

ATTACHMENT RJL-2

MASTER STANDARD SERVICE OFFER (“SSO”)

SUPPLY AGREEMENT

BETWEEN

THE DAYTON POWER AND LIGHT COMPANY d/b/a AES OHIO

AND

THE SSO SUPPLIER SET FORTH IN APPENDIX A HERETO

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MASTER SSO SUPPLY AGREEMENT

THIS MASTER SSO SUPPLY AGREEMENT (this “Agreement”) made and entered into this ___ day of _____, 20[] (the “Effective Date”) by and between The Dayton Power and Light Company d/b/a AES Ohio, which is a corporation organized and existing under the laws of the State of Ohio, and each of the suppliers listed on Appendix A severally, but not jointly (each an “SSO Supplier” and, collectively, the “SSO Suppliers”). AES Ohio and each SSO Supplier are hereinafter sometimes referred to collectively as the “Parties,” or individually as a “Party.”

WITNESSETH:

WHEREAS, AES Ohio is an Ohio public utility engaged, inter alia, in providing SSO Service within its service territory; and

WHEREAS, the PUCO found that, commencing on and after January 1, 2014, it would serve the public interest for AES Ohio to secure SSO Supply through a competitive bidding process; and

WHEREAS, on _____, 20[_], AES Ohio conducted and completed a successful Solicitation for SSO Supply; and

WHEREAS, each SSO Supplier was one of the winning bidders in the Solicitation for the provision of SSO Supply; and

WHEREAS, the PUCO has authorized AES Ohio to contract with winning bidders for the provision of SSO Supply to serve SSO Load in accordance with the terms of this Agreement; and

WHEREAS, AES Ohio is a signatory to agreements with the PJM Interconnection, LLC

("PJM"), including the Operating Agreement ("OA"), Transmission Owners Agreement ("TOA") and the Reliability Assurance Agreement ("RAA"). Pursuant to the RAA, AES Ohio currently acquires capacity through PJM's Reliability Pricing Model ("RPM") auctions; and

WHEREAS, each SSO Supplier has or will execute the appropriate PJM Agreements to permit it to provide SSO Supply to serve SSO Load within the Dayton Zone.

WHEREAS, each SSO Supplier, as a Load Serving Entity ("LSE") in the Dayton Load Zone, will satisfy its Capacity obligations under the PJM Agreements associated with its respective SSO Supplier Responsibility Share through the purchase of Capacity from PJM in accordance with the provisions of applicable PJM Agreements, including through participation in the base residual auction and incremental auctions administered by PJM, and related tariff provisions; and

WHEREAS, AES Ohio and the SSO Suppliers desire to enter into this Agreement setting forth their respective obligations concerning the provision of SSO Supply.

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

ARTICLE 1: DEFINITIONS

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

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

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

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

Bankrupt means, with respect to any entity, that such entity (i) voluntarily files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it by its creditors and such petition is not dismissed within sixty (60) calendar days of the filing or commencement; (ii) makes an assignment or any general arrangement for the benefit of its creditors; (iii) otherwise becomes 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 generally unable to pay its debts as they become 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 Month means each calendar month during the Delivery Period.

Business Day means any day except a Saturday, Sunday or a day that 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.

Capacity means “Unforced Capacity” as set forth in the PJM Agreements, or any successor measurement of the 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 PMEA/FMEA Adjustment if in favor of AES Ohio, or any other amount that is billable by AES Ohio to the SSO Supplier under this Agreement.

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 AES Ohio and the applicable SSO Supplier.

Credit Limit means an amount of credit, based on the creditworthiness of an SSO Supplier or its Guarantor, if applicable, determined pursuant to Section 6.6, granted by AES Ohio to such SSO Supplier to be applied towards the Total Exposure Amount for such SSO 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 AES Ohio.

Customer means any Person who receives distribution service from AES Ohio in accordance with the Applicable Legal Authorities.

Dayton Load Zone means that set of electrical locations determined pursuant to the applicable PJM Tariff, rules, agreements and procedures, representing the aggregate area of consumption for AES 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.

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 SSO Supply hereunder and the price at which AES Ohio or the SSO Supplier is able to purchase or sell (as applicable) SSO Supply (or any components of SSO Supply it is able to purchase or sell) from or to third parties including other SSO Suppliers and PJM; (ii) Emergency Energy charges; (iii) additional transmission or congestion costs incurred to purchase or sell SSO Supply; and (iv) Costs.

