

Certified Supplier Service Agreement

This CERTIFIED SUPPLIER SERVICE AGREEMENT (Agreement) dated as of _____, 200____ is between and among Duke Energy Shared Services Inc. on behalf of Duke Energy Ohio, Inc. (“Duke Energy Ohio”), having its principal place of business at 139 East Fourth Street, Cincinnati, Ohio 45202 and _____ (“Certified Supplier”), having its principal place of business at _____, Duke Energy Ohio and Certified Supplier are collectively the Parties and each individually is a Party to the Agreement.

WHEREAS, Certified Supplier intends to enter into an agreement with Duke Energy Ohio in order to participate in Duke Energy Ohio’s Customer Choice Program, in order for Certified Supplier to supply electricity to its customers located within Duke Energy Ohio’s service territory, subject to the terms and conditions set forth in Duke Energy Ohio’s tariff P.U.C.O. Electric No. 20, as currently in effect and as may be amended from time to time (Certified Supplier Tariff); and

WHEREAS, Duke Energy Ohio intends to provide services to Certified Supplier under the terms and conditions of the Certified Supplier Tariff; and

WHEREAS, the Parties wish to establish the terms and conditions under which the Certified Supplier will participate in Duke Energy Ohio’s Customer Choice Program; and

NOW, THEREFORE, in consideration of the premises and the mutual agreements contained herein, the Parties agree as follows:

ARTICLE I

Definitions

For purposes of interpreting this Agreement, the terms contained herein shall have the same definitions and meanings as those contained within Duke Energy Ohio’s Certified Supplier Tariff.

ARTICLE II

Term

This Agreement shall commence on the date it is signed by the Parties and, subject to Certified Supplier’s compliance with the terms and conditions of this Agreement and the Certified Supplier Tariff and maintaining certification in good standing with the

Commission, shall continue in effect for a primary term of twelve (12) months. This Agreement shall continue in effect month to month thereafter, subject to Certified Supplier's compliance with the terms and conditions of this Agreement and the Certified Supplier Tariff and maintaining certification in good standing with the Commission, unless terminated by either Party upon at least ninety (90) days advance written notice.

ARTICLE III

Requirements for Program Participation

Duke Energy Ohio shall have the right to establish reasonable financial and performance standards for participation in its Customer Choice Program, provided that it does so on a non-discriminatory basis. Certified Supplier agrees, at all times, to comply with Section VI, Credit Requirements, contained in the Certified Supplier Tariff.

If Certified Supplier's participation in Duke Energy Ohio's Customer Choice Program terminates for any reason, Certified Supplier shall maintain any and all financial security instruments that Certified Supplier was required to provide pursuant to Section VI, Credit Requirements, contained in the Certified Supplier Tariff, until such time as both Parties have fully satisfied and discharged all of their claims against each other and obtained a written release from each other of their mutual obligations.

Certified Supplier agrees to fully comply at all times with the terms and conditions of this Agreement and the Certified Supplier Tariff and to maintain certification in good standing with the Commission.

ARTICLE IV

Full Requirements Service

Certified Supplier agrees to supply the full service electrical requirements for its customers in Duke Energy Ohio's Customer Choice Program as required under the Certified Supplier Tariff. In doing so, it is also the responsibility of the Certified Supplier to comply with the requirements of the Midwest ISO's Transmission and Energy Markets Tariff.

ARTICLE V

Transmission Scheduling Agent (TSA)

Certified Supplier shall be entitled to schedule its own power for delivery to End-use Customer if Certified Supplier is an eligible transmission customer and Market Participant under the terms of the MISO TEMT. In all other cases, Certified Supplier shall retain the services of an eligible transmission customer under the MISO TEMT.

Whether the Certified Supplier performs scheduling for itself or uses the services of an eligible transmission customer, the Certified Supplier shall be required to complete a Transmission Scheduling Agent Designation Agreement.

The Parties agree that the TSA shall be the sole point of contact for The Midwest ISO and for Duke Energy Ohio on all matters relating to services performed under the MISO TEMT.

Certified Supplier agrees that all actions or inactions of the TSA relating to services performed under the Certified Supplier Tariff and MISO TEMT to serve Certified Supplier's End-use Customers in Duke Energy Ohio's Customer Choice Program shall be imputed to Certified Supplier.

