

**MASTER PIPP SUPPLY AGREEMENT**

**BY AND BETWEEN**

**DUKE ENERGY OHIO, INC.**

**AND**

**THE PIPP SUPPLIER SET FORTH ON ATTACHMENT A HERETO**

**TABLE OF CONTENTS**

**ARTICLE 1 ..... 2**

    DEFINITIONS ..... 2

**ARTICLE 2 ..... 10**

    TERM AND TERMINATION ..... 10

        2.1 Term ..... 10

        2.2 Mutual Termination ..... 10

        2.3 Early Termination ..... 10

        2.4 Termination of SSO Plan ..... 10

        2.5 Effect of Termination ..... 10

**ARTICLE 3 ..... 11**

**GENERAL TERMS AND CONDITIONS ..... 11**

        3.1 PIPP Supplier’s Obligations to Provide PIPP Supply and Other Obligations ..... 11

        3.2 Duke Energy Ohio’s Obligation to Take PIPP Supply and other Obligations ..... 12

        3.3 PJM E-Accounts ..... 13

        3.4 Reliability Guidelines ..... 13

        3.5 Regulatory Authorizations ..... 13

        3.6 PJM Member Default Cost Allocation ..... 14

        3.7 Status of PIPP Supplier ..... 14

        3.8 Sales for Resale ..... 14

        3.9 Transfer of PJM Charges and Credits ..... 14

**ARTICLE 4 ..... 15**

**SCHEDULING, FORECASTING AND INFORMATION SHARING ..... 15**

        4.1 Scheduling ..... 15

        4.2 Load Forecasting ..... 15

        4.3 Disconnection and Curtailment by Duke Energy Ohio ..... 15

        4.4 Loss of Service to PIPP Customers ..... 16

        4.5 PJM Requirements ..... 16

        4.6 Compliance with Governmental Directives ..... 16

**ARTICLE 5 ..... 16**

**CREDIT AND PERFORMANCE SECURITY ..... 16**

        5.1 Applicability ..... 16

        5.2 Creditworthiness Determination ..... 17

        5.3 Independent Credit Requirement ..... 18

        5.4 Independent Credit Threshold ..... 18

        5.5 Mark-to-Market Credit Exposure Methodology ..... 21

5.6	Credit Limit.....	21
5.7	Posting Margin Collateral and Return of Excess Collateral .....	25
5.8	Grant of Security Interest; Remedies .....	26
5.9	Acceptable Forms of Security.....	27
5.10	Reporting; Maintenance of Creditworthiness .....	28
5.11	Interest on Cash Held by Companies.....	28
5.12	No Endorsement of PIPP Supplier.....	28
<b>ARTICLE 6 .....</b>		<b>29</b>
<b>BILLING, PAYMENT AND NETTING .....</b>		<b>29</b>
6.1	Invoice Statement.....	29
6.2	PJM Billing; Third Party Billing.....	30
<b>ARTICLE 7 .....</b>		<b>31</b>
<b>BREACH AND DEFAULT .....</b>		<b>31</b>
7.1	Events of Default .....	31
7.2	Remedies Upon an Event of Default .....	32
7.3	Default Damages; Settlement Amount; Termination Payment .....	33
7.4	Setoff of Payment Obligations of the Non-Defaulting Party.....	35
7.5	Preservation of Rights of Non-Defaulting Party.....	35
<b>ARTICLE 8 .....</b>		<b>36</b>
<b>REPRESENTATIONS AND WARRANTIES.....</b>		<b>36</b>
8.1	Duke Energy Ohio’s Representations and Warranties.....	36
8.2	PIPP Supplier Representations and Warranties .....	37
<b>ARTICLE 9 .....</b>		<b>38</b>
<b>RISK OF LOSS; LIMITATION OF LIABILITY .....</b>		<b>38</b>
9.1	Risk of Loss .....	38
9.2	Limitation of Liability.....	38
<b>ARTICLE 10 .....</b>		<b>39</b>
<b>INDEMNIFICATION.....</b>		<b>39</b>
10.1	Indemnification .....	39
<b>ARTICLE 11 .....</b>		<b>40</b>
<b>DISPUTE RESOLUTION .....</b>		<b>40</b>
11.1	Informal Dispute Resolution.....	40
11.2	Formal Dispute Resolution .....	41
11.3	Recourse to Agencies or Courts of Competent Jurisdiction .....	41
<b>ARTICLE 12 .....</b>		<b>41</b>

**MISCELLANEOUS PROVISIONS** ..... 41

- 12.1 Assignment ..... 41
- 12.2 Notices ..... 42
- 12.3 General ..... 43
- 12.4 Governing Law ..... 43
- 12.5 Standard of Review ..... 44
- 12.6 PJM Agreement Modifications ..... 44
- 12.7 Confidentiality ..... 44
- 12.8 Taxes ..... 45
- 12.9 Record Retention ..... 46
- 12.10 Rules as to Usage ..... 46
- 12.11 Counterparts ..... 47

## MASTER PIPP SUPPLY AGREEMENT

This Master PIPP Supply Agreement (“Agreement”), dated as of March 15, 2019 (“Effective Date”), is by and between Duke Energy Ohio, Inc., an Ohio corporation with offices at 139 East Fourth Street, Cincinnati, Ohio (“Duke Energy Ohio”) and the supplier listed on Attachment A (the “PIPP Supplier”). Duke Energy Ohio and the PIPP Supplier are hereinafter referred to individually as a “Party” or collectively as the “Parties”).

### RECITALS

**WHEREAS**, Duke Energy Ohio is an Ohio public utility that engages, inter alia, in providing SSO Service within its service territory; and

**WHEREAS**, R.C. 4928.54 requires the director of development services to aggregate PIPP program customers for SSO Service; and

**WHEREAS**, the PUCO found that it would serve the public interest for Duke Energy Ohio to secure PIPP Supply through a request for proposal (RFP) auction; and

**WHEREAS**, on March 11, 2018, Duke Energy Ohio conducted and completed a successful Solicitation for PIPP Supply; and

**WHEREAS**, the PIPP Supplier was the winning bidder in the Solicitation for PIPP Supply; and

**WHEREAS**, the PUCO has authorized Duke Energy Ohio to contract with the winning bidder for PIPP Supply to serve PIPP Load in accordance with the terms of this Agreement; and

**WHEREAS**, the PIPP Supplier will satisfy its Capacity obligations under the PJM Agreements associated with its PIPP Supplier Responsibility Share in accordance with the PJM Agreements, including, without limitation, through participation in the base residual auction and incremental auctions administered by PJM; and

**WHEREAS**, Duke Energy Ohio and the PIPP Supplier desire to enter into this Agreement setting forth their respective obligations concerning the provision of PIPP Supply.

**NOW, THEREFORE**, for and in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties intending to be legally bound hereby agree as follows:

## **ARTICLE 1 DEFINITIONS**

The following definitions and any terms defined in this Agreement shall apply hereunder.

“Affiliate” means, with respect to any Person, any other Person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. 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.

“Ancillary Services” has the meaning set forth in the PJM Agreements.

“Bankrupt” means with respect to any entity, that such entity (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is unable to pay its debts as they fall due.

“Bankruptcy Code” means 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.

“Billing Period” means hour ending 0100 on the first day of a calendar month through hour ending 2400 on the last day of the applicable calendar month.

“Billing Statement” has the meaning set forth in Section 6.1(a).

“Business Day” means any day except a Saturday, Sunday or a day PJM declares to be a holiday, as posted on the PJM website. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. prevailing Eastern Time, unless otherwise agreed to by the Parties in writing.

“Capacity” means “Unforced Capacity” as set forth in the PJM Agreements, or any successor measurement of capacity obligation of an LSE as may be employed in PJM (whether set forth in the PJM Agreements or elsewhere).

“Charge” means any fee, charge, PJM charge, the Energy Share Adjustment if in favor of Duke Energy Ohio, or any other amount that is billable by Duke Energy Ohio to the PIPP Supplier under this Agreement.

“Commercial/Industrial Customer” means a Customer taking service under one of Duke Energy Ohio’s non-residential rates (Rate DS, Rate DM, Rate DP, Rate CUR, Rate EH, Rate GSFL, Rate SFL-ADPL, Rate RTP or Rate TS).

“Costs” mean, with respect to the Non-Defaulting Party, all reasonable attorney’s fees, brokerage fees, commissions, PJM charges and other similar transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace this Agreement; and all reasonable attorney’s fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement as between Duke Energy Ohio and the PIPP Supplier.

“Credit Limit” means an amount of credit, based on the creditworthiness of the PIPP Supplier or its Guarantor, if applicable, determined pursuant to Section 5.6, granted by Duke Energy Ohio to the PIPP Supplier to be applied towards the Total Exposure Amount for the PIPP Supplier.

“CRES Supplier” means a Person that is duly certified by the PUCO to offer and to assume the contractual and legal responsibility to provide Standard Service Offer pursuant to retail open access programs approved by the PUCO to Customers who are not SSO Customers of Duke Energy Ohio. For the avoidance of doubt, CRES Supplier shall exclude the PIPP Supplier under this Agreement.

“Cross Default Amount” means an amount equal to five percent (5%) of a Defaulting Party’s or Defaulting Party’s Guarantor’s (as applicable) Tangible Net Worth.

“Customer” means any Person who receives distribution service from Duke Energy Ohio in accordance with the Legal Authorities.

“Default Allocation Assessment” has the meaning set forth in the PJM Agreements.

“Default Damages” means direct damages, calculated in a commercially reasonable manner, that the Non-Defaulting Party incurs as a result of an Event of Default by the Defaulting Party. Default Damages may include: (i) the positive difference (if any) between the price of PIPP Supply hereunder and the price at which Duke Energy Ohio or the PIPP Supplier is able to purchase or sell (as applicable) PIPP Supply (or any components of PIPP Supply it is able to purchase or sell) from or to third parties including PJM; (ii) Emergency Energy charges; (iii) additional transmission or congestion charges incurred to purchase or sell PIPP Supply; and (iv) Costs.

“Defaulting Party” has the meaning set forth in Section 7.1.

“Delivery Period” means the Original Delivery Period, unless this Agreement is terminated earlier in accordance with the provisions hereof.

“Delivery Point” means the DEOK Residual Aggregate Zone as defined within PJM.

“DEOK Residual Aggregate Zone” means that set of electrical locations, designated by PJM as Pnode ID number 1069452904, determined pursuant to the applicable PJM Tariff, rules, agreements and procedures, representing the aggregate area of consumption for Duke Energy Ohio within PJM and used for the purposes of scheduling, reporting withdrawal volumes, and settling Energy transactions at aggregated load levels, to facilitate Energy market transactions.

“Duke Energy Ohio Indemnified Party” has the meaning set forth in Section 10.1(a).

“Early Termination” has the meaning set forth in Section 2.3.

“Early Termination Date” means the date upon which an Early Termination becomes effective as specified in Section 7.2(b).

“Effective Date” has the meaning set forth in the preamble.

“Emergency” means (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; (ii) a condition that requires implementation of emergency operations procedures; or (iii) any other condition or situation that Duke Energy Ohio, transmission owner(s) or PJM deems imminently likely to endanger life or property or to affect or impair Duke Energy Ohio’s electrical system or the electrical system(s) of other Person(s) to which Duke Energy Ohio’s electrical system is directly or indirectly connected (a “Connected Entity”). Such a condition or situation may include potential overloading of Duke Energy Ohio’s subtransmission or distribution circuits, PJM minimum generation (“light load”) conditions, or unusual operating conditions on either Duke Energy Ohio’s or a Connected Entity’s electrical system, or conditions such that Duke Energy Ohio is unable to accept Energy from the PIPP Supplier without jeopardizing Duke Energy Ohio’s electrical system or a Connected Entity’s electrical system.

“Emergency Energy” has the meaning set forth in the PJM Agreements.

“Energy” means electric energy of the character commonly known as three-phase, sixty-hertz electric energy that is delivered at the nominal voltage of the Delivery Point, expressed in MWh.

“Energy Share Adjustment” means for any Billing Period, the monetary amount due to the PIPP Supplier or Duke Energy Ohio, as the case may be, in order to reconcile any difference between the Estimated Monthly Energy Share used for the purpose of calculating estimated payments made to the PIPP Supplier for a given month and the Final Monthly Energy Share used for calculating the final payments due to the PIPP Supplier for such month, as more fully described in Article 6.

“ESP” means an electric security plan approved by the PUCO pursuant to the requirements of R.C.4928.143, for the period beginning June 1, 2018.

“Estimated Monthly Energy Share” means a quantity of Energy expressed in MWh which, for any Billing Period, is the preliminary calculation of the PIPP Supplier’s PIPP Supplier Responsibility Share.

“Event of Default” has the meaning set forth in Section 7.1.

“Excess Collateral” has the meaning set forth in Section 5.7.

“FERC” means the Federal Energy Regulatory Commission or such succeeding organization.

“Final Monthly Energy Share” means a quantity of Energy expressed in MWh which, for any Billing Period, is the Estimated Monthly Energy Share adjusted for any billing or metering errors found subsequent to the calculation of the Estimated Monthly Energy Share of which PJM is



notified prior to the last date on which PJM issues a settlement statement for a previous operating day for the Billing Period.

“Firm Transmission Service” has the meaning ascribed to “Network Integration Transmission Service” under the PJM Agreements. In the event the PJM Agreements are modified such that “Network Integration Transmission Service” is no longer offered, Firm Transmission Service means the type of transmission service offered under the PJM Agreements that is accorded the highest level of priority for scheduling and curtailment purposes.

“Forward Market Prices” means forward market prices for a specific geographic Market Price Hub, as adjusted by Duke Energy Ohio to reflect impact of load shape.

“Gains” means an amount equal to the present value of the economic benefit to the Non-Defaulting Party, if any, exclusive of Costs, resulting from an Early Termination.

“Governmental Authority” means any federal, state, local, municipal or other governmental entity, authority or agency, department, board, court, tribunal, regulatory commission, or other body, whether legislative, judicial or executive, together or individually, exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power over a Party to this Agreement.

“Guarantor” means any Person having the authority and agreeing to guarantee the PIPP Supplier’s financial obligations under this Agreement, provided that such party meets Duke Energy Ohio’s creditworthiness requirements.

“Guaranty” means the ICT Guaranty or the Total Exposure Amount Guaranty, as applicable.

“ICR Collateral” has the meaning set forth in Section 5.4(d).

“ICT Guaranty” means a guaranty, in substantially the form set forth in Attachment D, provided by a Guarantor in favor of Duke Energy Ohio guaranteeing the PIPP Supplier’s financial obligations in connection with ICT.

“Indemnification Losses” has the meaning set forth in Section 10.1(a).

“Indemnified Supplier” has the meaning set forth in Section 10.1(b).

“Independent Credit Requirement or ICR” means an amount required as security under Section 5.3, to mitigate the risk to Duke Energy Ohio of Energy price movements between the date of an Early Termination caused by an Event of Default by the PIPP Supplier and the date the final calculation of Default Damages owing to Duke Energy Ohio under Section 7.2(c) is made.

“Independent Credit Threshold or ICT” means an amount of credit, based on the creditworthiness of the PIPP Supplier or its Guarantor, if applicable, determined pursuant to Section 5.4, granted by Duke Energy Ohio to the PIPP Supplier to be applied towards the satisfaction of the PIPP Supplier’s Independent Credit Requirement.

“Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the effective federal funds rate as may be published from time to time in the Federal Reserve Statistical Release H.15; or (b) the maximum lawful interest rate.

“Kilowatt or kW” means a unit of measurement of useful power equivalent to 1,000 watts.

“Kilowatt-hour or kWh” means the equivalent of one kilowatt of electric power used over a period of one hour.

“Legal Authorities” means, generally, those federal and Ohio statutes and administrative rules and regulations that govern the electric utility industry in Ohio.

“Letter of Credit” means a standby irrevocable letter of credit in the form set forth in Attachment E, or in such other form as Duke Energy Ohio deems acceptable in its sole discretion, and in each case conforming to all of the requirements specifically set forth in Section 5.9(b).

“LIBOR” means the rates published daily as the London Inter-Bank Offered Rates for U.S. dollar deposits. For discounting purposes, the rates will be converted into a series of monthly rates representing the equivalent forward LIBOR rate from the valuation date to the month of delivery.

“Lighting Customer” means a Customer taking service under Duke Energy Ohio’s lighting rates (Rate SL, Rate SC, Rate NSU, Rate NSP, Rate SE, Rate UOLS, Rate OL or Rate TL).

“Load Serving Entity or LSE” has the meaning set forth in the applicable PJM Agreements.

“Losses” means an amount equal to the present value of the economic loss to the Non-Defaulting Party, if any, exclusive of Costs, resulting from an Early Termination.

“Margin” means, at any time, the amount by which the Total Exposure Amount exceeds the Credit Limit of the PIPP Supplier or its Guarantor.

