable discretion of Company; (iii) the Replacement TOU Supplier executes a counterpart signature page to this Agreement and all Transaction Confirmation(s) that are currently in effect and thereby becomes a Party under this Agreement and all relevant Transaction(s), effective immediately following the effective date of the Mutual Termination Agreement; and (iv) the Terminating TOU Supplier is not, to the belief or knowledge of the Company, subject to an Event of Default as of the effective date of the Mutual Termination Agreement or, if the Company believes that the Terminating TOU Supplier may be subject to an Event of Default, either (a) the Company has determined that, as of the effective date of the

Mutual Termination Agreement, it has not incurred any Damages as a result of the Event of Default or (b) if the Company has determined that, as of the effective date of the Mutual Termination Agreement, it may have incurred Damages as a result of the Event of Default, the Replacement TOU Supplier has agreed in writing to be responsible for the payment of such Damages or to otherwise cure the Event of Default, in either case to the satisfaction of the Company in its reasonable discretion.

## **ARTICLE 5 BREACH AND DEFAULT**

### **5.1 Events of Default**

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

- (a) Is the subject of a voluntary bankruptcy, insolvency or similar proceeding;
- (b) Fails to transfer Alternative Energy Credits in compliance with the requirements of Appendix D and Exhibit 2 (TOU Supplier’s Obligations for AEPS Compliance) if such failure is not remedied within three (3) Business Days after written notice;
- (c) In the case of a TOU Supplier, fails to comply with the requirements of Section 3.1(b) and (h) if such failure is not remedied within three (3) Business Days after written notice;
- (d) Makes an assignment for the benefit of its creditors;
- (e) Applies for, seeks consent to, or acquiesces in the appointment of a receiver, custodian, trustee, liquidator or similar official to manage all or a substantial portion of its assets;

- (f) In the case of a TOU Supplier, is dissolved or is the subject of a Merger Event;
- (g) Has a secured party take possession of all or substantially all of its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets;
- (h) Has a resolution passed for its winding-up, official management or liquidation;
- (i) In the case of a TOU Supplier, PJM terminates the TOU Supplier's ability to make purchases from PJM markets or PJM holds the Company responsible for the provision of TOU Supply to meet the TOU Supplier's TOU Supplier Responsibility Share under this Agreement and PJM does not rescind such termination or assignment of responsibility within seven (7) Business Days;
- (j) Fails to comply with the creditworthiness requirements as set forth in Article 6 of this Agreement, including, without limitation, compliance with the creditworthiness requirements to cover the Margin calculated under Section 6.3 or post any performance assurance collateral as set forth in Section 6.7 to cover Margin due under Section 6.5 of this Agreement, within the time frames set forth in this Agreement;
- (k) Is declared by PJM to be in default of any provision of any PJM Agreement, which default prevents a Party's performance hereunder if such failure is not remedied within three (3) Business Days after written

notice;

- (l) Fails 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;
- (m) Violates any federal, state or local code, regulation or statute applicable to the provision of TOU Supply and/or AECs in a manner that materially, and adversely, affects the Party's performance under this Agreement, including by way of failure to continually satisfy all applicable FERC requirements, or, in the case of the TOU Supplier, by way of failure to maintain any other governmental approvals required for participation in the Pennsylvania retail energy market, or defaults on any obligation or other failure to comply with PJM requirements under the PJM Agreements;
- (n) Is the subject of an involuntary bankruptcy or similar proceeding;
- (o) Subject to Section 5.3 (b) of this Agreement, in the case of the Company, fails to accept TOU Supply properly tendered by the TOU Supplier under this Agreement;
- (p) Fails to perform any material covenant or obligation set forth in this Agreement, if such failure is not remedied within three (3) Business Days after written notice;
- (q) Makes a materially incorrect or misleading representation or warranty under this Agreement or under any response to the TOU Solicitation;
- (r) Makes an omission or commits an act that constitutes an "Event of

Default” under any other agreement(s) for the provision of TOU Supply between the Company and the TOU Supplier; and fails to remedy such condition, event or delinquency herein above described such that the other Party (the “Non-Defaulting Party”) is completely made whole with respect to such condition, event or delinquency, within three (3) Business Days of receipt of written notice thereof from such Non-Defaulting Party; provided, however, that an Event of Default shall be deemed to have occurred immediately, without any need for the provision of notice thereof by the Non-Defaulting Party and without any right of cure on the part of the Defaulting Party, in the event of the occurrence of a condition, event or delinquency described in subsections (a), (d), (e), (f), (g), (h), (i), and (j) above. Termination or modification of this Agreement or any Transactions hereunder by the PaPUC, other regulatory authority or court of law does not constitute an Event of Default under this Agreement; or

(s) With respect to the TOU Supplier’s Guarantor, if any:

1. any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;
2. Guarantor fails to make, when due, any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such

failure shall not be remedied within three (3) Business Days after written notice;

3. Guarantor's guaranty fails to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of the TOU Supplier under this Agreement without the written consent of the Company; or
4. Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of any guaranty in connection with this Agreement.

## **5.2 Rights upon Default**

Upon and during the continuation of an Event of Default, the Non-Defaulting Party shall have the right to suspend performance, provided that such suspension shall not continue for longer than ten (10) Business Days. At any time during or subsequent to the temporary suspension of performance, the Non-Defaulting Party may proceed with the steps outlined in Sections 5.6 and 5.7. In addition to any other remedies available at law or in equity to the Non-Defaulting Party, if an Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right to implement all of the following remedies:

- (i) Declare an Early Termination Date of this Agreement with respect to the obligations of the Defaulting Party without any liability or



responsibility whatsoever except for obligations arising prior to the date of termination, by providing written notice to the Defaulting Party; provided, however, that this Agreement shall immediately terminate automatically and without notice in the case of any Event of Default in which a TOU Supplier is the Defaulting Party occurring under subsections (a), (d), (e), (f), (g), (h), (i), and (j) of Section 5.1 of this Agreement and such date of automatic termination shall be deemed the Early Termination Date of this Agreement with respect to such TOU Supplier; and

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

### **5.3 Damages Resulting From an Event of Default**

(a) **TOU Supplier's Failure to Supply TOU Supply or to Pay for Any Net Excess Generation or Declaration of Early Termination By Company:**

Damages resulting from (i) the TOU Supplier's failure to (A) provide TOU Supply or pay the Company for any Net Excess Generation in conformance with Section 2.2 hereof or (B) pay PJM for purchases of any products or services from PJM, or other failure to comply with PJM requirements, such that PJM holds the Company responsible for the provision of TOU Supply to meet the TOU Supplier's TOU Supplier Responsibility Share under Transaction(s) of this Agreement or (ii) the occurrence of any Event of Default attributable to the TOU Supplier resulting in Early Termination, shall include all Costs incurred by the

Company, acting in a commercially reasonable manner consistent with any statutory or regulatory requirements imposed by the Applicable Legal Authorities, in obtaining replacement services or in obtaining a replacement TOU Supplier, which Costs exceed the amounts that would have been payable to the defaulting TOU Supplier under this Agreement. Costs incurred by the Company for the purpose of calculating Damages hereunder will consist of:

- (1) The cost of TOU Supply allocated to the Company by the PJM OI due to the failure of the TOU Supplier to meet obligations owing to the PJM OI in connection with its obligations under this Agreement;
- (2) The costs of TOU Supply purchased by the Company to replace TOU Supply that the TOU Supplier was obligated to supply under this Agreement during the term hereof;
- (3) Administrative and legal costs associated with procuring replacement TOU Supply; and
- (4) Financial hedging costs incurred by the Company on behalf of TOU Customers as a result of having to procure TOU Supply not provided by the TOU Supplier.

The Parties further recognize and agree that the final calculation of Damages hereunder may not be known for some time since the level of such Damages may be dependent upon the arrangements made by the Company to obtain replacement services or a replacement TOU Supplier. The Company and the TOU Supplier agree that, until the calculation of Damages under this

provision is completed, the amount and payment to the Company of the Settlement Amount on behalf of TOU Customers in the event of an Early Termination as set forth in Section 5.4 of this Agreement shall be immediately due and owing as an estimate of all Damages ultimately determined to be due and owing. After Damages have been finally determined under this Section 5.3, the amounts of Damages due and owing will be reconciled with payments already made by the TOU Supplier under Section 5.4 of this Agreement.

(b) **Failure By Company on Behalf of Customers To Accept TOU Supply**

**Tendered By TOU Supplier:** Damages resulting from the failure of the Company on behalf of Customers to accept TOU Supply tendered by the TOU Supplier necessary to meet the TOU Supplier Responsibility Share of TOU Load under Transaction(s) of this Agreement shall consist of the positive difference (if any) between (i) the amounts that would have been payable to the TOU Supplier hereunder had the Company accepted the TOU Supply tendered by the TOU Supplier necessary to meet the TOU Supplier Responsibility Share of TOU Load under Transaction(s) of this Agreement and (ii) the amount realized by the TOU Supplier in disposing, in a commercially reasonable manner, of the TOU Supply not accepted by the Company.

(c) **Damages Resulting From Early Termination Due To An Event of**

**Default Attributable To the Company:** Damages resulting from Early Termination due to an Event of Default attributable to the Company shall be as set forth in Section 5.4 of this Agreement. Damages calculated in

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

(d) **Damages Resulting from TOU Supplier's Failure to Satisfy its AEPS**

**Obligations:** Damages resulting from the TOU Supplier's failure to continuously meet and satisfy all or any portion of its obligations under Section 2.2(a)(ix) of this Agreement shall include, but not be limited to, the amount of all penalties and costs associated with the procurement of additional AECs, including, without limitation, interest, attorneys' fees and other charges, if any, levied against the Company related to AEPS regulations, due to such TOU Supplier's conduct or inaction. In addition to such penalties and costs, TOU Supplier will remain liable for AECs that were not supplied as part of its obligations set forth in Section 2.2(a)(ix), Appendix D and Exhibit 2 of this Agreement.

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

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

first is specifically approved by the PaPUC in accordance with Commission Orders.

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

(a) **Settlement Amount.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the Non-Defaulting Party shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, as the Early Termination Date to accelerate all amounts owing between the Parties and to liquidate and terminate the undertakings set forth in this Agreement, (ii) to withhold any payments due to the Defaulting Party under this Agreement, and (iii) to suspend performance as provided in Section 5.2 of this Agreement; provided however, that an Early Termination Date shall be deemed to occur automatically and concurrently with the Event of Default, without any requirement for the provision of notice by the Non-Defaulting Party, with respect to an Event of Default under subsections (a), (d), (e), (f), (g), (h), (i), and (j) of Section 5.1 of this Agreement. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount with respect to the obligations under this Agreement.

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

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

amounts that may be determined to be due and owing by the TOU Supplier, and if, upon making a final determination of Damages, the Termination Payment, or any portion thereof, is to be made to the TOU Supplier, the Company will pay simple interest on the Termination Payment amount being made to the TOU Supplier. Simple interest will be calculated at the Interest Index.

- (c) **Notice of Termination Payment.** As soon as practicable after an Early Termination Date, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. Subject to Section 5.4(b) above, the Termination Payment shall be made by the Party that owes it within three (3) Business Days after such notice is effective (“Termination Payment Date”).
- (d) **Disputes With Respect to Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within three (3) Business Days of receipt of Non-Defaulting Party’s calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer collateral to the Non-Defaulting Party

in an amount equal to the Termination Payment, such collateral to be in a form acceptable to the Non-Defaulting Party as specified in the notice of Termination Payment pursuant to Section 5.4(c).

- (e) **Multiple Agreements.** It is the intention of the Company and the TOU Supplier that, in the event the TOU Supplier is a party to other agreements with the Company for the provision of TOU Supply, default service supply, or AECs that existed prior to the Effective Date of this Agreement or are entered into after the Effective Date of this Agreement, all such agreements may be considered, at the Company's reasonable discretion, to be in default, and the Company will calculate a single Termination Payment applicable to all such agreements as set forth herein.

**5.5 RESERVED.**

**5.6 Setoff of Payment Obligations of the Non-Defaulting Party**

Any payment obligations of the Non-Defaulting Party to the Defaulting Party pursuant to this Agreement or any other agreement(s) between the Company and the TOU Supplier for the provision of TOU Supply, default service supply or AECs shall be set off: (i) first, to satisfy any payment obligations of the Defaulting Party to the Non-Defaulting Party pursuant to this Agreement or any other agreement(s) between the Company and the TOU Supplier for the provision of TOU Supply, default service supply or AECs that are unsecured and not subject to any Guaranty; (ii) second, to satisfy any payment obligations of the Defaulting Party to the Non-Defaulting Party pursuant to this Agreement or any other agreement(s) between the Company and the TOU Supplier for the provision of TOU Supply, default service supply or AECs that are unsecured, but



which are subject to a Guaranty; and (iii) third, to satisfy any remaining payment obligations of the Defaulting Party to the Non-Defaulting Party pursuant to this Agreement or any other agreement(s) between the Company and the TOU Supplier for the provision of TOU Supply, default service supply or AECs.

### **5.7 Preservation of Rights of Non-Defaulting Party**

The rights of the Non-Defaulting Party under this Agreement, including without limitation Sections 5.4 and 5.6 of this Agreement, shall be supplemental to, and not in lieu of, any right of recoupment, lien, or set-off afforded by applicable law, and all such rights are expressly preserved for the benefit of the Non-Defaulting Party.