ARTICLE VI

Back-up Generation Service

If the Certified Supplier/TSA relationship is terminated and a new TSA has not begun to perform services under the MISO TEMT for Certified Supplier within the time limits specified in the Certified Supplier Tariff, Duke Energy Ohio agrees to supply and Certified Supplier agrees to take Back-up Generation Service under the terms and conditions of Rate BUG in the Certified Supplier Tariff.

ARTICLE VII

Credit

Duke Energy Ohio reserves the right to review Certified Supplier's credit worthiness at any time. Duke Energy Ohio may require Certified Supplier to post new or additional collateral at any time in order to enhance, restore or maintain Duke Energy Ohio's credit protection due to events including but not limited to market movement in the wholesale cost of power, degradation of a Certified Supplier's credit rating, impairment of a Certified Supplier's ability to pay its obligations, or failure to schedule adequate power to serve the Certified Supplier's End-use Customers. Certified Supplier shall satisfy Duke Energy Ohio's request for adequate security or adequate assurance of payment within three (3) business days of Duke Energy Ohio's request.

ARTICLE VIII

Supply Co-Management

The Parties acknowledge their responsibility to cooperate with each other to assure that Certified Supplier's End-use Customers receive reliable electric energy service. The Parties further agree to cooperate with each other whenever it becomes

necessary to switch any of Certified Supplier's End-use Customers to Duke Energy Ohio's standard service offer.

ARTICLE IX

Retail Energy Imbalance Service

The TSA must take service under the MISO TEMT, as a Market Participant, listing the switched load they represent, in Duke Energy Ohio, as an asset. Real time Load Balancing will be a function of the Midwest Market, and will be managed through Market Settlements with the MISO. When registering the aforementioned switched load as a market asset, the TSA will designate Duke Energy Shared Services as their meter Data Management Agent.

ARTICLE X

Billing Services and Obligations

Certified Supplier shall select one of the following billing options for each End-use Customer prior to initiating service to the End-use Customer: (1) separate billing by Duke Energy Ohio and the Certified Supplier; and (2) Consolidated and Rate Ready Billing by Duke Energy Ohio. Duke Energy Ohio will provide billing services to Certified Supplier in accordance with Section X, Billing Services and Obligations of the Certified Supplier Tariff and will use its best efforts to provide the additional billing services described in the stipulation of settlement in Case No. 99-1658-EL-ETP by the target dates set forth therein.

ARTICLE XI

Payment

Duke Energy Ohio shall submit monthly invoices to Certified Supplier for services rendered under this Agreement and the Certified Supplier Tariff. The invoices shall include charges for services rendered during the preceding month, unpaid charges for services rendered from prior months and late payment charges. Certified Supplier shall pay the invoice within ten (10) days of receipt. Payment shall be made in immediately available funds payable to Duke Energy Ohio or via electronic funds transfer. Duke Energy Ohio shall add a late payment charge of one and one-half (1½%) per month to any past due charges.

If Certified Supplier defaults and is terminated from Duke Energy Ohio's Customer Choice Program and Duke Energy Ohio is performing consolidated billing of Certified Supplier's End-use Customers, Duke Energy Ohio reserves the right to retain (as setoff) payments collected on behalf of the Certified Supplier against Duke Energy Ohio's charges to the Certified Supplier.

ARTICLE XII

Default, Suspension, Cancellation and Termination, Remedies

A Certified Supplier is in default of its obligations under Duke Energy Ohio's Customer Choice Program if any of the following occur, as set forth in Section 20.1(A) of Duke Energy Ohio's Certified Supplier Tariff:

- a) Notice is received that the Certified Supplier/TSA relationship is terminated and either (1) the Certified Supplier fails to designate a new TSA within five (5) business days or (2) the new entity acting as TSA fails to begin scheduling power within ten (10) business days of such new designation;
- b) the Certified Supplier fails to fully pay an invoice from Duke Energy Ohio for services rendered under this Agreement within three (3) business days following the due date of the invoice;
- c) the Certified Supplier's credit exposure exceeds the unsecured credit limit or Duke Energy Ohio's current collateral enhancement requirement by 5% or more and the Certified Supplier has failed to comply with Duke Energy Ohio's request for adequate security or adequate assurance of payment within three (3) business days of Duke Energy Ohio's request;
- d) the Commission has de-certified the Certified Supplier or otherwise declared it ineligible to participate in the Ohio Customer Choice Program or Duke Energy Ohio's Customer Choice Program;
- e) the Certified Supplier's action or inaction has or will jeopardize the operational integrity, safety or reliability of Duke Energy Ohio's transmission or distribution system;
- f) the Certified Supplier voluntarily withdraws from Duke Energy Ohio's Customer Choice Program without providing at least ninety (90) calendar days notice to Duke Energy Ohio;
- g) the Certified Supplier has filed a voluntary petition in bankruptcy, has had an involuntary petition in bankruptcy filed against it, is insolvent, has had a receiver, liquidator or trustee appointed to take charge of its affairs, or the Certified Supplier's liabilities exceeds its assets, or the Certified Supplier is otherwise unable to pay its debts as they become due.