“Margin Call” has the meaning set forth in Section 5.6(e).

“Margin Collateral” has the meaning set forth in Section 5.6(e).

“Mark-to-Market Exposure Amount” means an amount calculated daily for the PIPP Supplier reflecting the exposure to Duke Energy Ohio due to fluctuations in market prices for Energy as set forth in Section 5.5.

“Market Price Hub” means a liquid pricing point located within PJM’s geographic footprint.

“Minimum Margin Threshold” means \$100,000.

“Minimum Rating” means a minimum senior unsecured debt rating (or, if unavailable, corporate or issuer rating) as defined in Section 5.4(a).

“MW” means megaWatt.

“MWh” means megaWatt hour.

“NERC” means the North American Electric Reliability Corporation or its successor.

“Non-Defaulting Party” has the meaning set forth in Section 7.2.

“Ohio Sales and Use Taxes” has the meaning set forth in Section 12.8.

“Original Delivery Period” has the meaning set forth in Attachment A.

“Other PIPP Supply Agreement” means any other agreement between Duke Energy Ohio and the PIPP Supplier for the provision of PIPP Supply or similar service.

“Other SSO Supply Agreement” means any agreement between Duke Energy Ohio and the PIPP Supplier for the provision of SSO Supply or similar service.

“Party” has the meaning set forth in the preamble to this Agreement, and includes such Party’s successors and permitted assigns.

“Performance Assurance” means collateral in the form of cash, letters of credit, or other security reasonably acceptable to the requesting party.

“Person” means an individual, partnership, joint venture, corporation, limited liability company, trust, association or unincorporated organization, any Governmental Authority, or any other entity.

“PIPP Customers” means Customers that take service under the low income customer assistance program known as the Percentage of Income Payment Plus Program administered by the Ohio Development Services Agency in accordance with R.C. 4928.53.

“PIPP Load” means the full electricity requirements for SSO Service of PIPP Customers.

“PIPP Supplier” has the meaning set forth in the preamble.

“PIPP Supplier Responsibility Share” means the fixed percentage share of the PIPP Load for which the PIPP Supplier is responsible as set forth in Attachment A.

“PIPP Supply” means unbundled Energy, Capacity and Ancillary Services, including, to the extent not expressly assumed by Duke Energy Ohio pursuant to Section 3.2, all transmission and distribution losses and congestion and imbalance costs associated with the provision of such services, as measured and reported to PJM, and such other services or products that the PIPP Supplier may be required to provide, by PJM or other Governmental Authority, in order to meet the requirements of SSO Service for PIPP Customers.

“PJM” means PJM Interconnection, L.L.C. or any successor organization thereto.

“PJM Agreements” means the PJM OATT, PJM Operating Agreement, PJM RAA and any other applicable PJM manuals or documents, or any successor, superseding or amended versions thereof that may take effect from time to time.

“PJM E-Account” means an account obtainable through PJM which provides access to web-based PJM scheduling, settlement, accounting, marketing and other informational and economic systems.

“PJM OATT or PJM Tariff” means the Open Access Transmission Tariff of PJM or the successor, superseding or amended versions of the Open Access Transmission Tariff that may take effect from time to time.

“PJM Operating Agreement” means the Amended and Restated Operating Agreement of PJM or the successor, superseding or amended versions of the Amended and Restated Operating Agreement that may take effect from time to time.

“PJM RAA” means the Reliability Assurance Agreement Among Load Serving Entities in the PJM Region or any successor, superseding or amended versions of the Reliability Assurance Agreement Among Load Serving Entities in the PJM Region that may take effect from time to time.

“Price” means the price in \$/MWh set forth in Attachment A, resulting from Duke Energy Ohio’s Solicitation for the opportunity to provide PIPP Supply. The Price is the basis for financial settlement of PIPP Supply supplied by the PIPP Supplier for PIPP Customers under this Agreement.

“PUCO” means the Public Utilities Commission of Ohio, or any successor thereto.

“Residential Customer” means a Customer taking service under Duke Energy Ohio’s residential rates (Rate RS, Rate ORH, Rate TD, Rate TD-13, Rate RS3P or Rate RSLI).

“Seasonal Billing Factor” means a numerical factor, as set forth in Attachment B, one amount applicable during the summer months of June through September, and one amount applicable during the non-summer months of October through May, applied to the Price in accordance with the provisions of Article 6 and thereby used to adjust Duke Energy Ohio’s payments to the PIPP Supplier.

“Settlement Amount” means the net amount of the Losses or Gains, and Costs, expressed in U.S. Dollars, which the Non-Defaulting Party incurs as a result of Early Termination, calculated from the Early Termination Date through the end of the Original Delivery Period. For purposes of calculating the Settlement Amount, the quantity of Energy (and other components of PIPP Supply) provided for under this Agreement for the period following the Early Termination Date through the remainder of the Original Delivery Period will be determined by the Non-Defaulting Party in a commercially reasonable manner reflecting estimated PIPP Load based on the PIPP Load data as of October 31, 2018 as posted by Duke Energy Ohio for purposes of the Solicitation. The calculation of Settlement Amount with respect to an Early Termination shall exclude Default Damages calculated pursuant to Section 7.3(a).

“Solicitation” means the request for proposal (RFP) auction by which the counterparty, quantity, pricing and other terms of this Agreement are established.

“Special Contract Customers” means Customers that take retail generation service from Duke Energy Ohio under terms and conditions different than the otherwise applicable tariff.

“Specified Indebtedness” with respect to a Party means as of any date, without duplication, (i) all obligations of such Party for borrowed money, (ii) all indebtedness of such Party for the deferred purchase price of property or services purchased (excluding current accounts payable incurred in the ordinary course of business), (iii) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired, (iv) all indebtedness under leases which shall have been or should be, in accordance with generally accepted accounting principles, recorded as capital leases in respect of which such Party is liable as lessee, (v) the face

amount of all outstanding letters of credit issued for the account of such Party (other than letters of credit relating to indebtedness included in indebtedness of such Party pursuant to another clause of this definition) and, without duplication, the unreimbursed amount of all drafts drawn thereunder, (vi) indebtedness secured by any lien on property or assets of such Party, whether or not assumed (but in any event not exceeding the fair market value of the property or asset), (vii) all direct guarantees of indebtedness referred to above of another Party, (viii) all amounts payable in connection with mandatory redemptions or repurchases of preferred stock or member interests or other preferred or priority equity interests and (ix) any obligations of such Party (in the nature of principal or interest) in respect of acceptances or similar obligations issued or created for the account of such Party.

“SSO Customers” means Residential Customers, Commercial/Industrial Customers and Lighting Customers, including Special Contract Customers, but excluding PIPP Customers.

“SSO Service” means Standard Service Offer service that is not provided by a CRES Supplier.

“SSO Supply” means unbundled Energy, Capacity and Ancillary Services, including all transmission and distribution losses and congestion and imbalance costs associated with the provision of such services, as measured and reported to PJM, and such other services or products that a supplier may be required to provide, by PJM or other Governmental Authority, in order to meet the requirements of SSO Service for SSO Customers. “Standard Service Offer” means a market-based standard service offer provided by Duke Energy Ohio under PUCO tariffs of all competitive retail electric services necessary to maintain essential electric service to Customers, including unbundled Energy, Capacity, Ancillary Services and Firm Transmission Service, including all transmission and distribution losses, congestion and imbalance costs associated with the provision of the foregoing services, other obligations or responsibilities currently imposed or that may be imposed by PJM, as required by Section 4928.141 of the Ohio Revised Code.

“Tangible Net Worth” or “TNW” means total assets less intangible assets and total liabilities. Intangible assets include benefits such as goodwill, patents, copyrights and trademarks, each as would be reflected on a balance sheet prepared in accordance with generally accepted accounting principles.

“Taxes” have the meaning set forth in Section 12.8.

“Term” has the meaning set forth in Section 2.1.

“Termination Payment” has the meaning set forth in Section 7.3(c).

“Total Exposure Amount” means an amount calculated daily for the PIPP Supplier reflecting the total credit exposure to Duke Energy Ohio and consisting of the sum of: (i) the Mark-to-Market Exposure Amount arising under this Agreement; (ii) any amount(s) designated as the “mark-to-market exposure amount” (or similar designation) under any Other PIPP Supply Agreement; and (iii) the amount designated as the “credit exposure” (or similar designation) under any Other PIPP Supply Agreement; less (iv) amounts due to the PIPP Supplier pursuant to Section 6.1; 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.

“Total Exposure Amount Guaranty” means a guaranty, in substantially the form set forth in Attachment D, provided by a Guarantor in favor of Duke Energy Ohio guaranteeing the PIPP Supplier’s financial obligation with respect to its Total Exposure Amount.

## **ARTICLE 2**

### **TERM AND TERMINATION**

#### **2.1 Term**

The Term of this Agreement shall begin on the Effective Date and extend through and include the end of the Delivery Period (“Term”) unless terminated earlier or extended pursuant to the terms of this Agreement; provided, however, that the provision of PIPP Supply by the PIPP Supplier will commence on June 1, 2019 at 12:01 a.m. prevailing Eastern Time and end on May 31, 2020.

#### **2.2 Mutual Termination**

Duke Energy Ohio and the PIPP Supplier may terminate this Agreement at any time during the Term on such terms and under such conditions as they mutually agree.

#### **2.3 Early Termination**

This Agreement may be terminated by a Party prior to the end of the Term due to an occurrence of an Event of Default and the declaration of an Early Termination Date by the Non-Defaulting Party pursuant to Section 7.2 (an “Early Termination”).

#### **2.4 Termination of SSO Plan**

Duke Energy Ohio may, in its sole discretion, terminate its ESP due to changes in any Ohio state law that, in any way, relates to or addresses generation supply or Duke Energy Ohio’s obligation as the provider of last resort for all retail electric service customers in its service territory. Upon termination of the ESP, Duke Energy Ohio may terminate this Agreement with respect to any supply not yet delivered under this Agreement. Duke Energy Ohio shall exercise such right of termination by providing written notice to the PIPP Supplier.

#### **2.5 Effect of Termination**

The applicable provisions of this Agreement shall continue in effect and survive the termination of this Agreement to the extent necessary to provide for final accounting, billing, billing adjustments, resolution of any billing disputes, realization of any collateral or other

security, set-off, final payments, or payments pertaining to liability and indemnification obligations arising from acts or events that occurred in connection with this Agreement during the Term.

### ARTICLE 3

#### GENERAL TERMS AND CONDITIONS

##### **3.1 PIPP Supplier's Obligations to Provide PIPP Supply and Other Obligations**

The PIPP Supplier hereby agrees as follows:

(a) during the Delivery Period, the PIPP Supplier shall sell, deliver and provide PIPP Supply on a firm and continuing basis in order to meet its PIPP Supplier Responsibility Share, in accordance with this Agreement and the PJM Agreements;

(b) (i) except with respect to Capacity, the PIPP Supplier's obligation under Section 3.1(a) will result in physical delivery of PIPP Supply and not financial settlement; (ii) the quantity of PIPP Supply that the PIPP Supplier must deliver will be determined by the requirements of the PIPP Load, which may be different than the amount indicated in the Solicitation; and (iii) this Agreement does not provide for an option by the PIPP Supplier with respect to the quantity of PIPP Supply to be delivered;

(c) in connection with the provision of PIPP Supply at the Delivery Point, the PIPP Supplier shall be responsible for, in proportion to its PIPP Supplier Responsibility Share, all costs and expenses in Attachment F, PJM billing statement line items, identified as the responsibility of the PIPP Supplier, and any other costs and expenses related to transmission and Ancillary Services, unless expressly indicated otherwise in this Agreement;

(d) during the Term, the PIPP Supplier is responsible, at its sole cost and expense, for any changes in PJM products and pricing required for the delivery of its PIPP Supplier Responsibility Share, including all other costs and expenses related to transmission and Ancillary Services in connection with the provision of PIPP Supply in proportion to its PIPP Supplier Responsibility Share, except for any changes to products or the pricing of such products that are the responsibility of Duke Energy Ohio pursuant to Section 3.2;

(e) the PIPP Supplier is responsible for all transmission and distribution losses and congestion and imbalance costs incurred to supply its PIPP Supplier Responsibility Share;

(f) the PIPP Supplier shall be at all times during the Delivery Period (i) a member in good standing of PJM; (ii) qualified by PJM as a “Market Buyer” and “Market Seller” pursuant to the PJM Agreements, and (iii) qualified as a PJM “Load Serving Entity;”

(g) the PIPP Supplier shall be responsible, and be liable, to PJM for the performance of its LSE obligations associated with the provision of PIPP Supply under this Agreement;

(h) the PIPP Supplier shall have and maintain, throughout the Delivery Period, FERC authorization to make sales of Energy, Capacity, and Ancillary Services at market-based rates within PJM;

(i) the PIPP Supplier shall deliver PIPP Supply to the Delivery Point under this Agreement free and clear of any and liens, security interests, claims and encumbrances or any interest therein or thereto by any Person; and

(j) The PIPP Supplier shall be solely responsible for any auction revenue rights applicable to the PIPP Load that may be allocated to it. Duke Energy Ohio shall have no obligation to the PIPP Supplier for auction revenue rights or financial transmission revenue rights.

### **3.2 Duke Energy Ohio’s Obligation to Take PIPP Supply and other Obligations**

Duke Energy Ohio hereby agrees as follows:

(a) during the Delivery Period, Duke Energy Ohio shall purchase and accept the PIPP Supply provided by the PIPP Supplier pursuant to Section 3.1 at the Delivery Point and shall make payment to the PIPP Supplier based on the Price;

(b) during the Delivery Period, Duke Energy Ohio shall be a member in good standing of PJM;

(c) during the Delivery Period, Duke Energy Ohio shall be responsible for the provision of Firm Transmission Service from the Delivery Point;

(d) Duke Energy Ohio shall be responsible, at its sole costs and expense, for:

- i. charges and credits assessed under, Schedule 1A (Transmission Owner Scheduling, System Control and Dispatch Services), Schedule 2 (Reactive Supply and Voltage Control from Generation or Other Sources Services), “Network Integration Transmission Service (NITS)” under the PJM Agreements, and Schedule 12 (Transmission Enhancement Charge) of the PJM Tariff, Generation Deactivation, and Generation Deactivation Refund;



ii. other non-market-based costs, fees or charges imposed on or charged to Duke Energy Ohio by FERC or a regional transmission organization, independent transmission operator, or similar organization approved by FERC; and

iii. such services and schedules as they may be modified or superseded from time to time;

(e) Duke Energy Ohio will be responsible for (i) metering, billing and delivery with respect to PIPP Customers (and the PIPP Supplier will have no responsibility with respect thereto) and (ii) distribution services (and the PIPP Supplier will have no responsibility with respect thereto); and

(f) Duke Energy Ohio shall be responsible, at its sole cost and expense, for the provision of any renewable energy resource requirement as set forth in Ohio Rev. Code Ann. Sections 4928.64 and 4928.65 and regulations promulgated in respect thereto.

### **3.3 PJM E-Accounts**

The PIPP Supplier and Duke Energy Ohio shall work with PJM to establish any PJM E-Accounts necessary for the PIPP Supplier to provide PIPP Supply. The PIPP Supplier may manage its PJM E-Accounts in its sole discretion; provided the PIPP Supplier acts in accordance with the standards set forth in the PJM Agreements.

### **3.4 Reliability Guidelines**

Each Party agrees to adhere to the applicable operating policies, criteria and guidelines of the NERC, PJM, their successors, and any regional and sub-regional requirements.

### **3.5 Regulatory Authorizations**

(a) Duke Energy Ohio and the PIPP Supplier shall obtain and maintain throughout the Delivery Period all regulatory authorizations necessary to perform their respective obligations under this Agreement.

(b) The PIPP Supplier shall cooperate in good faith with Duke Energy Ohio in any regulatory compliance efforts as 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 PIPP Supply before the PUCO, FERC or any other Governmental Authority.

### **3.6 PJM Member Default Cost Allocation**

In the event PJM imposes a Default Allocation Assessment upon Duke Energy Ohio relating to a default during the Term, Duke Energy Ohio may, in its sole discretion, invoice the PIPP Supplier, based on its PIPP Supplier Responsibility Share, for amounts determined, in Duke Energy Ohio's sole discretion, to be properly payable by the PIPP Supplier from the Default Allocation Assessment and the PIPP Supplier shall pay such amounts within three (3) Business Days after receipt of such invoice, subject to the dispute resolution procedures set forth in Article 11.

### **3.7 Status of PIPP Supplier**

(a) In order to meet Duke Energy Ohio's service obligations under Legal Authorities, it is the intent of the Parties that the PIPP Supplier shall be deemed a LSE for the duration of the Delivery Period pursuant to the PJM Agreements and Legal Authorities.

(b) The PIPP Supplier shall maintain its certification, under R.C. 4928.08, as a competitive retail electric service (CRES) provider and its status as an authorized CRES provider in the Duke Energy Ohio service territory for the Term.