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

## **ARTICLE 6 CREDITWORTHINESS**

### **6.1 Applicability**

With respect to all Transactions under this Agreement and all other transactions for supply serving TOU Load under other agreements or other transactions for the provision of default service or AECs under other agreements executed between the Parties pursuant to the PaPUC Orders, if at any time and from time to time during the term of Transaction(s) under this Agreement, TOU Supplier's aggregate credit exposure exceeds the Credit Limit on any Business Day, then the Company shall have the right to request that TOU Supplier post performance assurance in an amount equal to the amount by which TOU Supplier's aggregate exposure exceeds the Credit Limit (rounding upwards to the nearest \$100,000), less any performance assurance already posted with the Company. The Company's request for performance assurance shall not be disputed by TOU Supplier in the absence of manifest error.

### **6.2 Creditworthiness Determination**

The TOU Supplier may submit and maintain a security deposit in accordance with Section 6.4(e) of this Agreement in lieu of submitting to or being qualified under a creditworthiness evaluation. The TOU Supplier shall have the opportunity to request that the Company re-evaluate its creditworthiness whenever an event occurs that the TOU Supplier believes would improve the determination made by the Company of its creditworthiness. The Company's credit re-evaluation must be completed as soon as possible but no longer than thirty (30) days after receiving a fully documented request. The Company must provide the rationale for its determination of the Credit Limit and any

resulting security requirement. The Company must perform its credit re-evaluation and associated security calculation in a non-discriminatory manner. TOU Supplier shall provide the Company and its agents unrestricted access to audited financial statements; provided that if audited financial statements are not available, the Company, in its reasonable discretion, may specify other types of financial statements that will be accepted.

### **6.3 Credit Exposure**

**(a) Reserved.**

**(b) TOU Transactions**

Credit exposure for Transactions shall be \$75,000 for each Transaction under this Agreement.

### **6.4 Credit Limit**

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

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

(b) The TOU Supplier will be required to post cash or a letter of credit in an

acceptable form as defined in Section 6.7(b) of this Agreement (see standard format in Exhibit 5) for the Margin due the Company as set forth in Section 6.5 of this Agreement.

- (c) For a TOU Supplier having a Guarantor, the Guarantor (i) must be rated by at least two of the following rating agencies: S&P, Moody's, or Fitch, and (ii) must have a minimum senior unsecured debt rating (or, if unavailable, corporate issuer rating) equal to the Minimum Rating, as defined in Appendix A. If the Guarantor is rated by only two rating agencies, and the ratings are split, the rating will be established based on the methodology outlined in Appendix A of this Agreement. The Maximum Credit Limit to cover the Total Exposure Amount that could be provided through the Guaranty (see standard format in Exhibit 6) will be determined based on the credit matrix table for Guarantors on Appendix A. The TOU Supplier will be granted a Credit Limit equal to the lesser of (i) the amount of the Guaranty as provided to the Company at the time this Agreement is executed as such amount may be modified in any amended or substitute Guaranty provided to the Company during the term of this Agreement, or (ii) the applicable Maximum Credit Limit as determined in Appendix A. The TOU Supplier, however, may not increase or substitute its Guaranty for the purpose of increasing its applicable Credit Limit during the time period after the Company has made a Margin call, but before the TOU Supplier has posted the required performance assurance collateral as set forth in Section 6.7 to cover Margin. Notwithstanding

anything herein to the contrary, the TOU Supplier may increase the limit of its Guaranty after satisfying a Margin call from the Company, and upon the Company's receipt of an amended or substitute Guaranty increasing the limit of the Guaranty, the TOU Supplier may request a return of the posted performance assurance collateral in accordance with Section 6.5 of this Agreement. The TOU Supplier will be required to post cash or a letter of credit in an acceptable form as defined in Section 6.7(b) of this Agreement (see standard format in Exhibit 5) for the Margin due the Company as set forth in Section 6.5 of this Agreement.

- (d) For a Guarantor that has not been incorporated or otherwise formed under the laws of the United States; in addition to the requirements set forth in 6.4(c), they shall supply the following additional information:
  - i. A legal opinion of counsel qualified to practice in the foreign jurisdiction in which the Guarantor is incorporated or otherwise formed that the Guaranty is, or upon completion of execution formalities will become, the binding obligation of the Guarantor in the jurisdiction in which it has been incorporated or otherwise formed;
  - ii. The sworn certificate of the corporate secretary (or similar officer) of such Guarantor that the person executing the Guaranty on behalf of the Guarantor has the authority to execute the Guaranty and that the governing board of the Guarantor has approved the execution of the Guaranty;

- iii. The sworn certificate of the corporate secretary (or similar officer) of such Guarantor that the Guarantor has been authorized by its governing board to enter into agreements of the same type as the Guaranty; and
  - iv. Such other documents and certificates as may be required by the Company in its reasonable discretion.
- (e) If a TOU Supplier chooses not to undertake a creditworthiness evaluation, it shall be required to post cash or a letter of credit for the Total Exposure Amount as set forth in Section 6.5 of this Agreement.

#### **6.5 Posting Margin and Return of Surplus Margin**

- (a) If at any time and from time to time during the term of Transaction(s) under this Agreement, the Total Exposure Amount, rounded by the Rounding Amount, exceeds the TOU Supplier's or the Guarantor's Credit Limit by the Minimum Transfer Amount, then the Company on any Business Day, may request that the TOU Supplier provide cash or a letter of credit in an acceptable form as defined in Section 6.7(b) of this Agreement (see standard format in Exhibit 5), in an amount equal to the Margin (less any performance assurance collateral for Margin posted by the TOU Supplier and held by the Company pursuant to this Agreement or any other agreement(s) between the Company and the TOU Supplier for the provision of TOU Supply). If the TOU Supplier receives written notice for performance assurance collateral to cover Margin from the Company by 1:00 p.m. New York time on a Business Day, then the TOU

Supplier shall post the performance assurance collateral to cover Margin the next following Business Day, if posting cash, and by the second Business Day following the date of notice, if posting a letter of credit, unless the Company agrees in writing to extend the period to provide performance assurance collateral to cover Margin. If the TOU Supplier receives notice for performance assurance collateral to cover Margin from the Company after 1:00 p.m. New York time on a Business Day, whether posting cash or a letter of credit, then the TOU Supplier must post performance assurance collateral to cover Margin the second Business Day following the date of notice unless the Company agrees in writing to extend the period to provide performance assurance collateral to cover Margin. The Company will not unreasonably deny a request for a one-day extension of such period. In the event that the TOU Supplier fails to post performance assurance collateral to cover Margin when due in accordance with this Section 6.5, then an Event of Default under Article 5 of this Agreement will be deemed to have occurred and the Company will be entitled to the remedies set forth in Article 5 of this Agreement.

- (b) Surplus Margin being held by the Company that is not needed to satisfy the Total Exposure Amount, as determined above, will be returned to the TOU Supplier upon receipt of a written request by the TOU Supplier. Surplus Margin means cash or a letter of credit posted by the TOU Supplier as a result of a request by the Company pursuant to Section 6.5(a) that exceeds the Total Exposure Amount less the TOU Supplier's or the

Guarantor's Credit Limit (rounded by the Rounding Amount). If the resulting surplus Margin amount is more than the Minimum Transfer Amount, it will be returned to the TOU Supplier. If the TOU Supplier posted cash and notice is received by 1:00 p.m. New York time on a Business Day, the surplus Margin will be returned by the next following Business Day, and if the TOU Supplier posted cash and notice is received by the Company after 1:00 p.m. New York time on a Business Day, the surplus Margin shall be returned by the second Business Day following the date of notice, unless the TOU Supplier agrees in writing to extend the period to return the surplus Margin. If the TOU Supplier posted a letter of credit, the surplus Margin shall be returned on the next Business Day following the Business Day on which the amendment to the letter of credit is received from the issuing bank, unless the TOU Supplier agrees in writing to extend the period to return the surplus Margin. The TOU Supplier will not unreasonably deny a request for a one-day extension of such period. In the event that the Company fails to return the surplus Margin when due in accordance with this Article, then an Event of Default under Article 5 of this Agreement will be deemed to have occurred and the TOU Supplier will be entitled to the remedies set forth in Article 5 of this Agreement.

#### **6.6 Grant of Security Interest/Remedies**

To secure its obligations under this Agreement and to the extent that the TOU Supplier posted performance assurance collateral to cover Margin hereunder, the TOU



Supplier hereby grants to the Company a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, the Company, and the TOU Supplier and the Company agree to take such action as is reasonably required to perfect the secured Party's first priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Company may do any one or more of the following: (i) exercise any of the rights and remedies of the Company with respect to all collateral, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the TOU Supplier in the possession of the Company whether held in connection with this Agreement or any other agreement(s) between the Company and the TOU Supplier for the provision of TOU Supply; (iii) draw on any outstanding letter of credit issued for its benefit; and (iv) liquidate all security held by or for the benefit of the Company free from any claim or right of any nature whatsoever of the TOU Supplier, including any equity or right of purchase or redemption by the TOU Supplier. The Company shall apply the proceeds of the collateral realized upon the exercise of such rights or remedies to reduce the TOU Supplier's obligation under this Agreement or any other agreement(s) between the Company and the TOU Supplier for the provision of TOU Supply (the TOU Supplier remaining liable for any amounts owing to the Company after such application), subject to the Company's obligation to return any

surplus proceeds remaining after such obligations are satisfied in full.

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

**If to a TOU Supplier to:**

**Copy to:**

**If to the Company to:**

Attn: Frank Marian – Snr. Manager, Credit Risk

Two North Ninth Street, PL7, Allentown, PA 18101

**Copy to:**

James M. Rouland – Supervisor, Energy Procurement

Two North Ninth Street, GENN2, Allentown, PA 18101

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

**6.7 Security Instruments**

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

- (a) Cash; or
- (b) A standby irrevocable letter of credit acceptable to the Company, in its reasonable discretion, issued by a bank or other financial institution with a minimum “A-” senior unsecured debt rating (or, if unavailable, corporate issuer rating discounted one notch) from S&P and “A3” from Moody’s (see standard format in Exhibit 5). The letter of credit shall state that it shall renew automatically for successive one-year or shorter periods, until terminated upon at least ninety (90) days prior written notice from the issuing financial institution. If the Company receives notice from the issuing financial institution that the letter of credit is being cancelled, the TOU Supplier will be required to provide a substitute letter of credit from an alternative bank satisfying the minimum requirements. The receipt of the substitute letter of credit must be effective as of the cancellation date and delivered to the Company thirty (30) days before the cancellation date of the original letter of credit. If the TOU Supplier fails to supply a substitute letter of credit as required, then the Company will have the right to draw on the existing letter of credit and to hold the amount as Margin.

If the credit rating of a bank or other financial institution from which a TOU Supplier has obtained a letter of credit falls below the levels specified in Section 6.7(b) of this Agreement, the TOU Supplier shall have two (2) Business Days following written notice by the Company to obtain a suitable letter of credit from another bank or other financial institution that meets those standards, unless such period is extended in writing by the Company. The Company shall have no obligation under this Agreement or

otherwise to make or grant such extension.

## **6.8 Maintenance of Creditworthiness**

### **(a) Reporting of Changes.**

The TOU Supplier shall promptly notify the Company within three (3) Business Days of any change in its credit rating or financial condition or that of its Guarantor. The TOU Supplier or Guarantor shall also furnish evidence of an acceptable credit rating or financial condition upon the request of the Company.

### **(b) Change in Credit Standing.**

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

## **6.9 Calling on Security**

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

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

The foregoing notwithstanding, the security posted by the TOU Supplier shall become due automatically without prior notice or right of cure in the case of any Event of Default arising under subsections (a), (d), (e), (f), (g), (h), (i), and (j) of Section 5.1 of this Agreement.

#### **6.10 Interest on Cash Held by Company**

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

#### **6.11 No Endorsement of TOU Supplier**

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

#### **6.12 Multiple Agreements**

It is the intention of the Company and the TOU Supplier that, in the event the TOU Supplier is a party to other agreements with the Company for the provision of TOU

Supply, default service, or AECs that existed prior to the Effective Date of this Agreement, the Company will calculate the Margin applicable to all such agreements based upon the terms and conditions of the applicable agreements.

## **ARTICLE 7**

### **Procedures For Energy Scheduling, Capacity Resource Submission And Transmission Procurement**

#### **7.1 Load Obligations**

The Company and the TOU Supplier acknowledge and agree that (1) the Company shall determine the TOU Load, including if the TOU Load is negative due to Net Excess Generation, (2) the Company shall allocate the TOU Supply obligation using the TOU Supplier Responsibility Share, (3) the Company shall provide the TOU Supplier's TOU Supply obligation to PJM, and (4) the TOU Supplier shall be responsible for meeting its TOU Supply obligations as an LSE under the PJM Agreements.

#### **7.2 Customer Excess Generation Energy Scheduling**

The Company and the TOU Supplier acknowledge that customers receiving TOU Supply may generate power as a Net Metering Customer, in some instances producing more energy than they consume. Excess Generation supplied by a customer generator will be aggregated with other TOU Customer load for the respective customer group. In the event Excess Generation from all Net Metering Customers within a Customer Group exceeds energy consumed by customers within the Customer Group, creating a Net Excess Generation value, the Company will schedule the Net Excess Generation with PJM according the rules set forth in the PJM OA, PJM OATT, and PJM Manual 28.