Defaulting Party has the meaning set forth in Section 5.1.

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

Delivery Point means the Dayton Residual Aggregate as defined within PJM.

Early Termination has the meaning set forth in Section 4.4.

Early Termination Date means, as between AES Ohio and the applicable SSO

Supplier, the date upon which an Early Termination becomes effective as specified in Section 5.2(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 AES Ohio, transmission owner(s) or PJM deems imminently likely to endanger life or property or to affect or impair AES Ohio's electrical system or the electrical system(s) of other Person(s) to which AES Ohio's electrical system is directly or indirectly connected (a "Connected Entity"). Such a condition or situation may include potential overloading of AES Ohio's subtransmission or distribution circuits, PJM minimum generation ("light load") conditions, or unusual operating conditions on either AES Ohio's or a Connected Entity's electrical system, or conditions such that AES Ohio are unable to accept Energy from the SSO Supplier without jeopardizing AES Ohio's electrical system or a Connected Entity's electrical system.

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

Energy means three-phase, 60-cycle alternating current electric energy, expressed in units of kilowatt-hours or megawatt-hours.

Event of Default has the meaning set forth in Section 5.1.

Excess Collateral has the meaning set forth in Section 6.7(c).

FERC means the Federal Energy Regulatory Commission, or any successor thereto.

Final Monthly Energy Allocation or **FMEA** means a quantity of Energy expressed in MWh which, for any Billing Month, is the PMEA adjusted for any billing or metering errors found subsequent to the calculation of PMEA 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 Month.

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.

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.

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

Guarantor means any Person having the authority and agreeing to guarantee an SSO Supplier's financial obligations under this Agreement, provided that such party meets AES Ohio's creditworthiness requirements for SSO Suppliers.

ICR Collateral means an ICT Guaranty plus the amount of any cash or Letter of Credit already posted to satisfy the aggregate ICR under this Agreement and any Other SSO Supply Agreement.

ICRT has the meaning set forth in Section 6.3.

ICT Guaranty means a guaranty, in the form substantially set forth in Appendix E, provided by a Guarantor in favor of AES Ohio guaranteeing an SSO Supplier's financial obligations in connection with ICT.

Indemnified Supplier has the meaning set forth in Section 12.1(b).

Independent Credit Requirement or **ICR** means an amount per Tranche required as security under Section 6.3, to mitigate the risk to AES Ohio of Energy price movements between the date of an Early Termination caused by an Event of Default by an SSO Supplier and the date the final calculation of Default Damages owing to AES Ohio under Section 5.2(c) is made.

Independent Credit Threshold or **ICT** means an amount of credit, based on the creditworthiness of an SSO Supplier or its Guarantor, if applicable, determined pursuant to Section 6.4, granted by AES Ohio to such SSO Supplier to be applied towards the satisfaction of such SSO Supplier's Independent Credit Requirement.

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

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

Kilowatt-hour or **kWh** means one kilowatt of electric power used over a period of one hour.

Letter of Credit means a standby irrevocable letter of credit acceptable to AES Ohio issued by a bank or other financial institution with a minimum "A-" long term bank deposit rating from S&P and a minimum "A3" long term bank deposit rating from

Moody's, in substantially similar form as set forth in Appendix D and including all of the requirements specifically set forth in Section 6.9.

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 SSO Supplier or its Guarantor.

Margin Call has the meaning set forth in Section 6.6(e).

Margin Collateral has the meaning set forth in Section 6.6(e).

Mark-to-Market Exposure Amount means an amount calculated each Business Day for each SSO Supplier reflecting the exposure to AES Ohio due to fluctuations in market prices for Energy as set forth in Section 6.5, minus amounts due to such SSO Supplier pursuant to Section 8.1.

Market Price Hub means a liquid pricing point located within PJM's geographic footprint.

Megawatt or **MW** means one thousand kilowatts.

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

Minimum Margin Threshold means \$100,000.

Minimum Rating means a minimum issuer rating as defined in Section 6.4(a)(i) of this Agreement.

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

Net Worth or **NW** means total assets less total liabilities, each as would be reflected on a balance sheet prepared in accordance with generally accepted accounting principles.