### **3.8 Sales for Resale**

All PIPP Supply provided by the PIPP Supplier to Duke Energy Ohio shall be sales for resale, with Duke Energy Ohio reselling such PIPP Supply to PIPP Customers.

### **3.9 Transfer of PJM Charges and Credits**

Duke Energy Ohio and the PIPP Supplier agree to use PJM's e-Suite Transfer Tool to transfer certain PJM charges and credits consistent with the terms of this Agreement. The PIPP Supplier agrees that the PJM billing line items set forth on Attachment G hereto shall be transferred to Duke Energy Ohio via PJM's e-Suite Transfer Tool. Duke Energy Ohio shall have the right to modify at any time the billing line items currently listed on Attachment G. The PIPP Supplier shall authorize and approve, via the PJM e-Suite Transfer Tool, a new billing line item transfer or modification of an existing billing line item transfer within ten (10) Business Days of Duke Energy Ohio initiating a new transfer or modifying an existing transfer. Notwithstanding the

provisions of Section 3.2, Duke Energy Ohio shall have no obligation to the PIPP Supplier for its failure to timely authorize and approve a PJM billing line item transfer or modification thereto.

## **ARTICLE 4**

### **SCHEDULING, FORECASTING AND INFORMATION SHARING**

#### **4.1 Scheduling**

(a) The PIPP Supplier shall schedule PIPP Supply and make all necessary arrangements for the delivery of PIPP Supply through the PJM Office of Interconnection pursuant to the PJM Agreements.

(b) Duke Energy Ohio will provide to PJM all load schedule information required by PJM for the purpose of calculating the PIPP Supplier's PIPP Supply obligations, including the magnitude of the PIPP Supplier's PIPP Supply obligation, as required by the PJM Office of Interconnection.

#### **4.2 Load Forecasting**

Duke Energy Ohio shall not be required to provide to the PIPP Supplier any load forecasting services.

#### **4.3 Disconnection and Curtailment by Duke Energy Ohio**

Duke Energy Ohio shall have the right, without incurring any liability to the PIPP Supplier, to disconnect (or otherwise curtail, interrupt or reduce deliveries from) the the PIPP Supplier or to disconnect (or otherwise curtail, interrupt or reduce deliveries to) any Customer whenever Duke Energy Ohio determines in its discretion acting in good faith that such a disconnection, curtailment, interruption or reduction is necessary to facilitate construction, installation, maintenance, repair, replacement or inspection of any of Duke Energy Ohio's facilities; or due to any other reason affecting the safe and reliable operation of any of Duke Energy Ohio's or a Customer's facilities, including Emergencies, forced outages or potential overloading of any of Duke Energy Ohio's transmission or distribution circuits, potential damage to the Customer's facilities or any risk of injury to persons, or when Duke Energy Ohio is directed by PJM. Duke Energy Ohio shall not show any preference for any Affiliate in connection with any such disconnection, curtailment or reduction.

#### **4.4 Loss of Service to PIPP Customers**

The Parties agree and acknowledge that service to PIPP Customers may be lost due to storms, weather, accidents, breakage of equipment or other events beyond the reasonable control of Duke Energy Ohio affecting the transmission and distribution facilities of Duke Energy Ohio. No Party will have any liability to any other Party for the occurrence of such events. In no event will a loss of service to a Customer affect a Party's obligation to make any payments then due or becoming due with respect to performance rendered prior to such loss of service.

#### **4.5 PJM Requirements**

The Parties acknowledge and agree that, as members of PJM, each of them is bound by the PJM Agreements and any other operating instructions, policies and procedures set forth by PJM. The PIPP Supplier acknowledges and agrees that it will cooperate with Duke Energy Ohio and PJM as the applicable balancing authority and reliability coordinator so that Duke Energy Ohio will be in compliance with all PJM emergency operations procedures, which include procedures pertaining to minimum and maximum generation Emergencies, and measures requiring involuntary Customer participation, such as supply voltage reduction and full interruption of Customer load by either manual or automatic means.

#### **4.6 Compliance with Governmental Directives**

The PIPP Supplier acknowledges and agrees that Duke Energy Ohio may need to act in response to directives by a Governmental Authority that may affect PIPP Supply or PIPP Load. The PIPP Supplier agrees to cooperate fully with Duke Energy Ohio in order to comply with such directives.

### **ARTICLE 5**

#### **CREDIT AND PERFORMANCE SECURITY**

##### **5.1 Applicability**

The PIPP Supplier agrees that it will meet the creditworthiness standards of this Article 5 at all times during the Term and will inform Duke Energy Ohio immediately of any changes in its credit rating or financial condition. Without limiting the foregoing, the PIPP Supplier shall, upon the written request of Duke Energy Ohio, affirmatively demonstrate to Duke Energy Ohio in a manner satisfactory to Duke Energy Ohio its compliance with the creditworthiness standards set

forth hereunder. Duke Energy Ohio may establish less restrictive creditworthiness standards under this Article 5 in a non-discriminatory manner.

During the Term, the PIPP Supplier or its Guarantor, if applicable, that has been granted an Independent Credit Threshold or a Credit Limit agrees to provide as soon as practicable (i) after the end of each fiscal year, complete annual audited financial statements (including footnotes), and (ii) after the end of each fiscal quarter, complete quarterly unaudited financial statements (including footnotes). If such financial statements are readily and timely available from the PIPP Supplier's website or other public website such as [www.sec.gov](http://www.sec.gov), then this requirement shall be deemed to be satisfied.

## **5.2 Creditworthiness Determination**

Duke Energy Ohio will determine the creditworthiness of the PIPP Supplier or its Guarantor, if applicable, whether organized under the laws of the United States or organized under the laws of a foreign jurisdiction, based on its most recent senior unsecured debt rating (or, if unavailable, its corporate or issuer rating). Duke Energy Ohio will have full discretion, without liability or recourse to the PIPP Supplier or its Guarantor, if applicable, to evaluate the evidence of creditworthiness submitted by the PIPP Supplier or Guarantor. Duke Energy Ohio may re-evaluate the creditworthiness of the PIPP Supplier or Guarantor from time to time, including whenever it becomes aware of an adverse change in the PIPP Supplier's or Guarantor's credit standing. In addition, the PIPP Supplier may petition Duke Energy Ohio to re-evaluate its creditworthiness whenever an event occurs that the PIPP Supplier reasonably believes would improve the determination made by Duke Energy Ohio of its or its Guarantor's creditworthiness. Duke Energy Ohio's credit re-evaluation must be completed as soon as practicable, but in no event longer than thirty (30) days after receiving a fully documented request. Duke Energy Ohio shall provide the rationale for its determination of the Credit Limit and any resulting security requirement and such determination shall be deemed final and conclusive. Duke Energy Ohio shall perform its credit re-evaluation and associated security calculation in a non-discriminatory manner. The PIPP Supplier or its Guarantor shall provide unrestricted access to its audited financial statements; however, if audited financial statements are not available, Duke Energy Ohio may specify other types of financial statements that will be accepted. If Duke Energy Ohio determines in its sole discretion that it is unable to adequately assess the PIPP Supplier's or

Guarantor’s creditworthiness or the credit rating of the PIPP Supplier or its Guarantor is insufficient, the PIPP Supplier shall be required to post ICR Collateral in accordance with Section 5.4(d) and Margin Collateral in accordance with Section 5.7.

**5.3 Independent Credit Requirement**

The Independent Credit Requirement (“ICR”) that will be required of the PIPP Supplier under this Agreement will initially be the amount set forth on Attachment C-1 at the inception of the Original Delivery Period and will decline throughout the Term in accordance with the schedule set forth on Attachment C-1.

**5.4 Independent Credit Threshold**

If the PIPP Supplier qualifies under the following criteria, the PIPP Supplier will be granted an Independent Credit Threshold (“ICT”).

(a) If the PIPP Supplier or its Guarantor has been organized under the laws of the United States, the following requirements must be satisfied in order for the PIPP Supplier to be granted an ICT:

i. the PIPP Supplier or its Guarantor, as applicable, must (1) be rated by Standard & Poor’s Rating Services (“S&P”), Moody’s Investors Service, Inc. (“Moody’s”) or Fitch, Inc. (“Fitch”), and (2) have a minimum senior unsecured debt rating (or, if unavailable, corporate or issuer rating) of at least “BB” from S&P, “Ba2” from Moody’s, or “BB” from Fitch (a “Minimum Rating”). If the PIPP Supplier or its Guarantor is rated by only two rating agencies and the ratings are split, the lower rating will be used. If the PIPP Supplier or its Guarantor is rated by three rating agencies and the ratings are split, the lower of the two highest ratings will be used; provided that, in the event that the two highest ratings are common, such common rating will be used. The maximum level of the ICT will be determined based on the following table:

Credit Rating of the PIPP Supplier or its Guarantor			Maximum Independent Credit Threshold (calculated as the lesser of the percentage of TNW and the applicable Independent Credit Threshold Cap below)	
S&P	Moody’s	Fitch	Percentage of TNW	Independent Credit Threshold

				Cap
A- and above	A3 and above	A- and above	16%	Not applicable
BBB+	Baa1	BBB+	10%	Not applicable
BBB	Baa2	BBB	10%	Not applicable
BBB-	Baa3	BBB-	8%	Not applicable
BB+	Ba1	BB+	2%	\$500,000
BB	Ba2	BB	1%	\$250,000
BB- and below	Ba3 and below	BB- and below	0%	\$0

ii. if the PIPP Supplier has a Guarantor, the maximum level of the ICT that can be granted based on an ICT Guaranty will be determined in accordance with subsection (i) above, with reference to the credit rating of the Guarantor.

The ICT granted to the PIPP Supplier will not exceed the amount of the ICT Guaranty. The ICT Guaranty tendered by the PIPP Supplier to satisfy the ICT requirement arising under this Section 5.4 shall be a separate guaranty from the Total Exposure Amount Guaranty, if any, tendered by the PIPP Supplier to satisfy any requirement for a Credit Limit to cover the Total Exposure Amount arising under Section 5.6; provided, however, that a single Guaranty may be provided if such Guaranty is for an unlimited amount.

(b) If the PIPP Supplier or its Guarantor has not been organized under the laws of the United States, the following requirements must be satisfied in order for the PIPP Supplier to be granted an ICT:

i. the PIPP Supplier must supply such evidence of creditworthiness as to provide Duke Energy Ohio with comparable assurances of creditworthiness as applicable above for a PIPP Supplier that has been organized under the laws of the United States; or

ii. the Guarantor of the PIPP Supplier must supply such evidence of creditworthiness as to provide Duke Energy Ohio with comparable assurances of creditworthiness as applicable above for a Guarantor of a PIPP Supplier that has been organized under the laws of the United States. Duke Energy Ohio may reject a Guarantor that does not meet the creditworthiness requirements.

(c) If the PIPP Supplier or its Guarantor has not been organized under the laws of the United States, the PIPP Supplier or its Guarantor must, in addition to all documentation required elsewhere in this Section 5.4, supply the following to Duke Energy Ohio as a condition of being granted an ICT:

i. for the PIPP Supplier: (1) a legal opinion of counsel qualified to practice in the foreign jurisdiction in which the PIPP Supplier is organized that (A) the PIPP Supplier is duly incorporated and existing in such foreign jurisdiction; (B) this Agreement is the binding and enforceable obligation of the PIPP Supplier in such foreign jurisdiction and does not violate any local law or the PIPP Supplier's organizational or governing documents; and (C) all authorizations, approvals, consents, licenses, exemptions or other requirements of governmental, judicial or public bodies in such foreign jurisdiction have been obtained, and all execution formalities have been duly completed, necessary for the enforcement and validity of this Agreement and the performance by the PIPP Supplier of its obligations hereunder; and (2) the sworn certificate of the corporate secretary (or similar officer) of the PIPP Supplier that the Person executing this Agreement on behalf of the PIPP Supplier has the authority to execute this Agreement and that the governing board of the PIPP Supplier has approved the execution of this Agreement. Duke Energy Ohio will have full discretion, without liability or recourse to the PIPP Supplier, to evaluate the sufficiency of the documents submitted by the PIPP Supplier; or

ii. for the Guarantor of the PIPP Supplier: (1) a legal opinion of counsel qualified to practice in the foreign jurisdiction in which the Guarantor is organized that (A) the Guarantor is duly incorporated and existing in such foreign jurisdiction; (B) the ICT Guaranty is the binding and enforceable obligation of the Guarantor in such foreign jurisdiction and does not violate any local law or the Guarantor's organizational or governing documents; and (C) all authorizations, approvals, consents, licenses, exemptions or other requirements of governmental, judicial or public bodies in such foreign jurisdiction have been obtained, and all execution formalities have been duly completed, necessary for the enforcement and validity of the ICT Guaranty and the performance by the Guarantor of its obligations thereunder; and (2) the sworn certificate of the corporate secretary (or similar officer) of such Guarantor that the Person executing the ICT Guaranty on behalf of the Guarantor has the authority to execute the ICT Guaranty and that the governing board of such Guarantor has approved the execution of the ICT Guaranty. Duke Energy Ohio will have full discretion, without liability or recourse to the



Guarantor or the PIPP Supplier, to evaluate the sufficiency of the documents submitted by such Guarantor.

(d) If the PIPP Supplier does not qualify for an ICT or its ICT plus the amount of any cash or Letter of Credit already posted in accordance with Section 5.9 to satisfy its aggregate ICR under this Agreement and any Other PIPP Supply Agreement (the “ICR Collateral”) does not meet its aggregate ICR under this Agreement and any Other PIPP Supply Agreement, the PIPP Supplier must post ICR Collateral at the time of or prior to the Effective Date to the extent its aggregate ICR under this Agreement and any Other PIPP Supply Agreement exceeds its ICT.

### **5.5 Mark-to-Market Credit Exposure Methodology**

To calculate the Mark-to-Market Exposure Amount for the PIPP Supplier, the following mark-to-market credit exposure methodology will be used. At the time the Solicitation is completed, the Mark-to-Market Exposure Amount for the PIPP Supplier shall be set equal to zero. Subsequently, the differences between the prevailing market prices on a valuation date and the market prices in effect on the date the Solicitation is completed will be used to calculate the Mark-to-Market Exposure Amount for the PIPP Supplier, as described further in Attachment C-2. The total Mark-to-Market Exposure Amount will be equal to the sum of the Mark-to-Market Exposure Amounts for each Billing Period, or portion thereof, remaining during the Original Delivery Period. Forward Market Prices will be determined with reference to publicly available market price quotations obtained by Duke Energy Ohio, as adjusted by Duke Energy Ohio to more closely approximate the price impact of serving a requirements load which reflects hourly variations due to customer usage patterns. Such adjustment is further described in Attachment C-2. However, if market price quotations are not publicly available, Forward Market Prices will be determined by Duke Energy Ohio using any method which Duke Energy Ohio deems appropriate and which reasonably reflects forward market pricing conditions in PJM. The Mark-to-Market Exposure Amount will be stated on a present value basis by discounting using the then-prevailing LIBOR rate. The methodology for calculation of the Mark-to-Market Exposure Amount is illustrated in the example (using hypothetical numbers) in Attachment C-2.

### **5.6 Credit Limit**

The following criteria constitute Duke Energy Ohio’s creditworthiness requirements for the PIPP Supplier to cover the Total Exposure Amount:

(a) For the PIPP Supplier to be granted a Credit Limit without delivering a Total Exposure Amount Guaranty or other Performance Assurances acceptable to Duke Energy Ohio, in the case where the PIPP Supplier has been organized under the laws of the United States, the PIPP Supplier must (1) be rated by S&P, Moody's or Fitch, and (2) have a minimum senior unsecured debt rating (or, if unavailable, corporate or issuer rating) equal to the Minimum Rating. If the PIPP Supplier is rated by only two rating agencies and the ratings are split, the lower rating will be used. If the PIPP Supplier is rated by three rating agencies and the ratings are split, the lower of the two highest ratings will be used; provided that, in the event that the two highest ratings are common, such common rating will be used. The maximum level of the Credit Limit to cover the Total Exposure Amount will be determined based on the following table:

Credit Rating of the PIPP Supplier or its Guarantor			Maximum Credit Limit (calculated as the lesser of the percentage of TNW and the applicable Credit Limit Cap below)	
S&P	Moody's	Fitch	Percentage of TNW	Credit Limit Cap
A- and above	A3 and above	A- and above	16%	\$10,000,000
BBB+	Baa1	BBB+	10%	\$9,000,000
BBB	Baa2	BBB	10%	\$8,000,000
BBB-	Baa3	BBB-	8%	\$7,000,000
BB+	Ba1	BB+	2%	\$2,500,000
BB	Ba2	BB	1%	\$1,500,000
BB- and below	Ba3 and below	BB- and below	0%	\$0

The PIPP Supplier will be required to post cash or a Letter of Credit for the Margin due Duke Energy Ohio as set forth in Section 5.7 of this Agreement.