### **7.3 Data Transmission**

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

### **7.4 Energy Scheduling**

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

## **ARTICLE 8 THE ENERGY SETTLEMENT/RECONCILIATION PROCESS**

### **8.1 Energy Settlement By PJM**

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

Any adjustments for billing and metering errors reported subsequent to the calculation of FHEA for a Billing Month will be proportionally allocated by the Company to the TOU Suppliers based on the respective TOU Supplier Responsibility Share.

Any Net Excess Generation will be scheduled according to Section 7.2, above, in accordance with the PJM Net Excess Generation scheduling rules.

## **8.2 Energy Settlement by the Company**

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

In the event Excess Generation exceeds consumption, resulting in a net negative load submission for any given hour, the values reported during the PJM Settlement A backcast to PJM, per the PJM rules set forth in their tariff and supplemental Manuals, will be zero. Negative values are not accepted by PJM during the Settlement A backcast term under current PJM rules. During the PJM Settlement B reconciliation for any month where Net Excess Generation occurred, the Net Excess Generation value will be submitted to PJM, adjusting the requisite submission value for the settlement month and for each hour within that month with a net negative value..

In no event will the Company be responsible to pay for any components of TOU Supply for On-Peak Hours or Off-Peak Hourse, as applicable, in the event of Net Excess Generation occurring in a supply month.



## **ARTICLE 9 BILLING AND PAYMENT**

### **9.1 The Payment of Obligations**

Each Party shall pay all amounts due to the Other Party hereunder in accordance with the following provisions:

**(a) Reserved.**

**(b) TOU Transactions:**

- (i) With respect to each Transaction, for each Billing Month, the Company will prepare a Statement of amounts due to or due from the TOU Supplier. This Statement will show the amounts due to the TOU Supplier, equal to the sum of: (a) an off-peak charge equal to the product of the TOU Off-Peak Price and the sum of the PHEA in each TOU Off-Peak Hour of the Billing Month, and (b) an on-peak charge equal to the product of the TOU On-Peak Price and the sum of the PHEA in each TOU On-Peak Hour of the Billing Month. If such amount is negative, such amount shall be due from the TOU Supplier.
- (ii) With respect to each Transaction, to the extent that the FHEA differs from the PHEA, the Company will calculate the PHEA/FHEA Adjustment Amount for each hour by multiplying the difference between the two amounts by the TOU On-Peak Price or the TOU Off-Peak Price, as applicable, and will sum the negative and positive dollar values over all hours to arrive at a net

PHEA/FHEA Adjustment Amount for the Billing Month. Based on the calculated net PHEA/FHEA Adjustment Amount, the Company will pay or charge the TOU Supplier for such billing adjustments within the PJM deadline for conducting the final settlement.

**(c) General Provisions:**

- (i) The Statement(s) will be sent to the TOU Supplier within eight (8) Business Days after the end of the Billing Month via overnight mail or other expeditious means.
- (ii) The Company or the TOU Supplier, as applicable, shall make payment on the first Business Day after the 19<sup>th</sup> day of each calendar month.
- (iii) If each Party owes an amount to the other Party pursuant to this Agreement, including any related interest, payments or credits, the Parties may satisfy their respective obligations to each other by netting the aggregate amounts due to one Party against the aggregate amounts due to the other Party, with the Party, if any, owing the greater aggregate amount paying the other Party the difference between the amounts owed.
- (iv) Payments shall be subject to adjustment for any arithmetic errors, computation errors, meter reading errors, or other errors, provided that the errors become known within one (1) year of the termination of all Transactions under this Agreement.

- (v) Each Party shall make payments of funds payable to the the other Party by electronic transfer to a bank designated by the Party due payment.
- (vi) If a good faith dispute arises between the Company and the TOU Supplier regarding a Statement, the disputing Party shall be obligated to pay only the undisputed portion of the Statement, if any, and shall present the dispute in writing and submit supporting documentation to the non-disputing Party within one hundred twenty (120) calendar days from the date of the Statement in dispute. Statement disputes shall be addressed promptly, and in accordance with the dispute resolution procedures set forth in Article 11 (Dispute Resolution) of this Agreement. Upon resolution of a Statement dispute, any payments made to either Party will include simple interest on the payment at the lower of the Interest Index or six (6) percent per annum payable from the date that notice of a Statement dispute was received by the non-disputing Party.
- (vii) If payment is made after the due date shown on the Statement, a late fee will be added to the unpaid balance until the entire Statement is paid. This late fee shall be the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under “Money Rates” on such day (or if not published on such day on the

most recent preceding day on which published), plus two percent (2%) or (b) the maximum rate permitted by applicable law.

(viii) If TOU Supplier has entered into more than one Transaction with the Company, TOU Supplier shall receive a single Statement listing the relevant information detailed above.

## **9.2 Billing for TOU Supplier's Obligations to Other Parties**

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

# **ARTICLE 10 SYSTEM OPERATION**

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

## **10.1 Disconnection and Curtailment By the Company**

The Company shall have the right, without incurring any liability to the TOU Suppliers, to disconnect (or otherwise curtail, interrupt or reduce deliveries from) the TOU Suppliers or to disconnect (or otherwise curtail, interrupt or reduce deliveries to) any Customer whenever the Company determines in the exercise of its good faith

discretion, or when the Company is directed by PJM, that such a disconnection, curtailment, interruption or reduction is necessary to facilitate construction, installation, maintenance, repair, replacement or inspection of any of the Company's facilities; or due to any other reason affecting the safe and reliable operation of the Company's or a Customer's facilities, including, without limitation, an Emergency, forced outage or potential overloading of the Company's transmission and/or distribution circuits, potential damage to any Customer's facilities or any risk of injury to persons or property.

### **10.2 Inadvertent Loss of Service to TOU Customers**

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

### **10.3 PJM Requirements**

The TOU Supplier acknowledges and agrees that, as a member of PJM, the Company is bound by all PJM operating instructions, policies and procedures as are currently set forth in the PJM Operating Manual, which are available through the Internet on the PJM Home Page (<http://www.pjm.com>), as may be revised from time to time, which are needed to maintain the integrity of the PJM system. The TOU Supplier acknowledges and agrees that it will cooperate with the Company so that the Company will be in compliance with all PJM Emergency Operations Procedures, which include,

but are not limited to, those procedures pertaining to minimum and maximum generation Emergencies, and measures requiring involuntary Customer participation, such as supply voltage reduction or full interruption of Customer load by either manual or automatic means.

#### **10.4 Compliance With Governmental Directives**

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

## **ARTICLE 11 DISPUTE RESOLUTION**

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

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

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

After the requirements of Section 11.1 (Informal Resolution of Disputes) have been satisfied, all unresolved disputes, except as noted below, between the Parties shall be submitted to the appropriate authority. Nothing in this Agreement shall restrict the rights of either Party to file a complaint with the FERC under relevant provisions of the Federal Power Act (“FPA”), with the PaPUC under relevant provisions of the Applicable Legal Authorities, at the Lehigh County Court of Common Pleas, or the Eastern District Court of Pennsylvania in Allentown. The Party’s agreement hereunder is without prejudice to any Party’s right to contest the jurisdiction of the agency or court to which a complaint is brought.

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

To the extent permitted by law and absent agreement to the contrary, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives its rights to argue before any governmental authority that any review, modification, or rescission of this Agreement should be considered under any standard of review other than the “public interest” standard set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), affirmed by *Morgan Stanley Capital Group, Inc. v.*

*Public Utility District No. 1 of Snohomish County, Washington, et al., 554 U.S. 527 (2008)* (the “Mobile-Sierra Doctrine”).

## **ARTICLE 12 REGULATORY AUTHORIZATIONS AND JURISDICTION**

### **12.1 Compliance With Applicable Legal Authorities**

The Company and the TOU Supplier are subject to, and shall comply with, all existing or future applicable federal, state and local laws, all existing or future duly-promulgated orders or other duly-authorized actions of PJM or of Applicable Legal Authorities.

### **12.2 FERC Jurisdictional Matters**

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

### **12.3 Energy Efficiency, Conservation, and Retail Market Programs**

TOU Supplier acknowledges that TOU Customers may participate in new or



existing energy efficiency and conservation programs, and retail market programs offered by the Company (required by Applicable Legal Authorities or otherwise offered by the Company whether voluntarily or not), by PJM, or by other third parties, and that such participation may reduce or change the amount of TOU Supply that TOU Supplier is required to provide and the amount of monies it may receive under this Agreement. The Company shall have no obligation whatsoever to TOU Supplier with respect to the effect, if any, of such programs. TOU Supplier is solely responsible for determining the effect, if any, of such programs on future load requirements.

## **ARTICLE 13**

### **LIMITATION OF REMEDIES, LIABILITY AND DAMAGES**

#### **13.1 Limitations on Liability**

Except as set forth in this Agreement, there is no warranty of merchantability or fitness for a particular purpose, and any and all implied warranties are disclaimed. The Parties confirm that the express remedies and measures of Damages provided in this Agreement satisfy the essential purposes hereof. For breach of any provision for which an express remedy or measure of Damages is provided, such express remedy or measure of Damages shall be the sole and exclusive remedy, the obligor's liability shall be limited as set forth in such provision and all other remedies or Damages at law or in equity are waived. If no remedy or measure of Damages is expressly provided herein, the obligor's liability shall be limited to direct actual Damages only, such direct actual Damages shall be the sole and exclusive remedy and all other remedies or Damages at law or in equity are waived. Unless expressly herein provided, neither Party shall be liable for consequential, incidental, punitive, exemplary or indirect Damages, lost profits or other

business interruption Damages, by statute, in tort or contract, under any indemnity provision or otherwise. It is the intent of the Parties that the limitations herein imposed on remedies and the measure of Damages be without regard to the cause or causes related thereto, including the negligence or any Party, whether such negligence by sole, joint or concurrent, or active or passive. To the extent any Damages required to be paid hereunder are liquidated, the Parties acknowledge that the Damages are difficult or impossible to determine, or otherwise obtaining an adequate remedy is inconvenient and the Damages calculated hereunder constitute a reasonable approximation of the harm or loss.

### **13.2 Risk of Loss**

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

## **ARTICLE 14 INDEMNIFICATION**

### **14.1 Indemnification**

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

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

- (c) If either Party intends to seek indemnification under Section 14.1(a) or Section 14.1(b), as applicable, from the other Party, the Party seeking indemnification shall give the other Party notice of such claim within ninety (90) days of the later of the commencement of, or the Party's actual knowledge of, such claim or action. Such notice shall describe the claim in reasonable detail, and shall indicate the amount, estimated if necessary, of the claim that has been, or may be, sustained by said Party. To the

extent that the other Party will have been actually and materially prejudiced as a result of the failure to provide such notice, such notice will be a condition precedent to any liability of the other Party under the provisions for indemnification contained in this Agreement. Neither Party may settle or compromise any claim without the prior consent of the other Party; provided, however, said consent shall not be unreasonably withheld, conditioned or delayed.

#### **14.2 Survives Agreement**

The obligation of a Party to defend, indemnify, and hold harmless another Party under this Article 14 (Indemnification) shall survive termination of this Agreement, and shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for either Party under any statutory scheme, including any workers' compensation acts, disability benefit acts or other employee benefit acts.

## **ARTICLE 15 FORCE MAJEURE**

#### **15.1 Force Majeure**

Notwithstanding anything in this Agreement to the contrary, the Parties shall be excused from performing their respective obligations under this Agreement (other than the obligation to make payments with respect to performance prior to the event of Force Majeure) and shall not be liable for damages or otherwise due to their failure to perform, during any period that one Party is unable to perform due to an event of Force Majeure, provided that the Party declaring an event of Force Majeure shall: (i) act expeditiously to

resume performance; (ii) exercise all commercially reasonable efforts to mitigate or limit damages to the other Party; and (iii) fulfills the requirements set forth in Section 15.2 (Notification).

### **15.2 Notification**

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

## **ARTICLE 16 MISCELLANEOUS PROVISIONS**

### **16.1 Notices**

Unless otherwise stated herein, all notices, demands or requests required or permitted under this Agreement shall be in writing and shall be personally delivered or sent by overnight express mail or courier service. Notice may also be provided via e-mail or facsimile transmission (with the original transmitted by any of the other delivery methods specified in the previous sentence) addressed per the notification information for the TOU Supplier and Company as set forth in Exhibit 3 hereto.

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

## **16.2 No Prejudice of Rights**

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

## **16.3 Effect of Regulatory or Legislative Actions**

- (a) The Parties agree that the Company's obligations under this Agreement are contingent on, and limited by, the Company's ability to recover all costs incurred by it under this Agreement from its retail customers in full and on a current basis. If any statutes, rules, regulations, or orders are enacted, amended, entered, or revoked which have the effect of depriving the Company's full and current recovery of said costs, the Company may terminate this Agreement upon ten (10) days written notice. The Parties agree that any such termination shall not constitute an Event of Default under this Agreement.
- (b) If any statutes, rules, regulations, or orders are enacted, amended, entered, or revoked which transfers the Company's obligation to procure or supply TOU Supply to third party, this Agreement may be transferred to such third party in accordance with the provisions of Section 16.4 below. The Parties agree that any such transfer shall not constitute an Event of Default

under this Agreement.