In the event of default pursuant to this Agreement, Duke Energy Ohio shall have

the discretion to temporarily suspend or completely terminate this Agreement, in addition to all other remedies available to Duke Energy Ohio. Suspension or termination shall be pursuant to the terms and conditions of Section XX of Duke Energy Ohio 's Certified Supplier Tariff for Default, Suspension and Termination of a Certified Supplier incorporated herein by reference.

In the event of suspension or termination of this Agreement, the Certified Supplier's End-use Customers shall be returned to Duke Energy Ohio's Standard Offer Rate effective on each End-use Customer's next Meter Read Date after the date of termination and shall be subject to any applicable minimum stay requirement, unless the End-use Customer selects another Certified Supplier or rate offered by Duke Energy Ohio as an alternative to the minimum stay.

Duke Energy Ohio shall notify the Certified Supplier, Commission, and Staff in writing in reasonable detail and with a proposed remedy ten (10) business days in advance of any suspension or termination pursuant to Section 20.1 of the Certified Supplier Tariff, except for a suspension or termination due to non-delivery of power. The notice shall state the reason why Duke Energy Ohio seeks to suspend or terminate the Certified Supplier and propose a remedy to the default. Duke Energy Ohio shall send the notice to the address and fax number provided by the Certified Supplier in its Certified Supplier Service Agreement. Certified Supplier shall be entitled to file a complaint with the Commission regarding any suspension or termination.

Simultaneously or at any time after the written notice of Duke Energy Ohio 's intent to terminate or suspend this Agreement pursuant to Section 20.1 of Duke Energy Ohio 's Certified Supplier Tariff, Duke Energy Ohio shall file a written request with the Commission for authorization to suspend or terminate this Agreement. If the Commission does not act within ten (10) business days upon receipt of the request, the termination or suspension shall be effective on the eleventh (11th) business day after the date of the notice.

Duke Energy Ohio shall notify the Certified Supplier, Commission, and Staff in writing in reasonable detail and with a proposed remedy five (5) business days in advance of any suspension or termination for non-delivery of power pursuant to Section XX of the Certified Supplier Tariff. The notice shall state the reason why Duke Energy Ohio seeks to suspend or terminate the Certified Supplier and propose a remedy to the default. Duke Energy Ohio shall send the notice to the address and fax number provided by the Certified Supplier in its Certified Supplier Service Agreement. Certified Supplier shall be entitled to file a complaint with the Commission regarding any suspension or termination.

Simultaneously, or at any time after the written notice of Duke Energy Ohio 's intent to terminate or suspend this Agreement for non-delivery of power pursuant to Section XX of Duke Energy Ohio 's Certified Supplier Tariff, Duke Energy Ohio shall file a written request with the Commission for authorization suspend or terminate this

Agreement. If the Commission does not act within five (5) business days upon receipt of the request, the termination or suspension shall be effective on the sixth (6th) business day after the date of the notice.

If Duke Energy Ohio files a written request with the Commission for authorization to suspend or terminate this Agreement and the Commission takes action, the suspension or termination shall be effective on the date of any Commission Order that authorizes Duke Energy Ohio to suspend or terminate the Agreement.

Suspension or termination of a Certified Supplier to this Agreement for any reason shall not relieve the Company or the Certified Supplier from performing any other obligations under the Certified Supplier Tariff or this Agreement.

Duke Energy Ohio shall also be entitled to suspend or cancel this Agreement if the Commission or any court with authority over Duke Energy Ohio issues any order that either delays the start-up, suspends or terminates Duke Energy Ohio's Customer Choice Program or the Certified Supplier.