(b) If the PIPP Supplier is delivering a Total Exposure Amount Guaranty, in the case where the Guarantor is organized under the laws of the United States, the maximum level of the Credit Limit to cover the Total Exposure Amount that could be granted based on the Total

Exposure Amount Guaranty will be determined in accordance with subsection (a) above, with reference to the credit rating of the Guarantor, except that the Credit Limit granted to the PIPP Supplier will not exceed the amount of the Total Exposure Amount Guaranty.

(c) If the PIPP Supplier or Guarantor, if applicable, has not been organized under the laws of the United States, the following standards will apply:

i. the PIPP Supplier must supply such evidence of creditworthiness as to provide Duke Energy Ohio with comparable assurances of creditworthiness as applicable above for a PIPP Supplier that has been organized under the laws of the United States; or

ii. if the PIPP Supplier is providing a Total Exposure Amount Guaranty, the Guarantor of the PIPP Supplier must supply such evidence of creditworthiness as to provide Duke Energy Ohio with comparable assurances of creditworthiness as applicable above for a Guarantor of a PIPP Supplier that has been organized under the laws of the United States. Duke Energy Ohio may reject a Guarantor that does not meet the creditworthiness requirements.

(d) If the PIPP Supplier or its Guarantor have not been organized under the laws of the United States, the PIPP Supplier or its Guarantor must, in addition to all documentation required elsewhere in this Section 5.6, supply the following to Duke Energy Ohio:

i. For the PIPP Supplier: (1) a legal opinion of counsel qualified to practice in the foreign jurisdiction in which the PIPP Supplier is organized that (A) the PIPP Supplier is duly incorporated and existing in such foreign jurisdiction; (B) this Agreement is the binding and enforceable obligation of the PIPP Supplier in such foreign jurisdiction and does not violate any local law or the PIPP Supplier's organizational or governing documents; and (C) all authorizations, approvals, consents, licenses, exemptions or other requirements of governmental, judicial or public bodies in such foreign jurisdiction have been obtained, and all execution formalities have been duly completed, necessary for the enforcement and validity of this Agreement and the performance by the PIPP Supplier of its obligations hereunder; and (2) the sworn certificate of the corporate secretary (or similar officer) of the PIPP Supplier that the Person executing this Agreement on behalf of the PIPP Supplier has the authority to execute this Agreement and that the governing board of the PIPP Supplier has approved the execution of this Agreement. Duke Energy Ohio will have full discretion, without liability or recourse to the PIPP Supplier, to evaluate the sufficiency of the documents submitted by the PIPP Supplier; or

ii. For the Guarantor of the PIPP Supplier: (1) a legal opinion of counsel qualified to practice in the foreign jurisdiction in which the Guarantor is organized that (A) the Guarantor is duly incorporated and existing in such foreign jurisdiction; (B) the Total Exposure Amount Guaranty is the binding and enforceable obligation of the Guarantor in such foreign jurisdiction and does not violate any local law or the Guarantor's organizational or governing documents; and (C) all authorizations, approvals, consents, licenses, exemptions or other requirements of governmental, judicial or public bodies in such foreign jurisdiction have been obtained, and all execution formalities have been duly completed, necessary for the enforcement and validity of the Total Exposure Amount Guaranty and the performance by the Guarantor of its obligations thereunder; and (2) the sworn certificate of the corporate secretary (or similar officer) of such Guarantor that the Person executing the Total Exposure Amount Guaranty on behalf of the Guarantor has the authority to execute the Total Exposure Amount Guaranty and that the governing board of such Guarantor has approved the execution of the Total Exposure Amount Guaranty. Duke Energy Ohio will have full discretion, without liability or recourse to the Guarantor or the PIPP Supplier, to evaluate the sufficiency of the documents submitted by such Guarantor.

(e) If the PIPP Supplier has a Total Exposure Amount Guaranty, the PIPP Supplier will be granted a Credit Limit up to the amount of the Total Exposure Amount Guaranty, but not exceeding the Credit Limit shown in the table above. The Total Exposure Amount Guaranty shall be provided to Duke Energy Ohio on or prior to the Effective Date, but may be modified in any amended or substitute Total Exposure Amount Guaranty provided to Duke Energy Ohio during the Term. The PIPP Supplier, however, may not increase or substitute its Total Exposure Amount Guaranty for the purpose of increasing its applicable Credit Limit during the time period after Duke Energy Ohio has made a demand of the PIPP Supplier to cover Margin (a "Margin Call") but before the PIPP Supplier has provided Duke Energy Ohio with cash credited to a deposit account of Duke Energy Ohio or a Letter of Credit in accordance with Section 5.9, in each case in an amount equal to the Margin (the "Margin Collateral"). Notwithstanding anything herein to contrary, the PIPP Supplier may increase the amount of its Total Exposure Amount Guaranty after satisfying a Margin Call. Upon Duke Energy Ohio's receipt of an amended or substitute Total Exposure Amount Guaranty increasing the amount of the Total Exposure Amount Guaranty, the PIPP Supplier may request a return of Margin Collateral in accordance with Section 5.7. The

PIPP Supplier will be required to post cash or a Letter of Credit for the Margin due Duke Energy Ohio as set forth in Section 5.7 of this Agreement.

(f) Under no circumstances shall the Credit Limit plus any other credit limit granted to the PIPP Supplier or its Guarantor under any Other PIPP Supply Agreement exceed the Credit Limit hereunder.

### **5.7 Posting Margin Collateral and Return of Excess Collateral**

If at any time and from time to time during the Delivery Period, Margin exists with respect to the PIPP Supplier, then Duke Energy Ohio on any Business Day may make a Margin Call of the PIPP Supplier; provided however that Duke Energy Ohio may not make a Margin Call unless the Margin exceeds the Minimum Margin Threshold. Upon receipt of a Margin Call, the PIPP Supplier shall provide to Duke Energy Ohio Margin Collateral, which shall comprise of cash or a Letter of Credit. The Margin Collateral shall be in the amount equal to the Margin less the amount of any Margin Collateral already posted by the PIPP Supplier in which Duke Energy Ohio has a first priority, perfected security interest to secure the obligations of the PIPP Supplier under this Agreement and any Other PIPP Supply Agreement. For the avoidance of doubt, any ICR Collateral posted pursuant to Section 5.4 shall not constitute Margin Collateral.

If the PIPP Supplier receives a Margin Call from Duke Energy Ohio by 1:00 p.m. prevailing Eastern Time on a Business Day, then the PIPP Supplier shall post Margin Collateral the following Business Day if posting cash and the second Business Day following the Margin Call if posting a Letter of Credit, unless in each case Duke Energy Ohio agrees in writing to extend the period to provide Margin Collateral. If the PIPP Supplier receives a Margin Call after 1:00 p.m. prevailing Eastern Time on a Business Day, whether posting cash or a Letter of Credit, then the PIPP Supplier must post Margin Collateral on the second Business Day following the Margin Call unless Duke Energy Ohio agrees in writing to extend the period to provide Margin Collateral. Duke Energy Ohio will not unreasonably deny a request for a one-day extension of such period.

Margin Collateral being held by Duke Energy Ohio that is not needed to satisfy the Margin (“Excess Collateral”), will be returned to the PIPP Supplier upon receipt of a written request from the PIPP Supplier; provided, however, that the PIPP Supplier may not request Excess Collateral until such Excess Collateral exceeds the Minimum Margin Threshold. If the PIPP Supplier posted cash and notice is received by Duke Energy Ohio by 1:00 p.m. prevailing Eastern Time on a Business Day, the Excess Collateral will be returned by the following Business Day and if the

PIPP Supplier posted cash and notice is received by Duke Energy Ohio after 1:00 p.m. prevailing Eastern Time on a Business Day, the Excess Collateral will be returned by the second Business Day following the date of notice. If the PIPP Supplier posted a Letter of Credit, the Excess Collateral 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 in each case the PIPP Supplier agrees in writing to extend such period for returning the Excess Collateral. The PIPP Supplier will not unreasonably deny a request for a one-day extension of the period for returning the Excess Collateral.

### **5.8 Grant of Security Interest; Remedies**

To secure its obligations under this Agreement, the PIPP Supplier hereby grants to Duke Energy Ohio a present and continuing security interest in, and lien on (and right of setoff against), its right, title and interest, whether now owned or hereafter acquired or arising, in (i) all deposit accounts in the name of Duke Energy Ohio or partially in the name of Duke Energy Ohio or held for the benefit of Duke Energy Ohio and all funds credited to any and all of the foregoing, (ii) all securities, instruments (including promissory notes), money (each of the foregoing terms as defined in the UCC), cash and other tangible property delivered to and held by Duke Energy Ohio (or its agents or custodians) and (iii) all proceeds (as defined in the UCC) of any and all of the foregoing. The PIPP Supplier agrees to take such action as reasonably required to create and perfect Duke Energy Ohio'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 at any time after the occurrence or deemed occurrence and during the continuation of an Event of Default where the PIPP Supplier is the Defaulting Party or an Early Termination Date (whether or not the PIPP Supplier was the Defaulting Party), Duke Energy Ohio may do any one or more of the following in any order: (i) exercise any of the rights and remedies of Duke Energy Ohio, including the right to set-off and liquidation, against any and all ICR Collateral, Margin Collateral or other collateral of the PIPP Supplier in the possession of Duke Energy Ohio, whether held in connection with this Agreement or any Other PIPP Supply Agreement, including any such rights and remedies under law then in effect, free from any claim or right of any nature whatsoever of the PIPP Supplier; and (ii) draw on any outstanding Letter of Credit provided by the PIPP Supplier. Duke Energy Ohio will apply the proceeds of the collateral

realized upon the exercise of such rights or remedies to reduce the PIPP Supplier's obligations under this Agreement and under any Other PIPP Supplier Agreement, and the PIPP Supplier shall remain liable for any amounts owing to Duke Energy Ohio after such application, subject to Duke Energy Ohio's obligation to return any surplus proceeds remaining after all such obligations are satisfied in full.

All notices, demands or requests regarding credit requirements and credit-related security or deposit transfers shall be sent in accordance with Section 12.2.

### **5.9 Acceptable Forms of Security**

At the PIPP Supplier's option, the following are deemed to be acceptable for posting Margin Collateral or ICR Collateral, if required:

- (a) Cash credited to a deposit account of Duke Energy Ohio; and
- (b) A Letter of Credit, which shall state that such Letter of Credit will 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 Duke Energy Ohio receives notice from the issuing financial institution that the Letter of Credit is being cancelled, the PIPP Supplier will be required to provide a substitute Letter of Credit from an alternative bank satisfying the requirements in this Section 5.9. The receipt of the substitute Letter of Credit must be effective as of the cancellation date and delivered to Duke Energy Ohio thirty (30) days before the cancellation date of the original Letter of Credit. If the PIPP Supplier fails to supply a substitute Letter of Credit as required, then Duke Energy Ohio will have the right to draw on the existing Letter of Credit and to hold the amount as Margin Collateral or ICR Collateral, as applicable.

The Letter of Credit shall be issued by a U.S. commercial bank with total assets of at least \$5 billion having a general long-term senior unsecured debt rating of A- or higher as rated by S&P or A3 or higher as rated by Moody's or other financial institution reasonably acceptable to Duke Energy Ohio and shall permit presentation at a bank located in the United States of America.

If at any time the bank or other financial institution from which the PIPP Supplier has obtained a Letter of Credit fails to meet the foregoing conditions, the PIPP Supplier will immediately notify Duke Energy Ohio and, within one (1) Business Day of the failure of the financial institution to meet the required conditions, 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 Duke Energy Ohio. For avoidance of doubt, the PIPP Supplier may elect to substitute a cash deposit for the Letter of Credit within the time frame specified herein.

Notwithstanding anything in this Agreement to the contrary, Duke Energy Ohio may exercise any rights or claims to any collateral posted, delivered or pledged to them under this Agreement, before, after, concurrently with, or to the exclusion of, any other collateral posted, delivered or pledged prior to applying any cash collateral against, or making a drawing under any letter of credit in respect of, any liabilities of the PIPP Supplier hereunder or its Guarantor under the guaranty to Duke Energy Ohio or any of them.

#### **5.10 Reporting; Maintenance of Creditworthiness**

(a) The PIPP Supplier must promptly notify Duke Energy Ohio of any change in its or its Guarantor's credit rating or financial condition. The PIPP Supplier or Guarantor must also furnish evidence of an acceptable credit rating or financial condition upon the request of Duke Energy Ohio.

(b) If the lowest credit rating (whether corporate or issuer rating or unsecured senior debt rating) used to determine the PIPP Supplier's ICT or its Credit Limit adversely changes, Duke Energy Ohio will require ICR Collateral or Margin Collateral from the PIPP Supplier in accordance with Sections 5.4, 5.6 and 5.7. The additional security must be in a form acceptable to Duke Energy Ohio, as specified in Section 5.9.

#### **5.11 Interest on Cash Held by Companies**

Duke Energy Ohio will pay simple interest calculated at the lower of the Interest Rate or 6% per annum on all cash held by Duke Energy Ohio pursuant to this Agreement. If applicable, each Billing Period the PIPP Supplier will prepare a statement of interest amounts due from Duke Energy Ohio. The statement will be sent to Duke Energy Ohio within three (3) Business Days after the end of the Billing Period via overnight mail or other expeditious means. Duke Energy Ohio will make interest payments on the first Business Day after the fifth (5<sup>th</sup>) day of each calendar month.

#### **5.12 No Endorsement of PIPP Supplier**

Duke Energy Ohio's determination of the PIPP Supplier's creditworthiness pursuant to the process set forth in this Article 5 will 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 PIPP Supplier.

## **ARTICLE 6**

### **BILLING, PAYMENT AND NETTING**

#### **6.1 Invoice Statement**

Subject to Section 6.2, Duke Energy Ohio and the PIPP Supplier shall pay all amounts due to each other hereunder in accordance with the following provisions:

(a) For each Billing Period, Duke Energy Ohio will prepare and provide an invoice to the PIPP Supplier, which will show (i) amounts due to the PIPP Supplier equal to the Price multiplied by the applicable Seasonal Billing Factor multiplied by the Estimated Monthly Energy Share, (ii) the Energy Share Adjustment from such Billing Period, if any, and (iii) all Charges due to Duke Energy Ohio incurred during the Billing Period (the “Billing Statement”).

(b) Duke Energy Ohio will determine the total amount payable by one Party to the other Party by netting the aggregate amounts due and owing to one Party against the aggregate amounts due and owing to the other Party, with the Party, if any, owing the greater aggregate amount paying the other Party the difference between the amounts owed.

(c) The Billing Statement will be sent to the PIPP Supplier within six (6) Business Days after the end of the Billing Period.

(d) Duke Energy Ohio or the PIPP Supplier, as the case may be, will make payment on or before the twentieth (20<sup>th</sup>) day of each calendar month. If such day falls on a Saturday, Sunday or any other day which is a legal holiday or a day on which banking institutions are closed, payment will be due the following Business Day. All such payments shall be made by electronic transfer to an account designated in writing by each Party.

(e) All payments shall be subject to adjustment for any arithmetic errors, computation errors, or other errors, provided that the errors become known within one (1) year of the earlier of (i) the end of the Term or (ii) the Early Termination Date.

(f) Overdue payments shall accrue interest at the Interest Rate from, and including, the due date, but excluding date of payment.

(g) If a good faith dispute arises between Duke Energy Ohio and the PIPP Supplier regarding a Billing Statement, the disputing Party shall be obligated to pay only the undisputed

portion of the Billing Statement, if any, no later than the due date 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 Billing Statement in dispute. Billing Statement disputes must be addressed promptly, and in accordance with the dispute resolution procedures set forth in Article 11. Upon resolution of a Billing Statement dispute, any payments made to either Party will include interest at the Interest Rate on the payment payable from the date that notice of a Billing Statement dispute was received by the non-disputing Party.

## **6.2 PJM Billing; Third Party Billing**

(a) Duke Energy Ohio and the PIPP Supplier shall direct PJM to invoice Duke Energy Ohio and the PIPP Supplier for PJM charges and credits relating to the PIPP Supplier's and Duke Energy Ohio's rights and obligations under this Agreement. If PJM is unable to invoice charges or credits in accordance with the foregoing sentence, Duke Energy Ohio shall rectify such PJM invoice discrepancy in the Billing Statement sent pursuant to Section 6.1.

(b) The Parties agree that the PJM invoice may change from time to time. Allocation of any charges that are reflected in a PJM invoice that are not included on or are inconsistent with Attachment F will be determined pursuant to Sections 3.1(c), 3.1(d), 3.1(e), 3.2(d) and 12.6.

(c) Duke Energy Ohio shall have no obligation to authorize or initiate a billing adjustment or resettlement under PJM rules, regulations, or agreements for the PIPP Supplier. However, in the event Duke Energy Ohio authorizes or initiates any such billing adjustment or resettlement, such adjustment or resettlement shall be conducted pursuant to applicable FERC-approved tariffs.