- (c) In the event that this Agreement is terminated as a result of any of the reasons set forth in subsections (a) and (b) of Section 16.3 above, the Parties agree that the Company shall not be liable for any costs or damages incurred or otherwise associated with (i) the transfer of the Company's obligation to obtain or provide TOU Supply to third party, or (ii) the elimination of the Company's obligation to obtain or provide TOU Supply.

#### **16.4 Assignment**

Parties shall not assign any of their rights or obligations under this Agreement without obtaining the prior written consent of the non-assigning Party, which consent shall not be unreasonably withheld. No assignment of this Agreement shall relieve the assigning Party of any of its obligations under this Agreement until such obligations have been assumed by the assignee and all necessary consents have been obtained. Any assignment in violation of this Section 16.4 shall be void; provided, however, the Company may assign any or all of its rights and obligations under this Agreement notwithstanding anything contained herein to the contrary, without the TOU Supplier's consent, to any entity succeeding to all or substantially all of the assets of the Company, or to a third party in accordance with 16.3(b), if such assignee agrees, in writing, to be bound by all of the terms and conditions hereof and all necessary regulatory approvals are obtained. The TOU Supplier may, with prior written notice to the Company but without obtaining the approval of the Company, assign the accounts, revenues or proceeds under this Agreement to a third party. The Company agrees that, following receipt of such



notice of the assignment of accounts, revenues or proceeds and such other documentation that the Company may reasonably request, the Company will pay amounts becoming due to the assigning TOU Supplier under this Agreement directly to the designated assignee; provided, however, that nothing herein shall enlarge or expand the rights of such designated assignee beyond the rights granted to the TOU Supplier and the right of such designated assignee to receive payments shall be subject to all defenses, offsets and claims of the Company arising under this Agreement.

### **16.5 Governing Law and Venue**

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

### **16.6 Regulatory Approvals**

TOU Supplier agrees to cooperate, to the fullest extent necessary, to obtain any and all required State, Federal or other regulatory approvals of the Agreement and/or Transaction Confirmations hereunder. The commencement of the Delivery Period of each Transaction and the obligations hereto are subject to (i) the receipt or waiver by Company of all Company required regulatory approvals, (ii) the receipt or waiver by

TOU Supplier of all TOU Supplier required regulatory approvals, and (iii) PaPUC approval.

### **16.7 Headings**

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

### **16.8 Third Party Beneficiaries**

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

### **16.9 General Miscellaneous Provisions**

- (a) This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties, or to impose any partnership obligation or liability upon any Party. No Party shall have any right, power, or authority to enter into any agreement or undertaking for, or on behalf of, or to act as or be an agent or representative of, or to otherwise bind, any other Party.
- (b) Cancellation, expiration or Early Termination of this Agreement shall not relieve the Parties of obligations that by their nature survive such cancellation, expiration or termination, including warranties, remedies, promises of indemnity and confidentiality.
- (c) Should any provision of this Agreement be held invalid or unenforceable, such provision shall be invalid or unenforceable only to the extent of such

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

- (d) Each of the Parties acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms. This Agreement is intended by the Parties as a final expression of their agreement. The Parties further agree that this Agreement is the complete and exclusive statement of agreement and supersedes all proposals (oral or written), understandings, representations, conditions, warranties, covenants and all other communications between the Parties relating thereto. In the case of an actual or apparent inconsistency between this Agreement and the PPL Electric Utilities Corporation Time-of-Use Request for Proposals Process and Rules (“RFP”), the provisions of this Agreement shall control. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement or any Transaction.

#### **16.10 Taxes**

As between the Parties: (i) the TOU Supplier is responsible for the payment of all

taxes imposed by all present and future federal, state, municipal or other taxes imposed by any taxing authority on the wholesale sales of TOU Supply under this Agreement; and (ii) the Company is responsible for the payment of all taxes imposed by all present and future federal, state, municipal or other taxes imposed by any taxing authority on retail sales of TOU Supply. Should the TOU Supplier be required to remit any Pennsylvania State sales and use taxes directly to the applicable taxing authority, other than taxes previously collected by the TOU Supplier on behalf of the Company, the Company will defend and indemnify the TOU Supplier for such sales and use taxes and will pay to the TOU Supplier all such tax amounts upon demand. If any Transaction is exempt from the payment of any sales and use taxes as defined above, the affected TOU Supplier will, if requested, provide the Company with valid tax exemption certificates. Should the Company be required to remit any sales and use taxes directly to any applicable taxing authority, other than taxes previously collected by the Company directly from the TOU Supplier, the TOU Supplier will defend and indemnify the Company and will pay to the Company all applicable sales and use tax amounts upon demand.

#### **16.11 Disclosure of Tax Treatment**

Notwithstanding anything to the contrary in this Agreement or in the RFP and appendices thereto, TOU Supplier and Company agree that: (i) any obligation of confidentiality with respect to the Parties' Transactions hereunder does not apply, and has not applied from the commencement of discussions between the Parties, to the tax treatment and tax structure of the Agreement and all Transactions thereunder, and (ii) TOU Supplier and Company (and each of their respective employees, representatives, or agents) may disclose to any and all persons, without limitation of any kind, the tax

treatment and tax structure of the Agreement and the Transactions thereunder, as well as any materials of any kind (including opinions or other tax analyses) that have been provided to the disclosing Party relating to such tax treatment and tax structure, all within the meaning of Treasury Regulations Section 1.6011-4; provided, however, that the foregoing is not intended to affect any privileges that each Party is entitled, at its reasonable discretion, to maintain, including with respect to any confidential communications with its attorney or any confidential communications with a federally authorized tax practitioner under Section 7525 of the Internal Revenue Code.

#### **16.12 Audit**

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

#### **16.13 Rules of Interpretation**

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

- (a) Unless otherwise stated, the terms “include” and “including” when used in this Agreement shall be interpreted to mean by way of example only and shall not be considered limiting in any way;

- (b) References to the singular include the plural and vice versa;
- (c) References to Articles, Sections, Clauses and the Preamble are, unless the context indicates otherwise, references to Articles, Sections, Clauses and the Preamble of this Agreement;
- (d) In carrying out its rights, obligations and duties under this Agreement, each Party shall have an obligation of good faith and fair dealing; and
- (e) If any payment due under this Agreement would be, by operation of the terms and conditions of any provision hereof, due and payable on a day other than a Business Day, such payment shall be made on the next following Business Day.

#### **16.14 Confidentiality**

- (a) Each Party shall hold in confidence and not release or disclose any document or information furnished by the other Party in connection with this Agreement, unless: (i) compelled to disclose such document or information by judicial, regulatory or administrative process or other provisions of law; (ii) such document or information is generally available to the public; (iii) such document or information was available to the receiving Party on a non-confidential basis; (iv) such document or information was available to the receiving Party on a non-confidential basis from a third-party, provided that the receiving Party does not know, and, by reasonable effort, could not know that such third-party is

prohibited from transmitting the document or information to the receiving Party by a contractual, legal or fiduciary obligation; or (v) such disclosure is made to PJM or PaPUC and is necessary in order for the Transactions contemplated by this Agreement to be consummated or to otherwise comply with the provisions of this Agreement.

- (b) Notwithstanding any other provision of this Section 16.14, a Party may disclose to its employees, representatives and agents all documents and information furnished by the other Party in connection with this Agreement, provided that such employees, representatives and agents have been advised of the confidentiality provisions of this Section 16.14, and further provided that in no event shall a document or information be disclosed in violation of the standard of conduct requirements established by the FERC.
- (c) A Party receiving notice or otherwise concluding that any confidential document or information furnished by the other Party in connection with this Agreement is being sought under any provision of law, to the extent it is permitted to do so under any applicable law or is being disclosed to PJM or PaPUC in order for the Transactions contemplated by this Agreement to be consummated or to otherwise comply with the provisions of this Agreement, shall: (i) promptly notify the other Party; and (ii) use reasonable efforts in cooperation with the other Party to seek confidential treatment of such confidential information.

- (d) The Parties agree that monetary damages may be inadequate to compensate a Party for the other Party's breach of its obligations under this Section 16.14. Each Party accordingly agrees that the other Party shall be entitled to equitable relief, by way of injunction or otherwise, if the receiving Party breaches or threatens to breach its obligations under this Section 16.14, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law.

#### **16.15 Federal Acquisition Regulation**

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

- 1) Clean Air and Water: § 52.223-2;
- 2) Contract Work Hours and Safety Standards Act-Overtime Compensation: § 52.222-4;
- 3) Equal Opportunity: § 52.222-26;
- 4) Affirmative Action for and Employment Reports on Special Disabled and Vietnam Era Veterans: § 52.222-35 and § 52.222-37;
- 5) Affirmative Action for Handicapped Workers: § 52.222-36;



- 6) Utilization of Small Business Concerns and Small Disadvantaged Business Concerns and Small Business and Small Disadvantaged Business Subcontracting Plan: § 52.219-8 and § 52.219-9.

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

#### **16.16 Binding Terms**

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

#### **16.17 Amendment**

This Agreement, including the appendices hereto, cannot be amended without the written agreement of all Parties prior to such amendment becoming effective. Except as provided in Appendix C, the rates, terms and conditions contained in this Agreement are not subject to change under Sections 205 or 206 of the Federal Power Act absent the mutual written agreement of the Parties. To the extent permitted by law and absent agreement to the contrary, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives its rights to argue before any governmental authority that any review, modification, or rescission of this Agreement should be considered under any standard of review other than the “public interest” standard set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), affirmed by *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County*,

*Washington, et al.*, 554 U.S. 527 (2008) (the “Mobile-Sierra Doctrine”).

### **16.18 Counterparts and Electronic Signatures**

This Agreement including all Transaction Confirmations hereunder may be executed in counterparts, each of which will be considered an original, but all of which shall constitute one instrument. Further, the Parties agree that the electronic signature of a Party to this Agreement and the forms appended herein shall be as valid as an original signature of such Party and shall be effective to bind such Party. The Parties agree that any electronically signed document shall be deemed (i) to be “written” or “in writing,” (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. Such paper copies or “printouts,” if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the Parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither Party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule. For purposes hereof, “electronic signature” means a manually signed original signature that is then transmitted by electronic means; transmitted by electronic means” means sent via the internet as a “pdf” (portable document format) or equivalent format.

### **16.19 Successors**

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

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

**ATTEST:**

**[TOU SUPPLIER]**

BY: \_\_\_\_\_

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

**ATTEST:**

**PPL ELECTRIC UTILITIES  
CORPORATION**

BY: \_\_\_\_\_

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

## APPENDIX A

### Maximum Unsecured Credit

S&P	Moody's	Fitch	Percentage of TNW	Credit Limit Cap (\$)
A- and above	A3 and above	A- and above	5%	60M
BBB+	Baa1	BBB+	5%	40M
BBB	Baa2	BBB	5%	30M
BBB-	Baa3	BBB-	5%	15M
BB+	Ba1	BB+	5%	5M
BB	Ba2	BB	5%	3M
BB-	Ba3	BB-	5%	1M
Below BB-	Below Ba3	Below BB-	0	0

#### Credit Rating Determination Methodology

The TOU Supplier or its Guarantor must have a minimum senior unsecured debt rating (or, if unavailable, corporate issuer rating) equal to the Minimum Rating<sup>1</sup>. If the TOU Supplier or its Guarantor is rated by more than one rating agency, and the ratings are split, the lowest of the available ratings will be used. The Maximum Credit Limit shall be calculated as the lesser of the percentage of TNW or the Credit Limit Cap.

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<sup>1</sup> **Minimum Rating** – The lowest credit rating, as set forth in this Appendix A, that a DS Supplier or Guarantor must have to obtain unsecured credit.

## **APPENDIX B**

**Reserved**

## APPENDIX C

### TOU Supply Specifications

- 1) With respect to a Transaction, TOU Supplier shall provide Full Requirements Service on a firm and continuous basis. The terms of the Transaction shall be set forth in a Transaction Confirmation to this Agreement, in a form as set forth in Exhibit 1. Full Requirements Service shall mean, all of the following necessary services or products that are required to supply the TOU Supplier Responsibility Share for the TOU Customers associated with the Transaction Confirmation, including: Energy, Capacity, transmission (other than Non-market-based Transmission Services), Ancillary Services, Alternative Energy Credits for compliance with the AEPS Act, transmission and distribution system losses, congestion management costs, and such other products and services that are required except for distribution service
- 2) With respect to a Transaction, the Company shall be responsible, at its sole cost and expense, for the costs of Non-market-based Transmission Services. Additionally, the Company will be responsible for any distribution service necessary to serve the TOU Supplier Responsibility Share.
- 3) Except as provided in Paragraph 1 above, TOU Supplier bears the risk of any other changes in PJM products and pricing during the term of all Transactions under this Agreement. However, if there are any other new FERC-approved PJM transmission charges other than those referred to in Paragraph 1 above or other new PJM charges and costs, charged to network transmission customers, that TOU Supplier believes the Company should recover through retail rates because

they are directly related to the Company's obligations, then Company may file with the PaPUC a request for approval to recover such new costs. TOU Supplier is required to intervene in any such proceeding before the PaPUC. Such new costs can only be charged to the Company to the extent that the PaPUC approves the Company's recovery of those costs. TOU Supplier agrees to be bound by the decision of the PaPUC (subject to the normal rules for appeal of the decision of the PaPUC) and waives all claims concerning this issue before the FERC. Notwithstanding the foregoing, nothing in the Agreement shall preclude TOU Supplier or Company from taking any position before the FERC regarding the creation and allocation of any such PJM charges.