Non-Defaulting Party means (i) where an SSO Supplier is the Defaulting Party, AES Ohio; or (ii) where AES Ohio is the Defaulting Party with respect to an Event of Default, the SSO Supplier to which the applicable obligation was owed.

Ohio Sales and Use Taxes has the meaning set forth in Section 13.8.

Original Delivery Period has the meaning set forth in Appendix A.

Other SSO Supply Agreement has the meaning set forth in Section 5.3(c).

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

Person means an individual, partnership, joint venture, corporation, limited liability company, trust, association or unincorporated organization, any Governmental

Authority, or any other entity.

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 Control Area means the control area recognized by NERC as the PJM Control Area.

PJM E-Account means an account obtainable through PJM which provides access to web-based PJM 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.

PMEA or Preliminary Monthly Energy Allocation means a quantity of Energy expressed in MWh which, for any Billing Month, is the preliminary calculation of the SSO Supplier's SSO Supplier Responsibility Share.

PMEA/FMEA Adjustment means, for any Billing Month, the monetary amount due to an SSO Supplier or AES Ohio, as the case may be, in order to reconcile any difference between the PMEA used for the purpose of calculating estimated payments made to such SSO Supplier for a given month and the Final Monthly Energy Allocation ("FMEA") used for calculating the final payments due to the SSO Supplier for such month, as more fully described in Article 8.

Price means, with respect to each SSO Supplier, the price in \$/MWh set forth in Appendix A, resulting from AES Ohio's Solicitation for the opportunity to provide SSO Supply. The Price is the basis for financial settlement of SSO Supply supplied by an SSO Supplier for SSO Customers under this Agreement.

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

Residential Customer means a Customer taking service under any of AES Ohio's Residential Tariffs.

Residential Tariff means the Rate Schedules designated as Residential or Residential

Heating within AES Ohio's Generation, Transmission and Distribution Tariffs as approved by the PUCO and as modified from time to time.

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 SSO Supply) provided for under this Agreement for the period following the Early Termination Date through the remainder of the Original Delivery Period will be deemed to be those quantities that were delivered on an hourly basis, or would have been delivered on an hourly basis had this Agreement been in effect, during the previous calendar year, adjusted for any SSO Load changes as may have occurred since the previous calendar year as determined by AES Ohio.

Solicitation means the competitive bidding process by which the counterparty, quantity, pricing and other terms of this Agreement are established.

SSO Customers means both Residential Customers and non-Residential Customers taking SSO Supply from AES Ohio during the Delivery Period.

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

SSO Service means Standard Service Offer service that is not provided by a CRES Supplier and also does not include the load of customers served via the Percentage of Income Payment Plan ("PIPP"), unless or until Ohio Department of Development (ODOD) initiates a PIPP aggregation effort.

SSO Supplier has the meaning set forth in the preamble.

SSO Supplier Responsibility Share means, for each SSO Supplier, the fixed percentage share of the SSO Load for which the SSO Supplier is responsible as set forth in Appendix A. The stated percentage is determined by dividing the number of Tranches won by the SSO Supplier in the Solicitation by the total number of Tranches.

SSO Supply means unbundled load-following Energy, Capacity and Ancillary Services, 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 or NERC and such other services or products that are provided by a CRES Supplier or an SSO Supplier to fulfill its obligations to serve customer load, as required by Section 4928.141 of the Ohio Revised Code and shall further include any market-based transmission and ancillary services necessary to import electric power into PJM. SSO Supply does not include transmission within PJM under PJM's OATT and Network Integration Transmission Service and nonmarket-based ancillaries and further does not include any delivery service provided by AES Ohio after receipt of the SSO Supply at the Delivery Point.

Standard Service Offer means a market-based standard service offer of all competitive retail electric services necessary to maintain essential electric service to

Customers, including unbundled load-following Energy, Capacity, Ancillary Services and all market-based 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, or NERC and such other services or products that are provided by a CRES Supplier or an SSO Supplier to fulfill its obligations to serve customer load, as required by Section 4928.141 of the Ohio Revised Code.

Statement has the meaning set forth in Section 8.1(a).

Taxes have the meaning set forth in Section 13.8.

Term has the meaning set forth in Section 4.1.

Termination Payment has the meaning set forth in Section 5.3(c).