(d) Duke Energy Ohio shall have no obligation to provide meter data to PJM on any interval less than an hourly interval.

(e) Duke Energy Ohio shall have no responsibility for billing between the PIPP Supplier and any other third party. Duke Energy Ohio shall be solely responsible for billing PIPP Customers for PIPP Supply.

## ARTICLE 7

### BREACH AND DEFAULT

#### 7.1 Events of Default

An “Event of Default” shall mean with respect to a Party (the “Defaulting Party”) the occurrence of any of the following:

(a) the failure of the Defaulting Party to make, when due, any payment required pursuant to this Agreement (including under Section 6.2) if such failure is not remedied within two (2) Business Days after receipt of written notice of non-payment, and provided the payment is not the subject of a good faith dispute as described in Section 6.1;

(b) any representation or warranty made by the Defaulting Party herein is false or misleading in any material respect when made;

(c) the failure of the Defaulting Party to perform any material obligation set forth in this Agreement (other than events that are otherwise specifically covered in this Article 7 as a separate Event of Default) if such failure is not remedied within two (2) Business Days after written notice;

(d) the Defaulting Party becomes Bankrupt;

(e) with respect to the PIPP Supplier, the failure of the Defaulting Party to provide Margin Collateral, or with respect to Duke Energy Ohio, the failure of the Defaulting Party to return Excess Collateral, in each case pursuant to Section 5.7;

(f) failure of the Defaulting Party to comply with its obligations pursuant to Article 5 (except to the extent constituting a separate Event of Default under Section 7.1(e)) if such failure is not remedied within three (3) Business Days after receipt of written notice of such failure;

(g) the failure of the Defaulting Party to comply with the requirements of Sections 3.1(f), 3.1(g), 3.1(h) and 3.5, as applicable, if such failure is not remedied within three (3) Business Days of such failure;

(h) PJM has declared the Defaulting Party to be in default of any provision of any PJM Agreement, which default prevents the Defaulting Party’s performance hereunder, if such failure is not remedied within three (3) Business Days after written notice;

(i) PJM holds Duke Energy Ohio responsible for the provision of all or any portion of PIPP Supply to meet the Defaulting Party’s PIPP Supplier Responsibility Share under this Agreement;

(j) the occurrence and continuation of: (i) a default, event of default or other similar condition or event in respect of the Defaulting Party or its Guarantor, if applicable, under one or more agreements or instruments, individually or collectively, relating to Specified Indebtedness in an aggregate amount of not less than the applicable Cross Default Amount, which results in such Specified Indebtedness becoming immediately due and payable; (ii) a default by the Defaulting Party or its Guarantor, if applicable, in making on the due date therefor one or more payments in respect of any obligation under contract or at law, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount; or (iii) a default, event of default or other similar condition or event by the Defaulting Party under any Other PIPP Supply Agreement or Other SSO Supply Agreement or by its Guarantor under any guaranty with respect to any Other PIPP Supply Agreement or Other SSO Supply Agreement; and

(k) with respect to the Defaulting Party's Guarantor, if any, (i) any representation or warranty made by such Guarantor in connection with this Agreement or any related Guaranty is intentionally or unintentionally false or misleading in any material respect when made or when deemed made or repeated; (ii) the failure of such Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty made in connection with this Agreement and such failure is not remedied within three (3) Business Days after written notice; (iii) the failure of such Guarantor's Guaranty to be in full force and effect (other than in accordance with its terms) prior to the satisfaction of all obligations of the Defaulting Party under this Agreement without the written consent of Duke Energy Ohio; (iv) such Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of the Guaranty; or (v) such Guarantor becomes Bankrupt.

## **7.2 Remedies Upon an Event of Default**

If an Event of Default shall have occurred and be continuing, the non-defaulting Party (the "Non-Defaulting Party") shall have the right to:

(a) immediately suspend performance upon written notice to the Defaulting Party; provided, however, that if the PIPP Supplier is the Non-Defaulting Party, the PIPP Supplier may only suspend performance if the default of the Defaulting Party constitutes an Event of Default under Sections 7.1(a) or (d);

(b) declare an Early Termination and designate by written notice an Early Termination Date which shall be no earlier than the day such designation notice is effective and no later than twenty (20) calendar days after such notice is effective; provided, however, that if the PIPP Supplier is the Non-Defaulting Party, the PIPP Supplier may only declare an Early Termination if the default of the Defaulting Party constitutes an Event of Default under Section 7.1(a) or (d);

(c) calculate and receive from the Defaulting Party payment for any Default Damages which the Non-Defaulting Party incurs as of the date of the event giving rise to the Event of Default, until the earlier of; (i) the Early Termination Date (if applicable); (ii) the date the Event of Default has been cured by the Defaulting Party; or (iii) the date the Non-Defaulting Party waives such Event of Default;

(d) withhold any payments due to the Defaulting Party under this Agreement as a set-off against any Default Damages, or Termination Payment, as applicable, the Defaulting Party is entitled to receive;

(e) draw down, liquidate, set-off against, or demand payment under, any Guaranty, ICR Collateral and Margin Collateral; and

(f) exercise any other remedies at law or in equity.

### **7.3 Default Damages; Settlement Amount; Termination Payment**

(a) **Default Damages.** Subject to Section 7.3(e), the Defaulting Party shall pay Default Damages on or before three (3) Business Days after receipt of an invoice therefor. The invoice shall include a written statement explaining in reasonable detail the calculation of such amount. Neither Party will be liable for Default Damages if this Agreement is terminated by a Governmental Authority.

(b) **Settlement Amount.** If the Non-Defaulting Party has declared an Early Termination Date pursuant to Section 7.2(b), the Non-Defaulting Party shall have the right to (i) accelerate all amounts owing between the Defaulting Party and the Non-Defaulting Party and to liquidate and terminate the undertakings set forth in this Agreement as between the Defaulting Party and the Non-Defaulting Party; and (ii) withhold any payments due to the Defaulting Party under this Agreement pending payment of the Termination Payment. The Non-Defaulting Party will calculate, in a commercially reasonable manner, the Settlement Amount with respect to the

Defaulting Party's obligations under the Agreement and shall net the Settlement Amount in the manner provided for in Section 7.3(c).

(c) **Termination Payment.** The Non-Defaulting Party will calculate a single payment (the "Termination Payment") by netting out (i) the sum of the Settlement Amount under this Agreement payable to the Defaulting Party, plus (a) similar settlement amounts payable to the Defaulting Party under any Other PIPP Supply Agreement being terminated due to the event giving rise to the Event of Default plus, (b) at the option of the Non-Defaulting Party, any Performance Assurance then available to the Non-Defaulting Party under this Agreement or Other PIPP Supply Agreements and actually received, liquidated and retained by the Non-Defaulting Party, plus (c) any or all other amounts due to the Defaulting Party under this Agreement and, at the option of the Non-Defaulting Party, Other PIPP Supply Agreements, and (ii) the sum of the Settlement Amount under this Agreement payable to the Non-Defaulting Party, plus (a) similar settlement amounts payable to the Non-Defaulting Party under any Other PIPP Supply Agreement being terminated due to the event giving rise to the Event of Default plus, (b) at the option of the Non-Defaulting Party, any Performance Assurance then available to the Defaulting Party under this Agreement or Other PIPP Supply Agreements and actually received, liquidated and retained by the Defaulting Party, plus (c) any or all other amounts due to the Non-Defaulting Party under this Agreement and, at the option of the Non-Defaulting Party, Other PIPP Supply Agreements.

The Termination Payment will be due to or due from the Non-Defaulting Party as appropriate; provided, however, that if the PIPP Supplier is the Defaulting Party and the Termination Payment is due to the PIPP Supplier, Duke Energy Ohio will be entitled to retain a reasonable portion of the Termination Payment, which may be equal to the entire amount of the Termination Payment, as a security for additional amounts that may be determined to be due and owing by the PIPP Supplier as Default Damages; and further provided that any previously attached security interest of Duke Energy Ohio in such retained amounts will continue. If the Termination Payment has been retained by Duke Energy Ohio as security for additional amounts that may be determined to be due and owing by the PIPP Supplier, and if, upon making a final determination of Default Damages and payment therefor, the Termination Payment, or any portion thereof, is to be made to the PIPP Supplier, Duke Energy Ohio will pay interest at the Interest Rate on the Termination Payment amount being made to the PIPP Supplier for the period of such retention.

(d) **Notice of Termination Payment.** As soon as practicable after calculation of the Termination Payment, notice must 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 7.3(e), the Termination Payment must be made by the Party that owes it within three (3) Business Days after such notice is received by the Defaulting Party.

(e) **Disputes With Respect to Default Damages or Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Default Damages or Termination Payment, in whole or in part, the Defaulting Party must, within three (3) Business Days of receipt of the Non-Defaulting Party's calculation of the Default Damages or Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Any dispute under this Section 7.3(e) shall be subject to the dispute resolution procedures in Article 11; provided, however, that if the Default Damages or Termination Payment is due from the Defaulting Party, the Defaulting Party must first provide Performance Assurance to the Non-Defaulting Party in an amount equal to the Default Damages or Termination Payment, as the case may be.

#### **7.4 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 PIPP Supply Agreement will 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 PIPP Supply Agreement that are unsecured and not subject to any Guaranty; (ii) second, to satisfy any payment obligations under this Agreement or any Other PIPP Supply Agreement that are unsecured, but which are guaranteed by 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 PIPP Supply Agreement.

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

The rights of the Non-Defaulting Party under this Agreement, including Sections 7.2, 7.3 and 7.5, will be supplemental to, and not in lieu of, any right of recoupment, lien, or set-off

afforded by applicable law, and all such rights are expressly preserved for the benefit of the Non-Defaulting Party.

## ARTICLE 8

### REPRESENTATIONS AND WARRANTIES

#### 8.1 Duke Energy Ohio's Representations and Warranties

Duke Energy Ohio hereby represents and warrants to the PIPP Supplier as follows:

(a) it is an electric utility corporation duly organized, validly existing and in good standing under the laws of the State of Ohio;

(b) it has all requisite power and authority necessary for it to enter into and to legally perform its obligations under this Agreement and any other documentation relating to this Agreement;

(c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision of any Governmental Authority;

(d) this Agreement and each other document executed and delivered in accordance with this Agreement constitute its legally valid and binding obligation enforceable against it in accordance with its terms;

(e) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings, including before a Governmental Authority, that could materially adversely affect its ability to perform its obligations under this Agreement or any other document relating to this Agreement;

(f) 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 or any other document relating to this Agreement;

(g) it is acting for its own account, has made its own independent decision to enter into this Agreement, is not relying upon the advice or recommendations of any other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement;



(h) at the commencement of the Original Delivery Period, it has obtained all authorizations from any Governmental Authority necessary for it to perform its obligations under this Agreement; and

(i) it is not in violation of any law, rules, regulations, ordinances or judgments of any Governmental Authority which could reasonably be expected to adversely affect its ability to perform its obligations under this Agreement.

## **8.2 PIPP Supplier Representations and Warranties**

The PIPP Supplier hereby represents and warrants to Duke Energy Ohio as follows:

(a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and, if organized outside the State of Ohio, is qualified to conduct its business and is in good standing in Ohio;

(b) it has all regulatory authorizations and all requisite power and authority necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement;

(c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision of any Governmental Authority;

(d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms;

(e) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code;

(f) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings, including before a Governmental Authority, that could materially adversely affect its ability to perform its obligations under this Agreement or any other document relating to this Agreement;

(g) 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 or any other document relating to this Agreement;

(h) it is acting for its own account, has made its own independent decision to enter into this Agreement, is not relying upon the advice or recommendations of Duke Energy Ohio in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement;

(i) at the commencement of the Original Delivery Period, it (i) has obtained all authorizations from any Governmental Authority necessary for it to perform its obligations under this Agreement; (ii) is a member in good standing with PJM; (iii) is qualified by PJM as a “Market Buyer” and “Market Seller” pursuant to the PJM Agreements; (iv) is qualified as a PJM “Load Serving Entity;” and (v) has duly obtained all FERC authorization necessary or desirable to make sales of Energy, Capacity, and Ancillary Services at market-based rates within PJM; and

(j) it is not in violation of any law, rules, regulations, ordinances or judgments of any Governmental Authority which could reasonably be expected to adversely affect its ability to perform its obligations under this Agreement.

## ARTICLE 9

### RISK OF LOSS; LIMITATION OF LIABILITY

#### 9.1 Risk of Loss

Title and risk of loss with respect to the PIPP Supply shall pass from the PIPP Supplier to Duke Energy Ohio when the PIPP Supply is delivered to the Delivery Point. As between the Parties, the PIPP Supplier shall be deemed to be in exclusive control and possession of the PIPP Supply prior to and at the Delivery Point, and Duke Energy Ohio shall be deemed to be in exclusive control and possession of the PIPP Supply from the Delivery Point. The PIPP Supplier warrants that it will deliver the PIPP Supply to Duke Energy Ohio at the Delivery Point free and clear of all liens, claims and encumbrances arising or attaching prior to the Delivery Point.

#### 9.2 Limitation of Liability

EXCEPT TO THE EXTENT EXPRESSLY SET FORTH IN THIS AGREEMENT, INCLUDING ARTICLE 10, AS BETWEEN DUKE ENERGY OHIO AND THE PIPP SUPPLIER, EACH PARTY’S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES INCURRED AS A RESULT OF A PARTY’S FAILURE TO COMPLY WITH THIS AGREEMENT. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. NO

PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, ARISING OUT OF SUCH PARTY'S FAILURE TO COMPLY WITH ITS OBLIGATIONS UNDER THIS AGREEMENT.

## **ARTICLE 10**

### **INDEMNIFICATION**

#### **10.1 Indemnification**

(a) The PIPP Supplier shall defend, save harmless and indemnify Duke Energy Ohio and its Affiliates, shareholders, managers, directors, officers, employees and agents (collectively, the "Duke Energy Ohio Indemnified Party") against and from any and all of the following incurred by the Duke Energy Ohio Indemnified Party solely as a result of a third party claim (including PJM) against the Duke Energy Ohio Indemnified Party: loss, liability, damage, claim, cost, charge, demand or expense (including reasonable attorneys' fees) (collectively "Indemnification Losses") for injury or death to persons and damage to property including a Party's employees or any third party to the extent (i) caused by any act or omission (or alleged act or omission) of the PIPP Supplier or its Affiliates, managers, directors, officers, employees and agents and (ii) such Indemnification Losses arise out of or are in any manner connected with the performance of this Agreement by the PIPP Supplier or for which the PIPP Supplier assumed liability under the terms of this Agreement, except to the extent that a court of competent jurisdiction determines that the Indemnification Losses were caused wholly or in part by the gross negligence or willful misconduct of Duke Energy Ohio. Duke Energy Ohio may, at its own expense, retain counsel and participate in the defense of any such suit or action.

(b) Duke Energy Ohio shall defend, save harmless and indemnify the PIPP Supplier and its Affiliates, shareholders, managers, directors, officers, employees and agents (the "Indemnified Supplier") against and from any and all of the following incurred by the Indemnified Supplier solely as a result of a third party claim against the Indemnified Supplier: Indemnification Losses for injury or death to persons and damage to property including a Party's employees or any third party to the extent (i) caused by any act or omission (or alleged act or omission) of Duke Energy Ohio or its Affiliates, managers, directors, officers, employees and agents, and (ii) such Indemnification Losses arise out of or are in any manner connected with the performance of this Agreement by Duke Energy Ohio, except to the extent that a court of competent jurisdiction

determines that the Indemnification Losses were caused wholly or in part by the gross negligence or willful misconduct of the Indemnified Supplier. The Indemnified Supplier may, at its own expense, retain counsel and participate in the defense of any such suit or action.

(c) Any Party that receives notice of any claim, action, or proceeding for which it may seek indemnification under this Section shall promptly notify the indemnitor in writing; provided, however, that the failure to so notify the indemnitor shall not relieve the indemnitor of liability hereunder except to the extent that the defense of such claim, action, or proceeding is prejudiced by the failure to give the notice. The indemnitee shall cooperate fully with the indemnitor in connection with any such litigation or proceeding the defense of which the indemnitor has assumed. No indemnitee may consent to entry of any judgment or enter into any settlement of any claim, action, or proceeding that would give rise to any liability of the indemnitor hereunder without the indemnitor's prior written consent, which consent may not be unreasonably withheld or delayed. If the indemnitor assumes the defense of the claim, action, or proceeding, no compromise or settlement of such claim, action, or proceeding may be effected by the indemnitor without the indemnitee's consent unless (i) there is no finding or admission of any violation of law or the rights of any Person and no effect on any other claims, actions, or proceedings that may be made against the indemnitee and (ii) the sole relief provided is monetary damages and such damages and the associated costs of suit and attorneys' fees are paid in full by the indemnitor.