**Customer Group and Service Type:**

<b>Customer Group</b>	<b>Rate Schedule</b>	<b>Description</b>
<b>Residential</b>	RS	RS – Residential Service
	RTS	RTS(R) – Residential Service – Thermal Storage
<b>Small Commercial &amp; Industrial</b>	GS-1	GS-1 – Small General Service
	GS-3	GS-3 – Large General Service – Customers with less than 100 kW peak demand
	LP-4	LP-4 – Large General Service (12 KV or Higher) – Customers with less than 100 KW peak demand
	GH-2	GH-2(R) – Separate Meter General Space Heating Service
	BL	BL – Borderline Service – Electric Utilities
	Standby	Rule 6A – Standby Service for Qualifying Facilities applicable to customers in the above listed rate schedules.

**Notes:**

1. Rate schedules also may be subject to riders. Any such riders are set forth in PPL Electric Utilities Corporation General Tariff, Rules and Rate Schedules for Electric Service.
2. Rate Schedule LP-4 customers and GS-3 customers with less than 100 KW peak demand will be included in the Small C&I Customer Group. The determination of peak demand will be based on the customer's ICAP peak load contribution assigned for the 2016-2017 PJM Interconnection, LLC ("PJM") Planning Year. This initial determination of peak demand and classification of customers will remain effective for the period June 1, 2018 through May 31, 2021.
3. OnTrack customers in the Residential Customer Group as well as lighting customers and unmetered GS-1 customers in the Small C&I Customer Group are not eligible to take service under PPL Electric's TOU Program.

## **Appendix D**

### **TOU Supplier's Obligations for AEPS Compliance**

To satisfy AEPS with respect to the TOU Supplier's TOU Supplier Responsibility Share, TOU Supplier has the following obligations:

- (1) TOU Supplier shall enable the Company to comply with the Alternative Energy Portfolio Standards, including regulations adopted thereunder, (together the AEPS Obligation) and shall provide its proportional share of AECs to fulfill the Company's AEPS Obligation as set forth in the AEPS Act and PaPUC rules and Orders that may be promulgated to implement the AEPS Act.
- (2) Provide the required percentage of each type of AEC as set forth in Exhibit 2;
- (3) Paying any AEPS penalties, costs, charges, etc. assessed against the TOU Supplier and/or the Company associated with the TOU Supplier's non-performance with AEPS requirements;
- (4) TOU Supplier shall establish the proper accounts within the GATS. TOU Supplier shall be a subscriber to GATS and is responsible for paying its annual subscription fee. TOU Supplier shall transfer AECs into the Buyer's account(s) in the amount necessary to fulfill TOU Supplier's AEPS Obligation under this Agreement. TOU Supplier shall be responsible for paying the volumetric fees associated with LSE GATS fee requirements in proportion to TOU Supplier's TOU Supplier Responsibility Share.
- (5) Within 40 calendar days following the conclusion of each quarter throughout the PJM planning year (August 31, November 30, February 28/29, and

May 31) during the Delivery Period of a given Transaction, the TOU Supplier shall transfer AECs into the Company's GATS account(s) in an amount commensurate with the AECs applicable to the Full Requirements Service provided by the TOU Supplier during the applicable quarter.

(6) At the conclusion of each annual June to May Period ("Reporting Period"), TOU Supplier shall complete its transfer of any AECs not transferred in accordance with this Appendix D and Exhibit 2, into the Company's GATS account(s) in the amount necessary to fulfill the TOU Supplier's AEPS Obligation under this Agreement. Transfers must be made no later than 70 calendar days following the completion of a Reporting Period.

(7) TOU Supplier may not transfer AECs in advance of future Reporting Periods.

(8) Submitting to the Company proof of AEPS compliance under this Agreement in such form and manner as may be required by the Company.

(9) Provide to the Company all information the Company may require to comply with the AEPS Act and its implementing regulations and other Requirements of Law, including, but not limited to the price paid per AEC required by 73 P.S. §§1648.3(e)(8).

(10) In addition the Remedies stated in Article 13 (Limitations of Remedies Liabilities and Damages) and Article 14 (Indemnification) of this Agreement, Company shall have the right, in its reasonable discretion, to withhold any and all payments pursuant to Article 9 (Billing and Payment) of this Agreement in the event that the TOU Supplier does not satisfy its obligations under this Appendix,

and to pursue any other remedies at law or in equity which may be available including, but not limited to those enumerated in Article 14 (Indemnification). Moreover, the TOU Supplier will be liable for any additional AECs and/or costs directly or indirectly related to the procurement of AECs by the Company or related to any penalties and costs associated with non-compliance of the AEPS Act in the event that the TOU Supplier defaults on its obligations under this Appendix.

## EXHIBIT 1 – TRANSACTION CONFIRMATION EXAMPLE

This Transaction Confirmation letter is being provided pursuant to and in accordance with the Time-of-Use Supplier Master Agreement (“Agreement”) dated [INSERT SMA Effective DATE] between PPL Electric Utilities Corporation (“Company”) and [INSERT TOU SUPPLIER NAME] (“TOU Supplier”). Terms used but not defined herein shall have the meanings ascribed to them in the Agreement. This Transaction Confirmation shall confirm the following terms of the Transaction agreed to on [INSERT TOU Solicitation PaPUC approval date] (“Transaction Date”).

Transaction Type: Time-of-Use

Product: TOU Supply

Customer Group: [Residential, Small Commercial & Industrial]

Delivery Point: PPL\_RESID\_AGG

Delivery Period: [MONTH] [DAY], [YEAR] through [MONTH] [DAY],  
[YEAR]

The TOU Supplier’s TOU Supplier Responsibility Share is 100%. TOU Supplier will supply TOU service or pay the Company for any Net Excess Generation (customer generation) at the following prices for the duration of the Delivery Period:

TOU Off-Peak Price: \$ \_\_\_\_\_/MWh

TOU On-Peak Price: \$ \_\_\_\_\_/MWh (i.e., Seasonal Multiplier x TOU Off-Peak Price)

Please confirm that the terms stated herein accurately reflect the agreement reached on the date above between the TOU Supplier and the Company by returning an executed copy of this Transaction Confirmation by pdf to the Company at [pplpolr@pplweb.com](mailto:pplpolr@pplweb.com). The signatories to this Transaction must have the authority to enter into this Transaction.

**WITNESS:**

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

**WITNESS:**

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

**PPL ELECTRIC UTILITIES  
CORPORATION**

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

**[TOU SUPPLIER]**

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

## EXHIBIT 2 – ALTERNATIVE ENERGY PORTFOLIO STANDARDS OBLIGATION

This Exhibit 2 shall confirm the Alternative Energy Portfolio Standards obligation of the Transaction agreed to on \_\_\_\_\_ ("Transaction Date").

### Residential Load Obligation:

<u>Reporting Period</u>	<u>Tier I</u>	<u>PV(included in Tier I Obligation)</u>	<u>Tier II</u>
6/1/17 to 5/31/18	6.5%	0.3400%	8.20%
6/1/18 to 5/31/19	7.0%	0.3900%	8.20%
6/1/19 to 5/31/20	7.5%	0.4433%	8.20%
6/1/20 to 5/31/21	8.0%	0.5000%	10.00%

### Small Commercial & Industrial Load Obligation:

<u>Reporting Period</u>	<u>Tier I</u>	<u>PV(included in Tier I Obligation)</u>	<u>Tier II</u>
6/1/17 to 5/31/18	6.5%	0.3400%	8.20%
6/1/18 to 5/31/19	7.0%	0.3900%	8.20%
6/1/19 to 5/31/20	7.5%	0.4433%	8.20%
6/1/20 to 5/31/21	8.0%	0.5000%	10.00%

### Large Commercial & Industrial Load Obligation:

<u>Reporting Period</u>	<u>Tier I</u>	<u>PV(included in Tier I Obligation)</u>	<u>Tier II</u>
6/1/17 to 5/31/18	6.5%	0.3400%	8.20%
6/1/18 to 5/31/19	7.0%	0.3900%	8.20%
6/1/19 to 5/31/20	7.5%	0.4433%	8.20%
6/1/20 to 5/31/21	8.0%	0.5000%	10.00%

The percentages set forth above may be revised for future TOU Solicitations to reflect changes in law or other applicable regulatory requirements. TOU Supplier shall provide the percentages set forth above in order to comply with its obligations under Full Requirements Service and the Company shall adjust the quantities/products being procured in future TOU Solicitations to make up any shortfall or utilize any excess AECs resulting from such change. Any such adjustments will be made known to bidders prior to the conclusion of the applicable TOU Solicitation.



## EXHIBIT 3 – FORM OF NOTICE

Any notices required under this Agreement shall be made as follows:

BUYER: PPL Electric Utilities Corporation      TOU Supplier: [INSERT]

**All Notices:**

Street: **Two North Ninth Street**  
City/State/Zip: **Allentown, PA 18101**  
Attn: **James M. Rouland**  
Facsimile: **610-774-2881**  
Duns: **00-790-9427**  
Federal Tax ID Number: **23-0959590**  
Email: **jmrouland@pplweb.com**

**Invoices:**

Attn: **James M. Rouland**  
Phone: **610-774-3042**  
Facsimile: **610-774-2881**  
Email: **jmrouland@pplweb.com**

**Scheduling:**

Attn: **James M. Rouland**  
Phone: **610-774-3042**  
Facsimile: **610-774-2881**  
Email: **jmrouland@pplweb.com**

**Payments:**

Attn: **James M. Rouland**  
Phone: **610-774-3042**  
Facsimile: **610-774-2881**  
Email: **jmrouland@pplweb.com**

**All Notices:**

Street:  
City/State/Zip:  
Attn:  
Facsimile:  
Duns:  
Federal Tax ID Number:  
Email:

**Invoices:**

Attn:  
Phone:  
Facsimile:  
Email:

**Scheduling:**

Attn:  
Phone:  
Facsimile:  
Email:

**Payments:**

Attn:  
Phone:  
Facsimile:  
Email:

**Wire Transfer:**

BNK: **Mellon Bank**  
ABA: \_\_\_\_\_  
ACCT: \_\_\_\_\_

**Credit and Collections:**

Attn: **Yan Gao**  
Phone: **610-774-6636**  
Facsimile: **N/A**  
Email: **YGao@pplweb.com**

**With additional Notices of an  
Event of Default to:**

Attn: **James M. Rouland**  
Phone: **610-774-3042**  
Facsimile: **610-774-2881**  
Email: **jmrouland@pplweb.com**

**Wire Transfer:**

BNK:  
ABA:  
ACCT:

**Credit and Collections:**

Attn:  
Phone:  
Facsimile:  
Email:

**With additional Notices of an  
Event of Default to:**

Attn:  
Phone:  
Facsimile:  
Email:

## EXHIBIT 4 – PJM DECLARATION OF AUTHORITY

This Declaration of Authority (“Declaration”) is made this \_\_\_\_ day of \_\_\_\_\_, 201\_ by the following:

PARTY A: PPL Electric Utilities Corporation (“Party A”).

PARTY B: \_\_\_\_\_ (“Party B”).

### RECITALS

WHEREAS, PJM is a Regional Transmission Organization (“RTO”) subject to the jurisdiction of the Federal Energy Regulatory Commission (“FERC”);

WHEREAS, PJM Settlement, Inc (“PJM Settlement”) is a Pennsylvania Non-Profit Corporation, incorporated for the purpose of providing billing and settlement functions and credit and risk management functions for PJM. References to “PJM” in this Declaration are intended to apply to PJM and/or PJM Settlement, as appropriate, with regard to their respective functions.

WHEREAS, PJM and PJM Settlement administer centralized markets that clear various electric energy and energy-related products among multiple buyers and sellers;

WHEREAS, PJM additionally exercises operational control over its members’ transmission facilities whereby PJM provides open-access transmission service and control area functions, including economic dispatch and emergency response to ensure reliability;

WHEREAS, Party A is a PJM Member and seeks to obtain, or is obtaining, services provided or administered by PJM, seeks to participate, or is participating in, markets administered by PJM, or seeks to engage in, or is engaging in, operations that use or affect the integrated transmission system operated by PJM;

WHEREAS, such activities or contemplated activities by Party A and Party B are governed by rights and obligations established by or under the PJM Open Access Transmission Tariff (“Tariff”), the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (“Operating Agreement”), the Reliability Assurance Agreement Among Load-serving Entities in the MAAC Control Zone (“RAA”), and other agreements, manuals, and practices of PJM (the Tariff, the Operating Agreement, the RAA, and such other agreements manuals, and practices of PJM, the “PJM Agreements”); and

WHEREAS, Party A and Party B desire to declare to PJM their respective authorities concerning such rights and obligations, intend that PJM rely upon such declaration, and acknowledge that PJM may rely upon such declaration to its detriment.