Upon cancellation of this Agreement, all amounts due under the Certified Supplier Tariff and this Agreement shall be immediately due and payable. The liquidated damages, termination rights, cancellation rights and payments due under the Certified Supplier Tariff and this Agreement for non-performance shall be Duke Energy Ohio's and Certified Supplier's sole and exclusive remedies for such non-performance. In no event shall either Party be liable for special, incidental, exemplary, punitive, indirect or consequential damages, including but not limited to loss of profit or revenue, cost of capital, cost of substitute products or services, downtime, costs or claims for damages by third parties against Duke Energy Ohio or Certified Supplier. This applies regardless of the legal theory upon which the claims are based, whether the legal theory is breach of contract, breach of warranty, tort (including negligence and strict liability) or any other theory of liability.

ARTICLE XIII

Force Majeure

Neither Party shall be liable in damages to the other, except for the actual delivered costs, plus losses, of replacement supplies, for any act, omission, or circumstance occasioned by or in consequence of any Acts of God, strikes, lockouts, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquake, fires, storms, floods, washouts, civil disturbances, explosions, breakage, or accident to machinery or transmission and distribution systems, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, and any other cause, whether of the kind herein enumerated or otherwise, not reasonably within the control of the Party claiming suspension and which by the exercise of due diligence such Party is unable to prevent or overcome. Failure to

prevent or settle any strike or strikes shall not be considered to be a matter within the control of the Party claiming suspension.

Such causes or contingencies affecting the performance hereunder by either Party hereto, however, shall not relieve it of liability in the event of its concurring negligence or in the event of its failure to use due diligence to remedy the situation and to remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies affecting such performance relieve Certified Supplier from its obligations to make payments of amounts due under the Certified Supplier Tariff or this Agreement.

Failure to purchase power supplies or transmission service for economic reasons shall not be considered force majeure.

ARTICLE XIV

Title to Power

Certified Supplier warrants that it will have good and clear title to all power delivered to Duke Energy Ohio hereunder, and that such power will be free and clear of all liens, encumbrances, and claims whatsoever, and that Certified Supplier will indemnify Duke Energy Ohio, and save it harmless from all suits, actions, debt, accounts, damages, costs, losses and expenses arising from or out of a breach of such warranty.

ARTICLE XV

Limitation of Third Party Rights

This Agreement is entered into solely for the benefit of Duke Energy Ohio and Certified Supplier and is not intended and should not be deemed to vest any rights, privileges or interests of any kind or nature to any third party, including, but not limited to Certified Supplier's End-use Customers.

ARTICLE XVI

Amendment

This Agreement may be amended only by a written agreement signed by the Parties, except that any amendment or revision to the Certified Supplier Tariff shall be automatically incorporated herein, as of the effective date of the amendment or revision to the Certified Supplier Tariff.

ARTICLE XVII

Succession and Assignment

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties hereto. Neither Party may assign this Agreement, however, in whole or in part, without the prior written approval of the non-assigning Party. Written consent to assignment shall not be unreasonably withheld.

ARTICLE XVIII

Applicable Law and Regulations

This Agreement shall be construed under the laws of the State of Ohio and shall be subject to all valid applicable State, Federal and local laws, rules, orders and regulations. Nothing herein shall be construed as divesting or attempting to divest any regulatory body of any of its rights, jurisdiction, powers or authority conferred by law.

ARTICLE XIX

Entire Agreement

This Agreement constitutes the entire agreement between the Parties and all prior discussions and documents exchanged between the Parties concerning the subject matter of this Agreement are merged and incorporated into this Agreement.

ARTICLE XX

Notices and Correspondence

All notices and correspondence provided for under this Agreement, the EDI Trading Partner Agreement, and the TSA Designation Agreement shall be sent to the following:

To the Certified Supplier:

Attn: _____

Title: _____

Telephone: _____

Facsimile: _____

Internet email: _____

To Duke Energy Ohio:

Certified Supplier Business Center
P. O. Box 960
Mail Location: EY575
Cincinnati, OH 45201-0960
Telephone: 513-287-2322
Facsimile: 513-287-2718
Internet e-mail: csbc@duke-energy.com

Either Party may change its address for receiving notices effective upon receipt, by written notice to the other Party.

IN WITNESS WHEREOF, the undersigned Parties have caused this Agreement to be executed in their names by their respective duly authorized officials, as of the _____ day of _____, 200__.

Duke Energy Ohio

By: _____

For the Certified Supplier

By: _____