## **ARTICLE 11**

### **DISPUTE RESOLUTION**

#### **11.1 Informal Dispute Resolution**

If a dispute arises between the Parties relating to this Agreement, a Party shall give the other Party written notice of a dispute which has not been resolved in the normal course of business. Such notice shall include: (a) a statement of that Party's position and a summary of arguments supporting such position, and (b) the name and title of the executive who will be representing that Party and of any other person who will accompany the executive. Within five (5) days after delivery of the notice, the receiving Party shall respond with (a) a statement of that Party's position and a summary of arguments supporting such position, and (b) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within ten (10) days after delivery of the initial notice, the executives of both Parties

shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. If, within twenty (20) days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, then either Party may pursue any remedies available at law or in equity as set forth below.

### **11.2 Formal Dispute Resolution**

After the requirements of Section 11.1 have been satisfied, all disputes between the Parties, except where this Agreement requires otherwise, shall be submitted to an Ohio State court of competent jurisdiction or to a federal court of competent jurisdiction situated in the State of Ohio, which courts shall have exclusive jurisdiction to settle disputes arising under or related to this Agreement.

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

Notwithstanding Section 11.2, nothing in this Agreement shall restrict the rights of a Party to file a complaint with the FERC under relevant provisions of the Federal Power Act or with the PUCO under relevant provisions of the Legal Authorities. The Parties' agreement under this Section 11.3 is without prejudice to any Party's right to contest jurisdiction of the FERC or PUCO to which a complaint is brought.

## **ARTICLE 12**

### **MISCELLANEOUS PROVISIONS**

#### **12.1 Assignment**

(a) Duke Energy Ohio may not assign this Agreement or its rights or obligations hereunder without the prior written consent of the PIPP Supplier, which consent may not be unreasonably withheld, conditioned or delayed; provided, however, Duke Energy Ohio may, without the consent of the PIPP Supplier (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues, or proceeds hereof in connection with any financing or other financial arrangements; (ii) transfer or assign this Agreement to any Person having a Minimum Rating; and (iii) transfer or assign this Agreement to any Person succeeding to all or substantially all of the assets of Duke Energy Ohio. Under (a)(ii) and (a)(iii) above, Duke Energy Ohio shall be relieved of its obligations upon the assignment and assumption of the assignee, except for those obligations which have arisen prior to the date of assignment.

(b) The PIPP Supplier may not assign this Agreement or any rights or obligations hereunder without the prior written consent of Duke Energy Ohio, which consent may not be unreasonably withheld, conditioned or delayed; provided, however, the PIPP Supplier may, without the consent of Duke Energy Ohio (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues, or proceeds hereof in connection with any financing or other financial arrangements; (ii) transfer or assign this Agreement to any CRES Supplier having a Minimum Rating; and (iii) transfer or assign this Agreement to any Person succeeding to all or substantially all of the assets of the PIPP Supplier. Under (b)(ii) and (b)(iii) above, the PIPP Supplier shall be relieved of its obligations upon (x) the assignment and assumption of this Agreement by the assignee and (y) the assignee's satisfaction of the credit requirements set forth in Article 5, except for those obligations which have arisen prior to the date of assignment.

## **12.2 Notices**

All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice by regular mail shall be deemed to have been received by the earlier of actual receipt or three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight mail or courier shall be deemed to have been received by the earlier of actual receipt or two (2) Business Days after it has been sent. A Party may change its addresses by providing notice of the same in accordance with this Section 12.2.

To Duke Energy Ohio:

### **NOTICES & CORRESPONDENCE:**

Duke Energy Ohio  
526 S. Church Street, EC02F  
Charlotte, NC 28202  
Attn: Contract Administration Manager

### **PAYMENTS:**

Institution: PNC Bank  
Account No.: 4060078836  
ABA No: 041000124

Contract Administration Manager Contact: Rhonda Johnson  
Email: [ContractAdmin@duke-energy.com](mailto:ContractAdmin@duke-energy.com)  
Phone: (980) 373-2322  
Fax: (980) 373-7595

**INVOICES:**

Attention: Sherry Hardy  
Email: [Sherry.Hardy@duke-energy.com](mailto:Sherry.Hardy@duke-energy.com)  
Fax Number: (980) 373-9748  
Phone Number: (980) 373-8688

**SCHEDULING:**

Attention: Dana Adams  
Email: [Dana.Adams@duke-energy.com](mailto:Dana.Adams@duke-energy.com)  
Fax Number: (704) 382-4014  
Phone Number: (704) 382-6292

**CREDIT:**

Attention: Lewis Camp  
Email: [Reg.Credit@duke-energy.com](mailto:Reg.Credit@duke-energy.com)  
Fax Number: (980) 373-8640  
Phone Number: (704) 382-5903

**To PIPP Supplier:**

The PIPP Supplier's notification information is set forth on Attachment A.

**12.3 General**

This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement and supersedes all prior communications and proposals (oral or written). 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. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable Governmental Authority or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only.

**12.4 Governing Law**

To the extent not subject to the jurisdiction of FERC, this Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the State of Ohio, without regard to principles of conflicts of law.

## **12.5 Standard of Review**

Except as provided in Section 12.6, this Agreement shall not be amended, modified, terminated, discharged or supplanted nor any provision hereof waived, unless mutually agreed in writing by the Parties. Except as provided in Section 12.6, the rates, terms and conditions contained in this Agreement are not subject to change under Sections 205 and 206 of the Federal Power Act, absent the written agreement of the Parties to change any provisions. Other than as expressly permitted in this Agreement, the standard of review for any changes proposed by a Party, a non-party, or the FERC, acting *sua sponte*, shall be the “public interest” application of the “just and reasonable” standard of review 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) (the “*Mobile-Sierra*” doctrine), as clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*.

## **12.6 PJM Agreement Modifications**

(a) If the PJM Agreements are amended or modified so that any term, schedule or section reference herein to such agreement is changed, such term, schedule or section reference herein shall be deemed automatically (and without any further action by the Parties) to refer to the new term, schedule or section of the PJM Agreements.

(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, the Parties shall cooperate to make the conforming changes to this Agreement.

## **12.7 Confidentiality**

(a) The Parties shall hold in confidence any information disclosed by one Party to the other Party in connection with negotiation of or performance under this Agreement unless (i) required, pursuant to any applicable court order, administrative order, statute, regulation or other official order by any government or any agency or department thereof, to disclose; (ii) such information is already in the possession of the receiving party at the time of disclosure, as evidenced by the receiving party’s written documentation; (iii) such information becomes subsequently available to the receiving party on a non-confidential basis from a source not known or reasonably suspected by the receiving party to be bound by a confidentiality agreement or



secrecy obligation owed to the disclosing party; and (iv) such information is or becomes generally available to the public other than as a result of a breach of this Agreement.

(b) In the event of disclosure pursuant to Section 12.7(a)(i), Duke Energy Ohio will attempt to notify the PIPP Supplier in advance of such disclosure. However, neither Duke Energy Ohio nor its employees, lenders, counsel, accountants, advisors or agents, will be responsible to the PIPP Supplier for any such disclosure and Duke Energy Ohio reserves the right to communicate publicly to third parties any and all information and data submitted as part of this Agreement or Solicitation in any proceedings before FERC, the PUCO and any other regulatory body and the courts, without the prior consent of, or notice to the PIPP Supplier, if Duke Energy Ohio deems such disclosure necessary.

(c) A Party may disclose information and documents provided in connection with this Agreement to its employees, lenders, counsel, accountants, advisors, or utility regulators who have a need to know such information and have agreed to keep such terms confidential.

(d) The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

## **12.8 Taxes**

All present and future federal, state, municipal and other taxes imposed by any taxing authority by reason of the provision of PIPP Supply by the PIPP Supplier under this Agreement (collectively, the “Taxes”) will be the liability of the PIPP Supplier, except for Ohio sales and use taxes imposed under Ohio Rev. Code Ann. Tit. 57, Chapters 5739, 5740 and 5741 (the “Ohio Sales and Use Taxes”), which will be Duke Energy Ohio’s responsibility. Should the PIPP Supplier be required to remit any Ohio Sales and Use Taxes directly to the applicable taxing authority, other than Ohio Sales and Use Taxes previously collected by the PIPP Supplier on behalf of Duke Energy Ohio, Duke Energy Ohio will defend and indemnify the PIPP Supplier for such Ohio Sales and Use Taxes and will pay to the PIPP Supplier all such Tax amounts upon demand. The PIPP Supplier shall pay all Taxes (other than Ohio Sales and Use Taxes) to the applicable taxing authority to the extent required or permitted by law. If any transaction is exempt from the payment of any such Taxes, the PIPP Supplier will, if requested, provide Duke Energy Ohio with valid tax exemption certificates. Should Duke Energy Ohio be required to remit any Taxes directly to any applicable taxing authority (other than Ohio Sales and Use Taxes and other Taxes previously

collected by Duke Energy Ohio directly from the PIPP Supplier), the PIPP Supplier will defend and indemnify Duke Energy Ohio and will pay Duke Energy Ohio all such Tax amounts upon demand.

Each Party shall provide to the other Party all information, data and exemption certificates as such other Party may from time to time reasonably request and otherwise fully cooperate with such other Party in connection with the reporting of (i) any Taxes payable by the PIPP Supplier; (ii) any Tax audit; or (iii) any assessment, refund claim or proceeding relating to Taxes. Each Party shall cooperate with the other Party and take any action reasonably requested, which does not cause the Party to incur any material cost or inconvenience, in order to minimize any Taxes payable.

### **12.9 Record Retention**

Each Party will retain for a period of two (2) years following the expiration of the Term necessary records so as to permit the Parties to confirm the accuracy of any statement, charge or computation made pursuant to this Agreement; provided that, if a Party provides notice within two (2) years of the expiration of the Term that it disputes the validity of any payments or quantity of Energy delivered, the Parties agree that they will retain all records related to such dispute until the dispute is resolved pursuant to Article 11.

The PIPP Supplier will have the right, upon reasonable notice, to inspect (at the sole cost and expense of the PIPP Supplier) the books and records retained by Duke Energy Ohio only insofar as they relate to payments due and owing, or owed and paid, to the PIPP Supplier. Such inspection must take place during regular business hours. Duke Energy Ohio will have the right, upon reasonable notice, to inspect (at the sole cost and expense of Duke Energy Ohio) the books and records retained by the PIPP Supplier only insofar as they relate to Energy delivered by the PIPP Supplier. Such inspection must take place during regular business hours.

### **12.10 Rules as to Usage**

Except as otherwise expressly provided herein, the following rules shall apply to the usage of terms in this Agreement:

The terms defined above have the meanings set forth above for all purposes, and such meanings are equally applicable to both the singular and plural forms of the terms defined.

“Include,” “includes” and “including” shall be deemed to be followed by “without limitation” whether or not they are in fact followed by such words or words of like import.

Any law defined or referred to above means such law as from time to time amended, modified or supplemented, including by succession of comparable successor law.

“Hereof,” “herein,” “hereunder” and comparable terms refer, unless otherwise expressly indicated, to the entire agreement or instrument in which such terms are used and not to any particular article, section or other subdivision thereof or attachment thereto. References in an instrument to “Article,” “Section,” or another subdivision or to an attachment are, unless the context otherwise requires, to the relevant article, section, subsection or subdivision of or an attachment to such agreement or instrument. If such reference in this Agreement to “Article,” “Section,” or other subdivision does not specify an agreement or document, such reference refers to an article, section or other subdivision of this Agreement. All references to exhibits or schedules in any agreement or instrument that is governed by this Agreement are to exhibits or schedules attached to such instrument or agreement.

All titles and headings used herein are for convenience and references purposes only, and shall not be applicable in construing or interpreting obligations under this Agreement.

The word “or” will have the inclusive meaning represented by the phrase “and/or.”

“Shall” and “will” have equal force and effect.

#### **12.11 Counterparts**

This Agreement may be executed in counterparts, each of which will be considered an original, but all of which will constitute one instrument. Any counterpart may be delivered by facsimile transmission or by electronic communication in portable document format (.pdf) or tagged image format (.tif), and the Parties agree that their electronically transmitted signatures shall have the same effect as manually transmitted signatures.

[Signatures appear on next pages]

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.

DUKE ENERGY OHIO, INC.

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

Name: Amy B. Spiller

Title: President

[PIPP SUPPLIER SIGNATURE APPEARS ON SUCCEEDING PAGE]

[PIPP SUPPLIER]

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

Name:

Title

## ATTACHMENTS

- A PIPP Supplier Responsibility Share
- B Seasonal Billing Factor
- C Credit Examples
- D Form of Guaranty
- E Form of PIPP Supplier Letter of Credit
- F Sample PJM Invoice
- G Billing Line Item Transfers

ATTACHMENT A

PIPP SUPPLIER RESPONSIBILITY SHARE

PIPP Supplier	Price (\$MWh)	PIPP Supplier Responsibility Share Percentage (%)
_____	_____/MWh	____%

Original Delivery Period: June 1, 2019 through May 31, 2020.

Address for Notice:

1. In the case of all notices except those required under Article 5:

Name:  
Address:  
Telephone:  
Facsimile:  
E-mail:

Copy to:

Name:  
Address:  
Telephone:  
Facsimile:  
E-mail:

Article 5 Notices:

Name:  
Address:  
Telephone:  
Facsimile:  
E-mail:

[PIPP SUPPLIER]

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

Name:

Title:



ATTACHMENT B  
SEASONAL BILLING FACTOR

The Seasonal Billing Factors are as follows:

June 1 through September 30	1.0524
October 1 through December 31 and January 1 through May 31	0.9704

ATTACHMENT C-1

INDEPENDENT CREDIT REQUIREMENT

Inception through May 2019	\$1,200,000
Jun-19	\$1,200,000
Jul-19	\$1,200,000
Aug-19	\$1,200,000
Sep-19	\$800,000
Oct-19	\$800,000
Nov-19	\$800,000
Dec-19	\$800,000
Jan-20	\$400,000
Feb-20	\$400,000
Mar-20	\$400,000
Apr-20	\$400,000
May-20	\$400,000

## ATTACHMENT C-2

### EXAMPLE MARK-TO-MARKET EXPOSURE AMOUNT CALCULATION

The following is an illustration of the methodology Duke Energy Ohio will use to determine the Mark-to-Market Exposure Amount for the PIPP Supplier.

Prior to the scheduled date of the Solicitation, the following parameters will be determined by Duke Energy Ohio, based on the then most currently available information:

1. The expected On-Peak PIPP Load;
2. The expected Off-Peak PIPP Load;
3. On-Peak Price Adjustment Factors; and
4. Off-Peak Price Adjustment Factors.

For purposes of the Mark-to-Market Exposure Amount calculation, “On-Peak” means the hours between 7:00 a.m. and 11:00 p.m. prevailing Eastern Time on Monday through Friday, excluding NERC holidays. “Off-Peak” means any hours that are not considered On-Peak.

The expected PIPP Load for each month will be determined by multiplying (i) the historical usage for each month of PIPP Customers served by Duke Energy Ohio averaged over a recent three-year period (“Historical Actual Usage”) by (ii) the PIPP Supplier Responsibility Share. The expected PIPP Load will then be separated into On-Peak and Off-Peak components (consistent with the definitions cited above), still on a monthly basis, based on the Historical Actual Usage.

A set of monthly On-Peak Price Adjustment Factors and Off-Peak Price Adjustment Factors will be developed using historical PJM day-ahead hourly prices applied to hourly usage derived from Historical Actual Usage on the Duke Energy Ohio system. The purpose of the Price Adjustment Factors is to restate the quoted Forward Market Prices, which are based on fixed block volumes of MWhs, to more closely approximate the price impact of serving a requirements load which reflects hourly variations due to customer usage patterns. The Price Adjustment Factors are anticipated to be recalculated at the time of each future RFP auction.

Duke Energy Ohio will determine the prevailing On-Peak Forward Market Prices and Off-Peak Forward Market Prices as of the closing day of the Solicitation for each month during the Delivery Period with reference to publicly available market price quotations obtained by Duke Energy Ohio. To the extent that quoted Forward Market Prices are not available on a monthly basis, monthly Forward Market Prices will be determined by Duke Energy Ohio with reference to publicly available market price data. Notwithstanding the foregoing, if market price data for Forward Market Prices is not available, Forward Market Prices will be determined by Duke Energy Ohio using any method which Duke Energy Ohio deems appropriate and which reasonably reflects forward market pricing conditions in PJM.

After the completion of the Solicitation, Duke Energy Ohio will calculate the Mark-to-Market Exposure Amount using the then prevailing Forward Market Prices as of any valuation date, compared to the Forward Market Prices prevailing on the closing day of the Solicitation. Table C-1 shows the calculation of the Mark-to-Market Exposure Amount using hypothetical Forward Market Prices and other assumptions for a 12-month Original Delivery Period from June 2019 through May 2020.