## DECLARATION

NOW, THEREFORE, acknowledging that PJM will rely on the truth, accuracy and completeness of the declarations made below, Party A and Party B, as identified below, make the following declarations:

### 1. Exclusivity of Party B's Authority.

Pursuant to a binding, legally enforceable agreement, Party A has authorized Party B to act for Party A with respect to certain rights and responsibilities as specified in Section 2 of this Declaration ("the Authorized Rights and Responsibilities"). With respect to the Authorized Rights and Responsibilities, Party B is authorized to communicate and transact with PJM as Party A's sole and exclusive Party B, and PJM is authorized to communicate and transact directly and exclusively with Party B as Party A's Party B. With respect to Authorized Rights and Responsibilities, Party A will abide by any direction issued by PJM to Party B.

### 2. Specification of Authorized Rights and Responsibilities.

In the following parts (a) through (h), Party A and Party B specify the rights and responsibilities with respect to which Party B is authorized to act for Party A. Specification shall be effective only if both Party A and Party B have placed the initials of their authorized representatives in the space provided for each applicable right or responsibility from among the options provided below:

#### (a) Load Server Responsibilities.

\_\_\_\_\_ Party B is authorized to satisfy Party A's obligations as a Load-Serving Entity under the RAA, including, without limitation, its obligations to provide Unforced Capacity, submit capacity plans, provide or arrange for Capacity Resources, satisfy Accounted-for Obligations and Peak Season Maintenance Obligations, comply with any capacity audits, make payment of all deficiency, data submission, and emergency procedure charges incurred, coordinate planning and operation of Capacity Resources with other parties; and develop and submit planned outage schedules.

\_\_\_\_\_ Party B is authorized to satisfy Party A's obligations under the Tariff, RAA and to provide or arrange for transmission service to its loads; provide or arrange for sufficient reactive capability, voltage control facilities, and black start capability for service to its loads; submit firm transmission service schedules, and designate Network Resources and other points of receipt and delivery for transmission service. Party B is

authorized to request changes to the transmission service required for service to Party A's loads, and to enter into, on Party A's behalf, any feasibility, system impact, facilities study, or other agreements required to process such request for a change in service.

\_\_\_\_\_ Party B is authorized to satisfy Party A's rights and obligations under the Tariff and Operating Agreement to submit bids on, obtain, administer, and receive payments or credits for Financial Transmission Rights and Auction Revenue Rights with respect to service to Party A's loads.

\_\_\_\_\_ Party B is authorized to provide data required by PJM with respect to service to Party A's loads, including, but not limited to, data required for coordination of operations, accounting for all interchange transactions, preparation of required reports and maintenance schedules, and analysis of system disturbances.

\_\_\_\_\_ Party B is authorized to provide the facilities and personnel required to coordinate operations with PJM and other PJM Members.

(b) Electric Distributor Responsibilities.

\_\_\_\_\_ Party B is authorized to satisfy Party A's rights and obligations as an Electric Distributor under the Operating Agreement, including, but not limited to, assuring the continued compatibility of its local energy management, monitoring, and telecommunications systems with PJM's technical requirements; providing or arranging for the services of a 24-hour local control center to coordinate with PJM; providing to PJM all system, accounting, customer tracking, load forecasting, and other data necessary or appropriate to implement or administer the Operating Agreement, RAA; shedding connected load, initiating active load management programs, and taking such other coordination actions as may be necessary in accordance with PJM's directions in Emergencies; maintaining or arranging for a portion of its connected load to be subject to control by automatic underfrequency, under-voltage, or other load-shedding devices; and complying with the underfrequency relay obligations and charges specified in the Operating Agreement.

(c) Generator Responsibilities.

\_\_\_\_\_ Party B is authorized to operate the Party A's generation resources in all events, including, but not limited to, in the event of Emergencies, and shall operate such resources in a manner that is consistent with the standards, requirements or directions of PJM and that will permit PJM to perform its obligations under the Operating Agreement, Tariff, RAA, and other applicable agreements, manuals, and practices.

\_\_\_\_\_ Party B is authorized to ensure that the required portion of Party A's Capacity Resources have the ability to go from a shutdown condition to an operating condition and start delivering power without assistance from the power system.

- Or -

\_\_\_\_\_ Party B is authorized to direct the operation of Party A's generation resources by relaying PJM's instructions to the resource in all events, including, but not limited to, in the event of Emergencies, and shall direct such resources in a manner that is consistent with the standards, requirements or directions of PJM and that will permit PJM to perform its obligations under the Operating Agreement, Tariff, RAA, and other applicable agreements, manuals, and practices.

\_\_\_\_\_ Party B is authorized to communicate with PJM in all matters concerning the provision of capacity, energy, or ancillary services from Party A's generation resources, including, without limitation, information required in connection with Capacity Resources, dispatch of any unit, provision of reactive power, regulation, synchronous condensing, spinning or other reserves, establishment or maintenance of a unit as a Black-Start Unit, satisfaction of must-run obligations, and costs or revenue requirements for any product or service offered by any such unit.

\_\_\_\_\_ Party B is authorized to provide information on outages of Party A's generation facilities, whether planned, forced, or for maintenance, and to coordinate such outages with PJM

\_\_\_\_\_ Party B is authorized to act on behalf of Party A with respect to Party A's rights and obligations under any Feasibility Study, System Impact Study, or Facilities Study Agreements.

\_\_\_\_\_ Party B is authorized to act on behalf of Party A with respect to Party A's rights and obligations under any Construction Service Agreements.

\_\_\_\_\_ Party B is authorized to act on behalf of Party A with respect to Party A's rights and obligations under any Interconnection Service Agreements.

\_\_\_\_\_ Party B is authorized to receive from PJM historic and real time data collected by PJM from, or provided to PJM by, Party A with respect to Party A's generation resources.

\_\_\_\_\_ Party B is authorized to act on behalf of Party A for the following specific unit(s) in Party A primary and subaccounts:

Resource Name:

Resource ID:

(d) Market Buyer/Market Seller Responsibilities.

\_\_\_\_\_ \_\_\_\_\_ Party B is authorized to satisfy Party A's rights and obligations as a Market Buyer or Market Seller under the Operating Agreement, including, but not limited to, arranging for a Market Operations Center capable of real-time communication with PJM during normal and Emergency conditions; reporting to PJM sources of energy available for operation; providing to PJM scheduling and other information, including, but not limited to, maintenance and other anticipated outages of generation or transmission facilities, scheduling and related information on bilateral transactions and self-scheduled resources, and implementation of active load management, interruption of load, and other load reduction measures; obtaining Spot Market Backup for bilateral transactions; submitting to PJM binding offers to purchase or sell energy and ancillary services in compliance with all applicable Offer Data specifications; responding to PJM's directives to start, shut down or change output levels of generation units, or change scheduled voltages or reactive output levels; responding to PJM's directives to schedule delivery or change delivery schedules for external resources; and following PJM's directions to take actions to prevent, manage, alleviate or end an Emergency.

(e) Billing and Payment Responsibilities.

\_\_\_\_\_ \_\_\_\_\_ In connection with all rights and responsibilities specified by Party A and Party B in any of subparts (a) through (d) of this Section, Party B shall be billed for, and shall make payment to PJM for, all charges, penalties, costs and fees. (If this option is not specified, PJM will issue billings to, and collect amounts due from, Party A.)

\_\_\_\_\_ \_\_\_\_\_ In connection with all rights and responsibilities specified by Party A and Party B above, Party B is entitled to receive from PJM in Party B's account all credits, revenues, distributions, and disbursements. (If this option is not specified, PJM will pay such amounts to Party A.)

(f) General Membership Responsibilities.

\_\_\_\_\_ \_\_\_\_\_ Party B is authorized to participate and vote in all PJM committees, working groups, and other stakeholder bodies on Party A's behalf.

\_\_\_\_\_ \_\_\_\_\_ Party B is authorized to participate on Party A's behalf in the regional transmission expansion planning process.

\_\_\_\_\_ \_\_\_\_\_ Party B is authorized to provide information or otherwise cooperate on Party A's behalf in connection with any investigation or request for

information by PJM or the PJM Market Monitoring Unit in accordance with the Operating Agreement and Attachment M to the Tariff. (If this option is specified, PJM and the PJM Market Monitoring Unit shall have the right to request and obtain such information from Party B and/or Party A.)

\_\_\_\_\_ Party B shall be billed for, and shall make payment of, Party A's costs of membership in PJM, including payment of the Membership fee, and payment of any other general assessments on the PJM members, including, but not limited to, amounts assessed as a consequence of defaults by other Members.

(g) Additional Responsibilities.

\_\_\_\_\_ Party B has been Authorized other rights and responsibilities of Party A as specified on Attachment "A" to this Declaration.  
(Initial)

(h) Limitation on Responsibilities.

\_\_\_\_\_ The rights and responsibilities specified in parts (a) through (f) above apply to a limited portion of Party A's facilities or loads located in the PJM Region, as specified on Attachment "B" to this Declaration, and to no other facilities or loads of Party A.

### **3. Continuing Responsibilities and Liabilities of Party A.**

3.1 The Authorized Rights and Responsibilities are the only rights and responsibilities under the PJM Agreements for which Party B is authorized to act for Party A, and Party A retains all rights and responsibilities under the PJM Agreements not specified by Party A and Party B in Section 2.

3.2 With respect to the Authorized Rights and Responsibilities, and notwithstanding any other provision of this Agreement, Party A shall remain liable to PJM for all amounts due or to become due to PJM under the PJM Agreements, and Party B's authorization to make payment of any such amounts hereunder (if specified in Section 2) shall not release Party A from liability for any financial obligations to PJM not satisfied by Party B.

### **4. Reliance and Indemnity, Duty to Inform, Liability Waiver, and Rules of Construction.**

4.1 Party A and Party B each recognizes, accepts and intends that PJM will rely, upon on the truth, accuracy and completeness of the declarations herein in matters including but not limited to creditworthiness and in assuring compliance with the PJM Agreements. Party A and Party B each recognizes and accepts that PJM or its members may suffer losses and damages if any



declaration is or becomes untrue, inaccurate or incomplete, and each agrees to indemnify PJM for any such losses and damages.

- 4.2 Party A and Party B each has a continuing duty to notify PJM if and when any declaration herein ceases to be truthful, accurate or complete. Until such time as PJM receives written notification of any change to any declaration, in accordance with the terms contained herein, PJM shall be entitled to rely perpetually on this Declaration as governing its relationship with Party A and Party B as to the subject matter of this Declaration. Written notice of changes to the declarations contained herein must be provided by Party A (PJM Member) to PJM at least thirty days in advance of their effectiveness. If Party B is also a PJM Member, then both parties will be required to provide thirty days prior written notification in order for such changes to be effective. Such notification is required for changes to the declarations and responsibilities contained herein and/or termination of this Declaration. Upon such termination, all rights, responsibilities and accounts will revert back to the original status quo prevailing before the Declaration became effective. Should less than thirty days' notice be provided, PJM shall use its best efforts to accommodate and process the declarations herein, but all attempts should be made to provide such notice.
- 4.3 Nothing in this Declaration shall be construed to create or give rise to any liability on the part of PJM and Party A and Party B expressly waive any claims that may arise against PJM under this Declaration. This Declaration shall not be construed to modify any of the PJM Agreements and in the event of conflict between this Declaration and a PJM Agreement, the applicable PJM Agreement shall control.
- 4.4 Capitalized terms used herein that are not defined herein have the meanings given in the PJM Agreements, as applicable.
- 4.5 The Recitals are hereby incorporated into the body of this Declaration.

IN WITNESS WHEREOF, Party A and Party B execute this Declaration to be effective as of the date written above or upon receipt of a fully executed original by PJM, whichever date is later.

**PARTY A:**

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

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

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

Company Name:  
PPL Electric Utilities Corporation

**PARTY B:**

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

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

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

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

**EXHIBIT 5 - PERFORMANCE ASSURANCE EVERGREEN  
LETTER OF CREDIT**

**{TO BE ISSUED ON THE LETTERHEAD OF THE ISSUING BANK}**

IRREVOCABLE STANDBY LETTER OF CREDIT NO. \_\_\_\_\_

ISSUE DATE \_\_\_\_\_

EXPIRY DATE: \_\_\_\_\_

**APPLICANT**

[NAME]

[ADDRESS]

**BENEFICIARY**

PPL ELECTRIC UTILITIES CORPORATION  
TWO NORTH NINTH STREET  
ALLENTOWN, PA 18101  
ATTN: JAMES ROULAND

CURRENCY AMOUNT

USD \*\*\*\*\*\$ \_\_\_\_\_

WE HEREBY ISSUE IN YOUR FAVOR OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO: \_\_\_\_\_ FOR THE ACCOUNT OF APPLICANT FOR AN AMOUNT OR AMOUNTS NOT TO EXCEED IN THE AGGREGATE US DOLLARS \_\_\_\_\_ AVAILABLE BY YOUR DRAFT(S) AT SIGHT ON THE BANK OF \_\_\_\_\_ (“ISSUER”) [ADDRESS], EFFECTIVE \_\_\_\_\_ AND EXPIRING AT OUR COUNTERS ON \_\_\_\_\_ AT 5:00 PM NEW YORK, NEW YORK TIME OR ANY AUTOMATICALLY EXTENDED EXPIRY DATE, AS PROVIDED HEREIN. THIS LETTER OF CREDIT IS AVAILABLE IN ONE OR MORE DRAFTS UP TO THE AGGREGATE AMOUNT SET FORTH HEREIN.

THIS LETTER OF CREDIT IS PRESENTABLE AND PAYABLE AT OUR COUNTERS AND WE HEREBY ENGAGE WITH YOU THAT DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE HONORED ON PRESENTATION BY PHYSICAL DELIVERY OR BY FACSIMILE TRANSMISSION, PROVIDED THAT ANY PRESENTATION BY FACSIMILE TRANSMISSION SHALL ALSO BE FOLLOWED BY PHYSICAL DELIVERY OF DOCUMENTS WITHIN ONE (1) BUSINESS DAY THEREAFTER, IF ACCOMPANIED BY THE REQUIRED DOCUMENTS PURSUANT TO THE TERMS OF THIS LETTER OF CREDIT.

THE BELOW MENTIONED DOCUMENT(S) MUST BE PRESENTED ON OR BEFORE THE EXPIRY DATE OR ANY AUTOMATICALLY EXTENDED EXPIRY

DATE, AS PROVIDED HEREIN, OF THIS INSTRUMENT IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT.

1. YOUR SIGNED AND DATED STATEMENT, READING AS FOLLOWS (WITH BLANKS APPROPRIATELY COMPLETED AND BRACKETED INSTRUCTIONS DELETED):

“THE AMOUNT FOR THIS DRAWING, USD [INSERT AMOUNT], BEING MADE UNDER THE [INSERT NAME OF BANK] IRREVOCABLE STANDBY LETTER OF CREDIT NO. [INSERT LETTER OF CREDIT REFERENCE NUMBER], REPRESENTS AN AMOUNT DUE AND PAYABLE TO BENEFICIARY FROM APPLICANT OR AN AFFILIATE OF APPLICANT UNDER THE PPL ELECTRIC UTILITIES CORPORATION TIME-OF-USE SUPPLIER MASTER AGREEMENT DATED [INSERT DATE OF SUCH AGREEMENT] BETWEEN APPLICANT OR AN AFFILIATE OF APPLICANT AND BENEFICIARY.”; OR

“AN EVENT OF DEFAULT UNDER THE PPL ELECTRIC UTILITIES CORPORATION TIME-OF-USE SUPPLIER MASTER AGREEMENT DATED [INSERT DATE OF SUCH AGREEMENT] BETWEEN APPLICANT OR AN AFFILIATE OF APPLICANT AND BENEFICIARY HAS OCCURRED AND THAT BENEFICIARY DEMANDS PAYMENT IN THE AMOUNT OF [INSERT AMOUNT UP TO ENTIRE REMAINING UNDRAWN AMOUNT] PURSUANT TO SUCH AGREEMENT.”; OR

“THE EXPIRY DATE OF IRREVOCABLE STANDBY LETTER OF CREDIT NO. [INSERT LETTER OF CREDIT REFERENCE NUMBER] IS LESS THAN THIRTY (30) DAYS FROM THE DATE OF THIS STATEMENT AND THAT THE APPLICANT UNDER SUCH LETTER OF CREDIT HAS FAILED TO PROVIDE A REPLACEMENT LETTER OF CREDIT THAT SATISFIES THE REQUIREMENTS UNDER THE PPL ELECTRIC UTILITIES CORPORATION TIME-OF-USE SUPPLIER MASTER AGREEMENT DATED \_\_\_\_\_ BETWEEN APPLICANT OR AN AFFILIATE OF APPLICANT AND BENEFICIARY. WE THEREFORE DEMAND PAYMENT IN THE AMOUNT OF [INSERT AMOUNT UP TO ENTIRE REMAINING UNDRAWN AMOUNT] PURSUANT TO SUCH AGREEMENT.”

2. THIS ORIGINAL LETTER OF CREDIT AND ANY AMENDMENT(S).

PARTIAL AND MULTIPLE DRAWINGS ARE PERMITTED. IN THE EVENT OF ANY PARTIAL DRAWING WE WILL, PROMPTLY FOLLOWING PRESENTATION THEREOF, RETURN THE ORIGINAL LETTER OF CREDIT AND ALL AMENDMENTS TO YOU. ALL AMOUNTS PAID BY US TO BENEFICIARY IN

COMPLIANCE WITH THIS LETTER OF CREDIT SHALL CONSTITUTE A PRO  
TANTO REDUCTION IN THE STATED AMOUNT OF THIS LETTER OF CREDIT.

IF PRESENTATION OF ANY DRAWING IS MADE ON A BUSINESS DAY (AS  
HEREIN DEFINED) AND SUCH PRESENTATION IS MADE ON OR BEFORE 11:00  
A.M. NEW YORK TIME, ISSUER SHALL SATISFY SUCH DRAWING REQUEST  
ON THE NEXT BUSINESS DAY. IF THE DRAWING IS RECEIVED AFTER 11:00  
A.M. NEW YORK TIME, ISSUER WILL SATISFY SUCH DRAWING REQUEST ON  
THE SECOND FOLLOWING BUSINESS DAY. ALL PAYMENTS MADE UNDER  
THIS LETTER OF CREDIT SHALL BE MADE BY MEANS OF WIRE TRANSFER  
IN IMMEDIATELY AVAILABLE UNITED STATES DOLLARS TO YOUR BANK  
ACCOUNT INDICATED BY BENEFICIARY.

WE HEREBY ENGAGE WITH YOU THAT ALL DOCUMENTS PRESENTED IN  
COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY  
HONORED IF PRESENTED FOR PAYMENT ON OR BEFORE THE EXPIRY DATE,  
AS EXTENDED FROM TIME TO TIME IN ACCORDANCE WITH THE TERMS OF  
THIS LETTER OF CREDIT.

IN THE EVENT OF ANY NON-CONFORMING PRESENTATION, WE SHALL  
IMMEDIATELY NOTIFY BENEFICIARY IN WRITING BY FACSIMILE TO FAX  
NUMBER 610-774-2881 THAT THE PRESENTATION HAS BEEN REJECTED,  
WHICH NOTICE SHALL INDICATE THE REASONS FOR DISHONORING SUCH  
PRESENTATION AND SHALL PLACE AT THE DISPOSAL OF BENEFICIARY  
THE DOCUMENTS PRESENTED BY BENEFICIARY IN SUPPORT OF ITS  
DEMAND FOR PAYMENT. BENEFICIARY MAY THEREAFTER PRESENT  
DOCUMENTS AND RECEIVE PAYMENT HEREUNDER IN THE EVENT A  
CONFORMING PRESENTATION IS MADE IN ACCORDANCE WITH THE TERMS  
OF THIS LETTER OF CREDIT.

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT WILL BE  
AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR ONE YEAR  
FROM THE EXPIRY DATE HEREOF, OR ANY FUTURE EXPIRY DATE,  
UNLESS AT LEAST 90 DAYS PRIOR TO ANY EXPIRY DATE WE NOTIFY YOU  
AT THE ABOVE ADDRESS BY REGISTERED MAIL OR HAND DELIVERED  
COURIER THAT WE ELECT NOT TO CONSIDER THIS LETTER OF CREDIT  
RENEWED FOR ANY SUCH PERIOD.

THE TERM "BUSINESS DAY" AS USED HEREIN MEANS ANY DAY OTHER  
THAN  
(I) A SATURDAY, (II) A SUNDAY, OR (III) A DAY ON WHICH  
BANKING INSTITUTIONS LOCATED IN THE CITY OF NEW YORK,  
NEW YORK ARE REQUIRED OR AUTHORIZED BY LAW TO BE  
CLOSED.

ADDITIONAL TERMS AND CONDITIONS:

1. ALL COMMISSIONS, FEES, COSTS, AND OTHER BANKING CHARGES WILL BE BORNE BY THE APPLICANT.
2. THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES (1998) OF THE INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590 (“ISP98”). AS TO MATTERS NOT GOVERNED BY ISP98, THIS LETTER OF CREDIT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE [COMMONWEALTH OF PENNSYLVANIA; STATE OF NEW YORK], INCLUDING, TO THE EXTENT NOT INCONSISTENT WITH ISP98, THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN THE [COMMONWEALTH OF PENNSYLVANIA; STATE OF NEW YORK]. THIS LETTER OF CREDIT MAY NOT BE AMENDED, CHANGED OR MODIFIED WITHOUT THE EXPRESS WRITTEN CONSENT OF THE BENEFICIARY AND THE ISSUER.
3. THE BENEFICIARY SHALL NOT BE DEEMED TO HAVE WAIVED ANY RIGHTS UNDER THIS LETTER OF CREDIT, UNLESS, AND THEN ONLY TO THE EXTENT THAT, THE BENEFICIARY OR AN AUTHORIZED AGENT OF THE BENEFICIARY SHALL HAVE SIGNED A DATED WRITTEN WAIVER EXPRESSLY WAIVING SUCH RIGHT OR RIGHTS. NO SUCH WAIVER, UNLESS EXPRESSLY SO STATED THEREIN, SHALL BE EFFECTIVE AS TO ANY TRANSACTION THAT OCCURS SUBSEQUENT TO THE DATE OF THE WAIVER, NOR AS TO ANY CONTINUANCE OF ANY BREACH OR NON-COMPLIANCE AFTER THE WAIVER.
4. A FAILURE TO MAKE ANY DRAWINGS AT ANY TIME SHALL NOT IMPAIR OR REDUCE THE AVAILABILITY OF THIS LETTER OF CREDIT IN ANY SUBSEQUENT PERIOD OR OUR OBLIGATION TO HONOR ANY SUBSEQUENT DEMAND OR DEMANDS FOR PAYMENT MADE IN ACCORDANCE WITH THE TERMS OF THIS LETTER OF CREDIT.

AUTHORIZED  
SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_

PLEASE DIRECT ANY WRITTEN CORRESPONDENCE, INCLUDING DRAWING OR INQUIRIES TO:

[BANK NAME, ADDRESS AND PHONE NUMBER]

## EXHIBIT 6 – UNCONDITIONAL GUARANTY

THIS GUARANTY AGREEMENT (this “Guaranty”) is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, by \_\_\_\_\_ (the “Guarantor”), with an address at \_\_\_\_\_, in favor of PPL Electric Utilities Corporation (the “Buyer”), with an address at Two North Ninth Street, Allentown, PA 18101, in consideration of all Transactions for Time-of-Use service, Default Service and Alternative Energy Credit under Supplier Master Agreement(s) (“SMA(s)”) between PPL Electric Utilities Corporation and \_\_\_\_\_ (the “Seller”), including but not limited to all transactions under other agreements providing for default service or similar service, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged. Unless otherwise defined herein, all capitalized terms used herein shall have the respective meanings assigned thereto in the applicable SMA(s).

Whereas, Seller is an affiliate of Guarantor, and Guarantor desires Buyer to enter into SMA(s) with Seller and Guarantor’s provision of this Guaranty is an inducement for Buyer to be willing to enter into SMA(s) with Seller.

Now, therefore, intending to be legally bound hereby, Guarantor covenants and agrees as follows:

1. Guaranty of Obligations.

- (a) The Guarantor hereby irrevocably and unconditionally guarantees as primary obligor and not as a surety, with effect from date hereof, the prompt and complete payment in immediately available funds in the United States when due of all of Seller’s obligations (present or future, direct or indirect, secured or unsecured, fixed or contingent and whenever due, whether on scheduled payment dates, upon demand, on a Termination Payment Date or otherwise) under the SMA(s), as well as, all reasonable out-of-pocket costs and expenses incurred by Buyer in the enforcement of the Guarantor’s obligations or collection under this Guaranty, including reasonable attorney’s fees and expenses (collectively, the “Obligations”) provided only that the Buyer is the prevailing party in any judicial suit, action or proceeding arising out of, resulting from, or in any way relating to this Guaranty, or if by mutual agreement by Guarantor and Buyer. [Optional provision: Notwithstanding anything to the contrary herein, the liability of the Guarantor under this Guaranty and Buyer’s right of recovery hereunder for all Obligations is limited to a total aggregate amount of \$ \_\_\_\_\_ (“Guaranty Amount”), where Guaranty Amount shall be no less than Five Hundred Thousand US Dollars (\$500,000).]
- (b) The Guarantor shall not be required to pay any consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages except in each case to the extent that they constitute Obligations that are required to be paid under the applicable SMA(s).