As shown on Table C-1, the difference between the then-prevailing On-Peak and Off-Peak Forward Market Prices as of the valuation date and the prices in effect as of the closing day of the Solicitation is multiplied by the most recently calculated expected On-Peak and Off-Peak PIPP Load. The result is then multiplied by the relevant Price Adjustment Factors, as determined by Duke Energy Ohio, and then summed to calculate the Mark-to-Market Exposure Amount on an undiscounted basis.

For simplicity, the discounting of the Mark-to-Market Exposure Amount is not shown in detail on Table C-1. The final Mark-to-Market Exposure Amount is determined by stating the values on a present value basis as of the determination date by discounting the calculated values at the then prevailing LIBOR rate applicable to each Delivery Month.

Table C-1

Market Valuation (Prior to Start of Delivery Period)

[VALUES ARE FOR ILLUSTRATION ONLY]

	Change in Forward		Expected Volumes (b)		Price Adjustment Factor (c)		Mkt Value
	Market Price (a)						
	On-Peak Market Price \$/MWh	Off-Peak Market Price \$/MWh	On-Peak MWh	Off-Peak MWh	On-Peak	Off-Peak	\$000 (d) Undiscounted
Jun-19	\$ 1.11	\$ 0.80	11,879	10,433	1.0594	1.2380	\$ 24
Jul-19	\$ 0.38	\$ 0.46	13,916	12,979	1.1656	1.4000	\$ 15
Aug-19	\$ 1.80	\$ 0.77	15,203	11,928	1.0919	1.3489	\$ 42
Sep-19	\$ 1.78	\$ 1.51	11,933	11,524	0.9611	1.1199	\$ 40
Oct-19	\$ 3.39	\$ 2.11	9,733	9,602	1.2268	1.1661	\$ 64
Nov-19	\$ 3.27	\$ 2.31	9,258	10,774	1.0870	0.8628	\$ 54
Dec-19	\$ 3.15	\$ 2.31	12,549	14,118	1.0299	0.8668	\$ 69
Jan-20	\$ 3.25	\$ 2.25	16,191	18,233	0.9703	0.7409	\$ 81
Feb-20	\$ 3.29	\$ 2.50	14,348	15,044	1.0637	0.8428	\$ 82
Mar-20	\$ 3.40	\$ 2.25	12,218	12,572	1.2906	0.9935	\$ 82
Apr-20	\$ 3.64	\$ 2.34	10,609	11,559	0.9665	0.8370	\$ 60
May-20	\$ 2.50	\$ 1.18	9,290	8,760	1.1480	1.1883	\$ 39
							<u>\$ 652</u>
					NPV of Mkt Value (e)		<u>\$ 613</u>

- (a): On-Peak and Off-Peak Forward Market Prices as of valuation date less On-Peak and Off-Peak Forward Market Prices as of auction date
- (b): Expected On-Peak and Off-Peak PIPP Load derived from Historical Actual Usage
- (c): Price Adjustment Factor as published by Duke Energy Ohio for each auction
- (d): Sum of (a) x (b) x (c) for On-Peak and Off-peak
- (e): Market Value discounted to valuation date based on LIBOR forward interest rates

ATTACHMENT D  
FORM OF GUARANTY  
[ICT / TOTAL EXPOSURE AMOUNT] GUARANTY OF  
\_\_\_\_\_ [Guarantor]

This Guaranty, dated as of \_\_\_\_\_, 201\_, is made by \_\_\_\_\_, a \_\_\_\_\_ [corporation] (the “Guarantor”), for the benefit of Duke Energy Ohio, Inc., an Ohio corporation (“Duke Energy Ohio”). Capitalized terms used herein but not defined herein shall have the meaning given such terms in the Agreement (as defined below).

WHEREAS, Duke Energy Ohio has entered into or will be entering into one or more Master PIPP Supply Agreement (each individually and collectively, the “Agreement”) with \_\_\_\_\_, a \_\_\_\_\_ [corporation] (the “PIPP Supplier”), which may involve the extension of credit by Duke Energy Ohio. Guarantor hereby acknowledges that it will receive a direct or indirect benefit from the business transactions between the PIPP Supplier and Duke Energy Ohio and the making of this Guaranty.

NOW, THEREFORE, in consideration of, and as an inducement for, Duke Energy Ohio entering into the Agreement, the Guarantor hereby covenants and agrees as follows:

1. **Guaranty.** The Guarantor hereby unconditionally and absolutely guarantees to Duke Energy Ohio the prompt payment when due, subject to any applicable grace period and upon demand in writing from Duke Energy Ohio, of any and all amounts payable by the PIPP Supplier to Duke Energy Ohio arising out of the Agreement in connection with PIPP Supplier’s [ICT / Total Exposure Amount] (the “Obligations”). Notwithstanding the aggregate amount of the Obligations at any time or from time to time payable by the PIPP Supplier to Duke Energy Ohio, the liability of the Guarantor to Duke Energy Ohio shall not exceed \_\_\_\_\_ U.S. Dollars (\$\_\_\_\_\_).

2. **Nature of Guaranty.** The Guarantor hereby agrees that its obligations hereunder shall be unconditional irrespective of the impossibility or illegality of performance by the PIPP Supplier under the Agreement; the absence of any action to enforce the Agreement; any waiver or consent by Duke Energy Ohio concerning any provisions of the Agreement; the rendering of any judgment against the PIPP Supplier or any action to enforce the same; any failure by Duke Energy Ohio to take any steps necessary to preserve its rights to any security or collateral for the Obligations; the release of all or any portion of any collateral by Duke Energy Ohio; or any failure by Duke Energy Ohio to perfect or to keep perfected its security interest or lien in any portion of any collateral.

This Guaranty is one of payment and not of collection. This Guaranty shall remain in full force and effect or shall be reinstated (as the case may be) if at any time any payment guaranteed

hereunder, in whole or in part, is rescinded or must otherwise be returned by Duke Energy Ohio upon the insolvency, bankruptcy or reorganization of the PIPP Supplier or otherwise, all as though such payment had not been made.

3. **Waivers.** The Guarantor hereby expressly waives notice of acceptance of this Guaranty; notice of any Obligation to which this Guaranty may apply or of any security therefor; diligence; presentment; protest; notice of protest, acceleration, and dishonor; filing of claims with a court in the event of insolvency or bankruptcy of the PIPP Supplier; all demands whatsoever, except as noted in Section 1 hereof; and any right to require a proceeding first against the PIPP Supplier.

4. **Effect of Amendments.** Guarantor agrees that Duke Energy Ohio and the PIPP Supplier may modify or amend any or all of the Agreement and that Duke Energy Ohio may, according to the Agreement, delay or extend the date on which any performance must be made under the Agreement, or release the PIPP Supplier from the obligation to so perform or waive any right thereunder, all without notice to or further assent by Guarantor, who shall remain bound by this Guaranty, notwithstanding any such act by Duke Energy Ohio.

5. **Termination.** This Guaranty is intended to be and shall be construed to be a continuing, absolute and unconditional guaranty, and shall remain in full force and effect until all Obligations have been fully and finally performed, at which point it will expire. The Guarantor may terminate this Guaranty upon thirty (30) days prior written notice to Duke Energy Ohio, which termination shall be effective only upon receipt by Duke Energy Ohio of alternative means of security or credit support, as specified in the Agreement and in a form reasonably acceptable to Duke Energy Ohio. Upon the effectiveness of any such expiration or termination, the Guarantor shall have no further liability under this Guaranty, except with respect to the Obligations existing prior to the time the expiration or termination is effective, which Obligations shall remain guaranteed pursuant to the terms of this Guaranty until finally and fully performed.

6. **Notices.** All notices and other communications about this Guaranty must be in writing, must be given by facsimile, hand delivery or overnight courier service and must be addressed or directed to the respective parties as follows:

If to Duke Energy Ohio, to:

Duke Energy Ohio, Inc.  
550 South Tryon Street, DEC40C  
Charlotte, NC 28202  
Facsimile No.:  
Attention: Chief Risk Officer

If to the Guarantor, to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Facsimile No.: \_\_\_\_\_

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

Notices are effective when actually received by the party to which they are given, as evidenced by facsimile transmission report, written acknowledgment or affidavit of hand delivery or courier receipt.

7. **Representations and Warranties.** The Guarantor represents and warrants to Duke Energy Ohio as of the date hereof that:

- a) The Guarantor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has full power and legal right to execute and deliver this Guaranty and to perform the provisions of this Guaranty on its part to be performed;
- b) The execution, delivery and performance of this Guaranty by the Guarantor have been and remain duly authorized by all necessary corporate action and do not contravene any provision of its certificate of incorporation or by-laws or any law, regulation or contractual restriction binding on it or its assets;
- c) All consents, authorizations, approvals, registrations and declarations required for the due execution, delivery and performance of this Guaranty have been obtained from or, as the case may be, filed with the relevant governmental authorities having jurisdiction and remain in full force and effect, and all conditions thereof have been duly complied with and no other action by, and no notice to or filing with, any governmental authority having jurisdiction is required for such execution, delivery or performance; and
- d) This Guaranty constitutes the legal, valid and binding obligation of the Guarantor enforceable against it in accordance with its terms, except as enforcement hereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights or by general equity principles.



8. **Certification.** The Guarantor hereby certifies that it satisfies the Minimum Rating as defined in the Agreement.

9. **Setoffs and Counterclaims.** Without limiting the Guarantor's own defenses and rights hereunder, the Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which the PIPP Supplier is or may be entitled arising from or out of the Agreement, except for defenses arising out of bankruptcy, insolvency, dissolution or liquidation of the PIPP Supplier.

10. **Subrogation.** The Guarantor will not exercise any rights that it may acquire by way of subrogation until all Obligations shall have been paid in full. Subject to the foregoing, upon payment of all such Obligations, the Guarantor shall be subrogated to the rights of Duke Energy Ohio against the PIPP Supplier, and Duke Energy Ohio agrees to take at the Guarantor's expense such steps as the Guarantor may reasonably request to implement such subrogation.

11. **Expenses.** The Guarantor hereby agrees to pay on demand all reasonable out-of-pocket expenses (including the reasonable fees and expenses of Duke Energy Ohio's counsel) in any way relating to the enforcement or protection of the rights of Duke Energy Ohio hereunder; provided that the Guarantor shall not be liable for any expenses of Duke Energy Ohio if no payment under this Guaranty is due.

12. **Assignment.** This Guaranty shall be binding upon the Guarantor and upon its permitted successors and assigns, and shall inure to the benefit of Duke Energy Ohio and its permitted successors and assigns and shall apply to all successors and assigns of the PIPP Supplier. The Guarantor may not assign this Guaranty nor delegate its duties or rights hereunder without the prior express written consent of Duke Energy Ohio. Duke Energy Ohio may assign this Guaranty in accordance with the terms of the Agreement.

13. **Amendments.** No term or provision of this Guaranty shall be amended, modified, altered, waived, or supplemented except in a writing signed by the parties hereto, except that Guarantor may amend this Guaranty without Duke Energy Ohio's consent if the amendment only increases the dollar amount stated in Section 1 to which liability of the Guarantor to Duke Energy Ohio shall not exceed, provided that Guarantor deliver such amendment to Duke Energy Ohio on or before the effective date of such amendment.

14. **Choice of Law and Venue.** The Guarantor and Duke Energy Ohio hereby agree that this Guaranty shall be governed by and construed in accordance with the internal laws of the State of Ohio without giving effect to principles of conflicts of law.

15. **Waiver of Jury Trial.** The Guarantor and Duke Energy Ohio, through acceptance of this Guaranty, waive all rights to trial by jury in any action, proceeding or counterclaim arising or relating to this Guaranty.

16. **Miscellaneous.** This Guaranty is the entire and only agreement between the Guarantor and Duke Energy Ohio with respect to the guarantee of amounts payable by the PIPP

Supplier to Duke Energy Ohio arising out of the Agreement in connection with PIPP Supplier's [ICT / Total Exposure Amount]. All representations, warranties, agreements, or undertakings heretofore or contemporaneously made, which are not set forth herein, are superseded hereby.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed in its [corporate] name by its duly authorized representative as of the date first above written.

[GUARANTOR]

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

Its: \_\_\_\_\_

ATTACHMENT E  
FORM OF PIPP SUPPLIER LETTER OF CREDIT

\_\_\_\_\_ (Date)

Letter of Credit No. \_\_\_\_\_

To: Duke Energy Ohio, Inc. (“Beneficiary”)  
550 South Tryon Street (DEC40C)  
Charlotte, NC 28202  
Attention: Chief Risk Officer

1. We hereby establish in your favor this irrevocable transferable standby Letter of Credit (this “Letter of Credit”) for the account of \_\_\_\_\_ (the “Applicant”), in the aggregate amount of \$ \_\_\_\_\_, effective immediately and available to you at sight upon demand at our counters at \_\_\_\_\_ (location) and expiring 364 days from date of issuance or any extension thereof (in the form of Annex 5), unless terminated earlier or automatically extended in accordance with the provisions hereof or otherwise extended.
2. This Letter of Credit is issued at the request of the Applicant, and we hereby irrevocably authorize you to draw on us, in accordance with the terms and conditions hereof, up to the maximum amount of this Letter of Credit, subject to reduction as provided in Paragraph 12 hereof.
3. A partial or full drawing hereunder may be made by you on any Business Day on or prior to the expiration of this Letter of Credit by delivering, by no later than 11:00 A.M. (prevailing Eastern Time<sup>1</sup>) on such Business Day to \_\_\_\_\_ (Bank), \_\_\_\_\_ (address), the following documents appropriately completed and signed by an authorized representative of the Beneficiary: (i) a notice in the form of Annex 1 hereto, and (ii) your draft in the form of Annex 2 hereto.
4. We may, but shall not be obligated to, accept any request to issue a substitute letter of credit. Such request shall be in an Availability Certificate in the form of Annex 3 hereto by you to us for exchange for a new letter of credit in the amount set forth in an Availability Certificate, which amount shall not exceed the present value of this Letter of Credit. Upon acceptance by us of any such request to issue a substitute letter of credit for exchange, the new letter of credit shall be issued in the amount as set forth in the Availability Certificate.

\_\_\_\_\_

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

5. We hereby agree to honor your drawing made in compliance with the terms and provisions of this Letter of Credit by transferring in immediately available funds the amount specified and to the account directed in your draft delivered to us pursuant to Paragraph 3 hereof, by 3:00 P.M. prevailing Eastern Time on the date of such drawing, if delivery of the requisite documents is made prior to 11:00 A.M. (prevailing Eastern time) on a Business Day pursuant to Paragraph 3 hereof, but at the opening of business on the first Business Day next succeeding the date of such drawing if delivery of the requisite documents is made after 11:00 A.M. (prevailing Eastern time) on any Business Day pursuant to Paragraph 3 hereof.

6. We shall have a reasonable amount of time, not to exceed three (3) Business Days following the date of our receipt of drawing documents, to examine the documents and determine whether to take up or refuse the documents and to inform you accordingly. Upon being notified that the demand for payment was not effected in conformity with this Letter of Credit, you may attempt to correct any such non-conforming demand for payment to the extent that you are entitled to do so, provided, however, that in such event a conforming demand for payment must be timely made in accordance with the terms of this Letter of Credit.

7. This Letter of Credit will automatically terminate and be delivered to us for cancellation on the earliest of (i) the making by you of the drawings in an amount equal to the maximum amount available to be made hereunder; (ii) the date we issue a new letter of credit in exchange for this Letter of Credit in accordance with Paragraph 4 hereof; and (iii) the date we receive from you a Certificate of Expiration in the form of Annex 4 hereto. The Letter of Credit will be automatically extended without written amendment for successive additional one (1) year periods from the current or any future extended expiry date, unless at least ninety (90) days prior to such date of expiration, we give written notice to the Beneficiary by registered or certified mail, return receipt requested, or by overnight courier, at the address set forth above, or at such other address of which prior written notice has been provided to us, that we elect not to renew this Letter of Credit for such additional one (1) year period.

8. As used herein:

“Availability Certificate” shall mean a certificate substantially in the form of Annex 3 hereto, appropriately completed and duly signed by an Authorized Officer of the Beneficiary.

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

“Master PIPP Supply Agreement” shall mean that certain Master PIPP Supply Agreement between the Applicant and the Beneficiary, dated \_\_\_\_\_

9. This Letter of Credit is assignable and transferable, in accordance with Annex 6, to an entity certified by you to us in the form of Annex 6, and we hereby consent to such assignment or transfer, provided that this Letter of Credit may not otherwise be amended or modified without consent from us, you and the Applicant, and, except as otherwise expressly stated herein, is subject to the International Standby Practices 1998, International Chamber Of Commerce Publication No. 590 (“ISP98”). Any and all banking charges, transfer fees, expenses and costs shall be borne by the Applicant. This Letter of Credit shall, as to matters not governed by the ISP98, be governed and construed in accordance with New York law, without regard to principles of conflicts of law.