2. Nature of Guaranty; Waivers

- (a) This is a guaranty of payment and not of collection and the Buyer shall not be required, as a condition of the Guarantor's liability, to proceed first against Seller or any performance assurance or any collateral that Guarantor may hold, or to pursue any rights which may be available to it with respect to any other person or entity who may be liable for the payment of the Obligations. This is not a guaranty of performance (other than of performance of payment obligations) and the Guarantor is not obligated to provide power or to deliver AECs under the SMA(s) or this Guaranty.
- (b) This Guaranty is an absolute, unconditional, irrevocable (subject to the provisions of Section 12 of this Guaranty) and continuing guaranty and will remain in full force and effect until all of the Obligations have been indefeasibly paid in full, or until the SMA(s) have been terminated, whichever comes later. This Guaranty will not be affected by any surrender, exchange, acceptance, compromise or release by the Buyer or any other party, or any other guaranty, performance assurance or other security held by it for any of the Obligations, by any failure of the Buyer to take any steps to perfect or maintain its lien or security interest in or to preserve its rights to any security, performance assurance, or other collateral for any of the Obligations or any guaranty, or by any irregularity, unenforceability or invalidity of any of the Obligations or any part thereof.
- (c) Except as to any claims, defenses, or rights of set-off to which Seller is entitled under the SMA(s), exclusive of any claims, defenses, and rights of set-off that are based upon the insolvency, bankruptcy or reorganization of Seller, the power or authority to enter into and perform under the SMA(s) or the Transactions, all of which are expressly reserved under this Guaranty, the Guarantor's obligations hereunder shall not be affected, modified or impaired by any counterclaim, set-off, deduction or defense based upon any claim the Guarantor may have against Seller or the Buyer, including: (i) any change in the corporate existence (including its charter or other governing agreement, laws, rules, regulations or powers), structure or ownership of Seller or the Guarantor; or (ii) any insolvency, bankruptcy, reorganization or other similar proceeding affecting Seller or its assets; or (iii) the invalidity or unenforceability in whole or in part of the SMA(s); or (iv) any provision of applicable law or regulations purporting to prohibit payment by Seller of amounts to be paid by it under the SMA(s) (other than any law or regulation that eliminates or nullifies the obligations under the SMA(s)).
- (d) Guarantor waives notice of acceptance of this Guaranty, diligence,



presentment, notice of dishonor and protest and any requirement that at any time Buyer or any other person or entity exhaust any right to take any action against Seller or Seller's assets or any other guarantor, person or entity, and Buyer shall not be bound or obligated to exhaust its recourse against Seller or any other person or entity or against any performance assurance or other collateral it may hold or take any other action before being entitled to receive payment from Guarantor. Any failure of Buyer to give notice shall not discharge, alter or diminish in any way Guarantor's obligations under this Guaranty. The Guarantor waives all claims, defenses, and rights of set-off based on suretyship or impairment of collateral or any other defenses that would constitute a legal or equitable discharge of Guarantor's obligations, except any claims, defenses, or rights of set-off of Seller in respect of its obligations under the SMA(s) that are expressly reserved under Section 2(c) above.

- (e) The Buyer at any time and from time to time, without notice to or the consent of the Guarantor, and without impairing or releasing, discharging or modifying the Guarantor's liabilities hereunder, may (i) to the extent permitted by the SMA(s), change the manner, place, time or terms of payment or performance of, or other terms relating to, any of the Obligations; (ii) to the extent permitted by the SMA(s), renew, substitute, modify, amend or alter, or grant consents or waivers relating to any of the Obligations, or any other guaranties for any Obligations; (iii) settle, compromise or deal with any other person, including Seller, with respect to any Obligations in such manner as the Buyer deems appropriate at its reasonable discretion; (iv) substitute, exchange or release any performance assurance or any guaranty; or (v) take such actions and exercise such remedies hereunder or under the SMA(s) as Buyer deems appropriate in its reasonable discretion.

3. Representations and Warranties. The Guarantor hereby represents and warrants that:

- (a) it is a [limited liability company, corporation, limited partnership, general partnership] duly organized, validly existing and in good standing under the laws of the jurisdiction of its [formation, organization, incorporation] and has the [corporate power] [power] and authority to conduct the business in which it is currently engaged and enter into and perform its obligations under this Guaranty;
- (b) it has the [corporate power] [power] and authority and the legal right to execute and deliver, and to perform its obligations under, this Guaranty, and has taken all necessary [corporate action] [action] to authorize its execution, delivery and performance of this Guaranty;
- (c) this Guaranty constitutes a legal, valid and binding obligation of the

Guarantor enforceable in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law);

- (d) the execution, delivery and performance of this Guaranty will not violate any provision of any requirement of law or contractual obligation of the Guarantor;
- (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or governmental authority and no consent of any other person (including, without limitation, any stockholder or creditor of the Guarantor) is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty, other than any which have been obtained or made prior to the date hereof and remain in full force and effect; and
- (f) no litigation, investigation or proceeding of or before any arbitrator or governmental authority is pending or, to the knowledge of the Guarantor, threatened by or against the Guarantor that could reasonably be expected to have a material adverse effect on this Guaranty or Guarantor's ability to perform all of its obligations hereunder.

4. Repayments or Recovery from the Buyer. If any demand is made at any time upon the Buyer for the repayment or recovery of any amount received by it in payment or on account of any of the Obligations, including but not limited to upon the bankruptcy, insolvency, dissolution or reorganization of the Seller and if the Buyer repays all or any part of such amount by reason of any judgment, decree or order of any court or administrative body or by reason of any settlement or compromise of any such demand, the Guarantor shall be and remain liable hereunder for the amount so repaid or recovered to the same extent as if such amount had never been received originally by the Buyer. The provisions of this section will be and remain effective notwithstanding any contrary action which may have been taken by the Guarantor in reliance upon such payment, and any such contrary action so taken will be without prejudice to the Buyer's rights hereunder and will be deemed to have been conditioned upon such payment having become final and irrevocable. Furthermore, this Guaranty shall continue to be effective or be reinstated, as the case may be, without any release or discharge of any obligations if at any time any payment of any of the Obligations is rescinded, avoided, recovered or must otherwise be returned by Buyer upon the insolvency, bankruptcy, or reorganization of Seller, Guarantor or any other guarantor or any other person or entity or otherwise, all as though such payment had not been made.

5. Enforceability of Obligations. No modification, limitation or discharge of the

obligations of Seller arising out of or by virtue of any bankruptcy, reorganization or similar proceeding for relief of debtors under federal or state law will affect, modify, limit or discharge the Guarantor's liability in any manner whatsoever and this Guaranty will remain and continue in full force and effect and will be enforceable against the Guarantor to the same extent and with the same force and effect as if any such proceeding had not been instituted. The Guarantor waives all rights and benefits which might accrue to it by reason of any such proceeding and will be liable to the full extent hereunder, irrespective of any modification, limitation or discharge of the liability of Seller that may result from any such proceeding.

6. Postponement of Subrogation. Guarantor shall not be subrogated to any of the rights (or if subrogated by operation of law, such Guarantor hereby waives such rights to the extent permitted by applicable law) of Buyer as the result of any payment or enforcement of any of the Obligations until all of the SMA(s) have terminated and all Obligations (other than contingent indemnities not then due) have been paid in full (such date, the "Obligations Full Payment Date"). If any amount shall be paid to Guarantor on account of subrogation at any time prior to the Obligations Full Payment Date, such amount shall be held by Guarantor in trust for Buyer, segregated from other funds of Guarantor, and shall, forthwith upon receipt by Guarantor, be turned over to Buyer in the exact form received by Guarantor (duly endorsed by Guarantor to Buyer, if required) to be applied against the Obligations, whether due or to become due, in such order as Buyer may determine. On the Obligations Full Payment Date, Buyer agrees that Guarantor shall be subrogated to the rights of Buyer against Seller to the extent of Guarantor's payments to Buyer hereunder that have not been rescinded, avoided or otherwise required to be returned.
7. Notices. All notices, demands, requests, consents, approvals and other communications required or permitted hereunder must be in writing and will be effective upon receipt. Such notices and other communications may be hand-delivered, sent by facsimile transmission with confirmation of delivery and a copy sent by first-class mail, or sent by nationally recognized overnight courier service, to the addresses for the Buyer and the Guarantor set forth below or to such other address as one may give to the other in writing for such purpose:

All communications to Buyer shall be directed to:

Attn: James Rouland  
Phone: 610-774-3042  
Fax: 610-774-2881  
E-mail: [jmrouland@pplweb.com](mailto:jmrouland@pplweb.com)  
Address: 2 North 9<sup>th</sup> Street, GEN N2, Allentown, PA 18101

or such other address as the Buyer shall from time to time specify to Guarantor by notice given in accordance with this Section 7.

All communications to Guarantor shall be directed to:

Attn: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

or such other address as the Guarantor shall from time to time specify to Buyer by notice given in accordance with this Section 7.

8. Preservation of Rights. No delay or omission on the Buyer's part to exercise any right or power arising hereunder will impair any such right or power or be considered a waiver of any such right or power, nor will the Buyer's action or inaction impair any such right or power. The Buyer's rights and remedies hereunder are cumulative and not exclusive of any other rights or remedies which the Buyer may have under other agreements with the Guarantor or in respect of any performance assurance or at law or in equity.
9. Illegality. In case any one or more of the provisions contained in this Guaranty should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.
10. Amendments. No modification, amendment or waiver of any provision of this Guaranty nor consent to any departure by the Guarantor therefrom, will be effective unless made in a writing signed by the Buyer, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Guarantor in any case will entitle the Guarantor to any other or further notice or demand in the same, similar or other circumstance.
11. Entire Agreement. This Guaranty (including the documents and instruments referred to herein) constitutes the entire statement of the terms of this Guaranty and supersedes all other prior agreements and understandings, both written and oral, between the Guarantor and the Buyer with respect to the subject matter hereof.
12. Successors and Assigns. This Guaranty will be binding upon the successors and permitted assigns of Guarantor and inure to the benefit of the Buyer and its successors and assigns. Any assign must meet the requirements of a Guarantor under the SMA. Guarantor shall not assign this Guaranty in whole or in part without Buyer's prior written consent, which consent shall not be unreasonably withheld or delayed, except that this Section 12 shall not limit the Guarantor's right to assign this Guaranty, along with substantially all of the Guarantor's assets and business to a successor entity or Affiliate that concurrently assumes in a writing provided to the Buyer all of Guarantor's obligations hereunder and (i)

where the successor Guarantor's Lowest Credit Rating is equal to or greater than the Guarantor's Lowest Credit Rating or where the successor Guarantor's Lowest Credit Rating is equal to or greater than BB-, as rated by Standard & Poor's Financial Services LLC, a part of McGraw-Hill Financial (or its successor) ("S&P") or Fitch Ratings, Inc. (or its successor) ("Fitch"), or Ba3, as rated by Moody's Investors Service, Inc. (or its successor) ("Moody's"), and (ii) the Seller is in compliance with all of its obligations under the SMA(s) before and immediately after giving effect to such assignment and assumption. The "Lowest Credit Rating" shall mean the lowest of the senior unsecured long-term debt ratings (or, if unavailable, the most current corporate issuer rating) determined by S&P, Moody's or Fitch immediately before such transfer and assumption. Upon any such delegation and assumption of obligations by a successor Guarantor, the Guarantor shall be relieved of and fully discharged from all of its obligations hereunder, whether such obligations arose before or after the date of such delegation and assumption.

13. Interpretation. In this Guaranty, unless the Buyer and the Guarantor otherwise agree in writing, the singular includes the plural and the plural the singular; references to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute referred to; the word "or" shall be deemed to include "and/or", the words "including", "includes" and "include" shall be deemed to be followed by the words "without limitation"; and references to sections or exhibits are to those of this Guaranty unless otherwise indicated. Section headings in this Guaranty are included for convenience of reference only and shall not constitute a part of this Guaranty for any other purpose.
14. Governing Law.
  - (a) This Guaranty has been delivered to and accepted by the Buyer. THIS GUARANTY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF PENNSYLVANIA, EXCLUDING ITS CONFLICT OF LAWS RULES THAT WOULD APPLY THE LAWS OF ANY OTHER JURISDICTION.
  - (b) The Guarantor hereby irrevocably consents to the non-exclusive jurisdiction of any federal court in the Commonwealth of Pennsylvania, but in the event that the Guarantor and the Buyer jointly determine in good faith that jurisdiction does not lay with such court or that such court refuses to exercise jurisdiction or venue over the Guarantor and the Buyer or any claims made pursuant to this Guaranty, then the Guarantor agrees to submit to the non-exclusive jurisdiction of the Pennsylvania State courts; provided that nothing contained in this Guaranty will prevent the Buyer from bringing any action, enforcing any award or judgment or exercising any rights against the Guarantor individually, against any security or against any property of the Guarantor within any other county,

state or other foreign or domestic jurisdiction. The Guarantor acknowledges and agrees that the venue provided above is the most convenient forum for both the Buyer and the Guarantor. The Guarantor waives any objection to venue and any objection based on a more convenient forum in any action instituted under this Guaranty.

15. WAIVER OF JURY TRIAL. THE GUARANTOR AND BUYER IRREVOCABLY WAIVE ANY AND ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR CLAIM OF ANY NATURE RELATING TO THIS GUARANTY, ANY DOCUMENTS EXECUTED IN CONNECTION WITH THIS GUARANTY OR ANY TRANSACTION CONTEMPLATED IN ANY OF SUCH DOCUMENTS. THE GUARANTOR AND BUYER ACKNOWLEDGE THAT THE FOREGOING WAIVER IS KNOWING AND VOLUNTARY.
16. Term. This Guaranty shall survive termination of the SMA(s) and remain in full force and effect until all amounts due hereunder, including all of the Obligations, have been paid in full.
17. Stay of Acceleration Ineffective with Respect to Guarantor. If acceleration of the time for payment of any amount payable by Seller under the SMA(s) is stayed upon the insolvency, bankruptcy or reorganization of Seller, all such amounts otherwise subject to acceleration or required to be paid upon an early termination pursuant to the terms of the SMA(s) shall nonetheless be payable by the Guarantor hereunder on written demand by Buyer.
18. Severability. Any provision contained in this Guaranty which is prohibited or severability in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
19. Electronic Signatures. The electronic signature of Guarantor shall be valid as an original signature of Guarantor and shall be effective to bind Guarantor.

The Guarantor acknowledges that it has read and understood all the provisions of this Guaranty, and has been advised by counsel as necessary or appropriate.

[Guarantor]  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_