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

11. We certify that as of \_\_\_\_\_(date) we \_\_\_\_\_ (“Bank”) satisfy the minimum long-term senior unsecured debt rating of “A-” from Standard & Poor’s Rating Services or “A3” from Moody’s Investors Service, Inc.

12. The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid through us referencing this Letter of Credit No. \_\_\_\_\_. Partial drawings are permitted hereunder. Drafts showing amounts in excess of amounts available under this Letter of Credit are acceptable, however, in no event will payment exceed the amount available to be drawn under this Letter of Credit.

13. Presentation to us of documents under this Letter of Credit includes presentation in person, by certified or overnight mail or by fax. Presentation by fax must be made to fax number \_\_\_\_\_ and confirmed by telephone to \_\_\_\_\_.

14. This original Letter of Credit has been sent to the Beneficiary located at \_\_\_\_\_ (as per Applicant's instructions). Any demands or communications in the form of the attached Annexes (except for Annex 5) or other communications directed to us under this Letter of Credit must be signed by an authorized representative of the Beneficiary. Acceptance or rejection of any amendments to this Letter of Credit or any extensions pursuant to Annex 5 must be signed by an authorized representative of the Beneficiary.

Very truly yours,

(Bank)

\_\_\_\_\_

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

Name:

Title:

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

Name:

Title:

**Annex 1 to Letter of Credit**

DRAWING UNDER LETTER OF CREDIT NO. \_\_\_\_\_

\_\_\_\_\_, 20\_\_

To: (Bank)

(Address)

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

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

1. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the Letter of Credit.

1. Pursuant to Paragraph 2 of the Letter of Credit No. \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_, the undersigned is entitled to make a drawing under the Letter of Credit in the aggregate amount of \$\_\_\_\_\_, inasmuch as (choose one of the following by placing an "X" on the line preceding the statement):

\_\_\_\_\_ (a) An Event of Default has occurred with respect to the Applicant under the Master PIPP Supply Agreement;

\_\_\_\_\_ (b) The Applicant has failed to supply a substitute letter of credit thirty (30) days prior to the expiration of this Letter of Credit as required by the Master PIPP Supply Agreement.

3. The amount to be received by Duke Energy Ohio, Inc. is \$\_\_\_\_\_.
4. We acknowledge that, upon your honoring the drawing herein requested, the amount of the Letter of Credit available for drawing shall be automatically decreased by an amount equal to this drawing.

Very truly yours,

Duke Energy Ohio, Inc.

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

Name:

Title:

Date:



**Annex 2 to Letter of Credit**

DRAWING UNDER LETTER OF CREDIT NO. \_\_\_\_\_

\_\_\_\_\_, 20\_\_

ON [Business Day set forth in Paragraph 5]

PAY TO: Duke Energy Ohio, Inc.

\$ \_\_\_\_\_

For credit to the account of \_\_\_\_\_.

FOR VALUE RECEIVED AND CHARGE TO ACCOUNT OF LETTER OF CREDIT  
NO. \_\_\_\_\_ OF

(Bank)

(Address)

Duke Energy Ohio, Inc.

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

Name:

Title:

Date:

**Annex 3 to Letter of Credit**

AVAILABILITY CERTIFICATE

UNDER LETTER OF CREDIT NO. \_\_\_\_\_

\_\_\_\_\_, 20\_\_

To: (Bank)

(Address)

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

Each of the undersigned hereby requests that, in exchange for the above-referenced Letter of Credit, a new letter of credit be issued in the aggregate amount of \$\_\_\_\_\_ (the "New Amount") and to expire on \_\_\_\_\_(date), but otherwise in the form of the above-referenced Letter of Credit.

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

[Beneficiary's Address]

Very truly yours,

Duke Energy Ohio, Inc.

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

Name:

Title:

Date:

Agreed and Accepted

(Bank)

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

Title:

Date:

APPLICANT NAME

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

Name:

Title:

Date:

**Annex 4 to Letter of Credit**

CERTIFICATE OF EXPIRATION  
OF LETTER OF CREDIT NO. \_\_\_\_\_

\_\_\_\_\_, 20\_\_

To: (Bank)

(Address)

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

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

Duke Energy Ohio, Inc.

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

Name:

Title:

Date:

cc: \_\_\_\_\_ (Applicant Name)

**Annex 5 to Letter of Credit**

**NOTICE OF EXTENSION**

**OF LETTER OF CREDIT NO. \_\_\_\_\_**

\_\_\_\_\_, 20\_\_

To: Duke Energy Ohio, Inc.  
550 South Tryon Street (DEC40C)  
Charlotte, NC 28202  
Attention: Chief Risk Officer

Re: Our Letter of Credit No. \_\_\_\_\_ presently in the aggregate amount of USD \_\_\_\_\_ issued for the account of \_\_\_\_\_ and expiring on \_\_\_\_\_.

On the expiration date of the Letter of Credit No. \_\_\_\_\_, we will issue a new Letter of Credit No. \_\_\_\_\_ to expire on \_\_\_\_\_ (date). This new Letter of Credit No. \_\_\_\_\_ will, aside from the expiration date, be in the amount and form of our Letter of Credit No. \_\_\_\_\_.

Very truly yours,

BANK \_\_\_\_\_

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

Name:

Title:

Date:

Duke Energy Ohio, Inc.

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

Name:

Title:

Date:

cc: \_\_\_\_\_ (Applicant Name)

NOTICE OF TRANSFER  
OF LETTER OF CREDIT NO. \_\_\_\_\_

\_\_\_\_\_, 20\_\_

To:

[Bank]

[Bank Address]

To Whom It May Concern:

Re: Credit \_\_\_\_\_

Issued by \_\_\_\_\_

Advice No \_\_\_\_\_

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

\_\_\_\_\_

(Name of Transferee)

\_\_\_\_\_

(Address)

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

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

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

Very Truly Yours,

Duke Energy Ohio, Inc.

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

Name:

Title:

Date:

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

(Name of authenticating party)

\_\_\_\_\_

(Authorized signature of authenticating party)

Name

Title



ATTACHMENT F  
SAMPLE PJM INVOICE

<b>PJM Billing Statement Line Items</b>		
<b>ID #</b>	<b>Resp.</b>	<b>CHARGES</b>
1000	PIPP S	Amount Due for Interest on Past Due Charges
<b>1100</b>	<b>EDC</b>	<b>Network Integration Transmission Service</b>
<b>1108</b>	<b>EDC</b>	<b>Transmission Enhancement</b>
<b>1109</b>	<b>EDC</b>	<b>Midcontinent ISO Transmission Expansion Plan Assessment</b>
1110	PIPP S	Direct Assignment Facilities
1120	PIPP S	Other Supporting Facilities
1130	PIPP S	Firm Point-to-Point Transmission Service
1133	PIPP S	Firm Point-to-Point Transmission Service Resale
1140	PIPP S	Non-Firm Point-to-Point Transmission Service
1143	PIPP S	Non-Firm Point-to-Point Transmission Service Resale
1200	PIPP S	Day-ahead Spot Market Energy
1205	PIPP S	Balancing Spot Market Energy
1210	PIPP S	Day-ahead Transmission Congestion
1215	PIPP S	Balancing Transmission Congestion
1218	PIPP S	Planning Period Congestion Uplift
1220	PIPP S	Day-ahead Transmission Losses
1225	PIPP S	Balancing Transmission Losses
1230	PIPP S	Inadvertent Interchange
1240	PIPP S	Day-ahead Economic Load Response
1241	PIPP S	Real-time Economic Load Response
<b>1242</b>	<b>EDC</b>	<b>Day-Ahead Load Response Charge Allocation</b>
<b>1243</b>	<b>EDC</b>	<b>Real-Time Load Response Charge Allocation</b>

1245	PIPP S	Emergency Load Response
1250	PIPP S	Meter Error Correction
1260	PIPP S	Emergency Energy
1301	PIPP S	PJM Scheduling, System Control and Dispatch Service - Control Area Administration
1302	PIPP S	PJM Scheduling, System Control and Dispatch Service - FTR Administration
1303	PIPP S	PJM Scheduling, System Control and Dispatch Service - Market Support
1304	PIPP S	PJM Scheduling, System Control and Dispatch Service - Regulation Market Administration
1305	PIPP S	PJM Scheduling, System Control and Dispatch Service - Capacity Resource/Obligation Mgmt.
1306	PIPP S	PJM Scheduling, System Control and Dispatch Service - Advanced Second Control Center
1307	PIPP S	PJM Scheduling, System Control and Dispatch Service - Market Support Offset
1308	PIPP S	PJM Scheduling, System Control and Dispatch Service Refund - Control Area Administration
1309	PIPP S	PJM Scheduling, System Control and Dispatch Service Refund - FTR Administration
1310	PIPP S	PJM Scheduling, System Control and Dispatch Service Refund - Market Support
1311	PIPP S	PJM Scheduling, System Control and Dispatch Service Refund - Regulation Market Administration
1312	PIPP S	PJM Scheduling, System Control and Dispatch Service Refund - Capacity Resource/Obligation Mgmt.
1313	PIPP S	PJM Settlement, Inc.
1314	PIPP S	Market Monitoring Unit (MMU) Funding
1315	PIPP S	FERC Annual Charge Recovery
1316	PIPP S	Organization of PJM States, Inc. (OPSI) Funding
1317	PIPP S	North American Electric Reliability Corporation (NERC)
1318	PIPP S	Reliability First Corporation (RFC)
<b>1320</b>	<b>EDC</b>	<b>Transmission Owner Scheduling, System Control and Dispatch Service</b>
<b>1330</b>	<b>EDC</b>	<b>Reactive Supply and Voltage Control from Generation and Other Sources Service</b>
1340	PIPP S	Regulation and Frequency Response Service
1350	PIPP S	Energy Imbalance Service
1360	PIPP S	Synchronized Reserve
1365	PIPP S	Day-ahead Scheduling Reserve
1370	PIPP S	Day-ahead Operating Reserve
1371	PIPP S	Day-ahead Operating Reserve for Load Response
1375	PIPP S	Balancing Operating Reserve
1376	PIPP S	Balancing Operating Reserve for Load Response
1377	PIPP S	Synchronous Condensing
1378	PIPP S	Reactive Services
1380	PIPP S	Black Start Service
1400	PIPP S	Load Reconciliation for Spot Market Energy
1410	PIPP S	Load Reconciliation for Transmission Congestion
1420	PIPP S	Load Reconciliation for Transmission Losses
1430	PIPP S	Load Reconciliation for Inadvertent Interchange
1440	PIPP S	Load Reconciliation for PJM Scheduling, System Control and Dispatch Service
1441	PIPP S	Load Reconciliation for PJM Scheduling, System Control and Dispatch Service Refund
1442	PIPP S	Load Reconciliation for Schedule 9-6 - Advanced Second Control Center
1444	PIPP S	Load Reconciliation for Market Monitoring Unit (MMU) Funding

1445	PIPP S	Load Reconciliation for FERC Annual Charge Recovery
1446	PIPP S	Load Reconciliation for Organization of PJM States, Inc. (OPSI) Funding
1447	PIPP S	Load Reconciliation for North American Electric Reliability Corporation (NERC)
1448	PIPP S	Load Reconciliation for Reliability First Corporation (RFC)
<b>1450</b>	<b>EDC</b>	<b>Load Reconciliation for Transmission Owner Scheduling, System Control and Dispatch Service</b>
1460	PIPP S	Load Reconciliation for Regulation and Frequency Response Service
1470	PIPP S	Load Reconciliation for Synchronized Reserve
1475	PIPP S	Load Reconciliation for Day-ahead Scheduling Reserve
1478	PIPP S	Load Reconciliation for Balancing Operating Reserve
1480	PIPP S	Load Reconciliation for Synchronous Condensing
1490	PIPP S	Load Reconciliation for Reactive Services
1500	PIPP S	Financial Transmission Rights Auction
1600	N/A	RPM Auction
1610	N/A	Locational Reliability
1650	N/A	Auction Specific MW Capacity Transaction
1660	N/A	Demand Resource and ILR Compliance Penalty
1661	N/A	Capacity Resource Deficiency
1662	N/A	Generation Resource Rating Test Failure
1663	N/A	Qualifying Transmission Upgrade Compliance Penalty
1664	N/A	Peak Season Maintenance Compliance Penalty
1665	N/A	Peak-Hour Period Availability
1666	N/A	Load Management Test Failure
1670	N/A	FRR LSE Reliability
1687	N/A	FRR LSE Schedule 9-5
1688	N/A	FRR LSE Schedule 9-6
1920	PIPP S	Station Power
<b>1930</b>	<b>EDC</b>	<b>Generation Deactivation</b>
<b>1932</b>	<b>EDC</b>	<b>Generation Deactivation Refund</b>
1980	PIPP S	Miscellaneous Bilateral
1995	PIPP S	PJM Annual Membership Fee
1999	PIPP S	PJM Customer Payment Default

<b>PJM Credits</b>		
<b>ID#</b>	<b>Resp.</b>	<b>CREDITS</b>
2100	TO	Network Integration Transmission Service
2106	TO	Non-Zone Network Integration Transmission Service
2108	TO	Transmission Enhancement
2109	TO	Midcontinent ISO Transmission Expansion Plan Assessment
2110	TO	Direct Assignment Facilities
2120	TO	Other Supporting Facilities
2130	TO	Firm Point-to-Point Transmission Service
2132	PIPP S	Internal Firm Point-to-Point Transmission Service
2133	PIPP S	Firm Point-to-Point Transmission Service Resale
<b>2140</b>	<b>EDC</b>	<b>Non-Firm Point-to-Point Transmission Service</b>
2142	PIPP S	Internal Non-Firm Point-to-Point Transmission Service
2143	PIPP S	Non-Firm Point-to-Point Transmission Service Resale
2210	PIPP S	Transmission Congestion
2217	PIPP S	Planning Period Excess Congestion
2218	PIPP S	Planning Period Congestion Uplift
2220	PIPP S	Transmission Losses
2240	N/A	Day-ahead Economic Load Response
2241	N/A	Real-time Economic Load Response
2245	N/A	Emergency Load Response
2260	N/A	Emergency Energy
<b>2320</b>	<b>EDC</b>	<b>Transmission Owner Scheduling, System Control and Dispatch Service</b>
<b>2330</b>	<b>EDC</b>	<b>Reactive Supply and Voltage Control from Generation and Other Sources Service</b>
2340	N/A	Regulation and Frequency Response Service
2350	N/A	Energy Imbalance Service
2360	N/A	Synchronized Reserve
2365	N/A	Day-ahead Scheduling Reserve
2370	N/A	Day-ahead Operating Reserve
2371	N/A	Day-ahead Operating Reserve for Load Response
2375	N/A	Balancing Operating Reserve
2376	N/A	Balancing Operating Reserve for Load Response
2377	N/A	Synchronous Condensing
2378	N/A	Reactive Services
2380	N/A	Black Start Service
2420	PIPP S	Load Reconciliation for Transmission Losses
2500	PIPP S	Financial Transmission Rights Auction
2510	PIPP S	Auction Revenue Rights
2600	N/A	RPM Auction
2620	N/A	Interruptible Load for Reliability
2630	N/A	Capacity Transfer Rights
2640	N/A	Incremental Capacity Transfer Rights
2650	N/A	Non-Unit Specific Capacity Transaction
2660	N/A	Demand Resource and ILR Compliance Penalty
2661	N/A	Capacity Resource Deficiency

2662	N/A	Generation Resource Rating Test Failure
2663	N/A	Qualifying Transmission Upgrade Compliance Penalty
2664	N/A	Peak Season Maintenance Compliance Penalty
2665	N/A	Peak-Hour Period Availability
2666	N/A	Load Management Test Failure
<b>2687</b>	<b>N/A</b>	<b>FRR LSE Schedule 9-5</b>
<b>2688</b>	<b>N/A</b>	<b>FRR LSE Schedule 9-6</b>
<b>2930</b>	<b>EDC</b>	<b>Generation Deactivation</b>
<b>2932</b>	<b>EDC</b>	<b>Generation Deactivation Refund</b>
2980	PIPP S	Miscellaneous Bilateral

ATTACHMENT G

BILLING LINE ITEM TRANSFERS

<b><u>Billing Line Item Number</u></b>	<b><u>Billing Line Item</u></b>
1100	Network Integration Transmission Service
1108	Transmission Enhancement
1109	Midwest ISO Transmission Expansion Plan Assessment
1115	Transmission Enhancement Settlement
1242	Day-Ahead Load Response Charge Allocation
1243	Real-Time Load Response Charge Allocation
1320	Transmission Owner Scheduling, System Control and Dispatch Service
1330	Reactive Supply and Voltage Control from Generation and Other Sources Service
1450	Load Reconciliation for Transmission Owner Scheduling, System Control and Dispatch Service
1930	Generation Deactivation
1932	Generation Deactivation Refund
2108	Transmission Enhancement
2140	Non-Firm Point-to-Point Transmission Service