Total Exposure Amount means an amount calculated each Business Day for each SSO Supplier reflecting the total credit exposure to AES 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 SSO Supply Agreement; and (iii) the amount designated as the “credit exposure” (or similar designation) under any Other SSO Supply Agreement; 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 similar form as set forth in Appendix E, provided by a Guarantor in favor of AES Ohio guaranteeing an SSO Supplier’s financial obligation with respect to its Total Exposure Amount.

Tranche means a fixed percentage share of the SSO Load as determined for the purposes of the Solicitation conducted to procure SSO Supply for the SSO Load.

UCC means the Uniform Commercial Code.

ARTICLE 2: GENERAL TERMS AND CONDITIONS

2.1 SSO Supplier’s Obligations to Provide SSO Supply

Each SSO Supplier hereby agrees, severally, but not jointly, as follows:

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

b) in accordance with the applicable PJM Agreements, each SSO Supplier shall purchase capacity from PJM (and, unless AES Ohio directs otherwise, provide payment for the same to PJM in accordance with Section 8.2(b)) the Capacity necessary to fulfill the Capacity obligation associated with such SSO Supplier's SSO Supplier Responsibility Share pursuant to the PJM Agreements;

c) (i) each SSO Supplier's obligation under Sections 2.1(a) and (b) will result in physical delivery and not financial settlement; (ii) the quantity of SSO Supply that such SSO Supplier must deliver will be determined by the requirements of the SSO Load, which may be different than the amount indicated in the Solicitation; and (iii) this Agreement does not provide for an option by such SSO Supplier with respect to the quantity of SSO Supply to be delivered; and

d) each SSO Supplier shall deliver SSO Supply to the Delivery Point under this Agreement free and clear of any and all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person.

2.2 Company's Obligation to Take SSO Supply

During the Delivery Period, AES Ohio shall purchase and accept SSO Supply provided by an SSO Supplier pursuant to Section 2.1.

2.3 Firm Transmission Service and other Transmission Charges

a) Each SSO Supplier shall be responsible and at its sole cost and expense, for the provision of any transmission service that may be necessary to import electric power into PJM. Notwithstanding the requirements of Section 7.1(a), AES Ohio shall be financially responsible for the provision of Firm Transmission Service within PJM under PJM's OATT and Network Integration Transmission Service; provided, however, that the SSO Supplier shall remain financially liable for any fines or penalties associated with the scheduling function, unless the fine or penalty is directly and solely a result of a failure of AES Ohio to fulfill its obligations under Section 7.1(b). AES Ohio shall be responsible for both performance and financially for any transmission and delivery services necessary to deliver the SSO Supply from the Delivery Point to SSO Customers.

b) As further clarification as to the allocation of financial obligations between AES Ohio and each SSO Supplier, Appendix G identifies each line item on PJM bills received by AES Ohio and identifies whether that line item will become the responsibility of the SSO Supplier (consistent with its SSO Supplier Responsibility Share) or whether the financial responsibility for such line item will be retained by AES Ohio. Any new PJM charges not reflected in Appendix G will be assigned based on how similar charges were assigned within Appendix G.

c) For costs assigned to SSO Suppliers, each SSO Supplier shall be responsible for all such costs and expenses in proportion to its SSO Supplier Responsibility Share.

2.4 Other Changes in PJM Charges

Each SSO Supplier is responsible, at its sole cost and expense, for any changes in PJM products and pricing during the Term.

2.5 Congestion and Congestion Management

Each SSO Supplier is responsible for any congestion costs incurred to supply its SSO Supplier Responsibility Share.

2.6 PJM E-Accounts

Each SSO Supplier and AES Ohio shall work with PJM to establish any PJM E-Accounts necessary for such SSO Supplier to provide SSO Supply. Accounts will be used for the sole purpose of scheduling auction load. No other transactions will be executed under such accounts.

2.7 Reliability Guidelines

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

2.8 PJM Membership

a) Each SSO 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.” During the Delivery Period, AES Ohio shall be a member in good standing of PJM.

b) Pursuant to the PJM Agreements that each SSO Supplier shall be required to execute, each SSO Supplier shall be responsible, and be liable, to PJM for the performance of its LSE obligations associated with the provision of SSO Supply under this Agreement.

2.9 Declaration of Authority

AES Ohio and each SSO Supplier shall have executed the Declaration of Authority in the form attached hereto as Appendix F.

2.10 Regulatory Authorizations

a) AES Ohio and each SSO Supplier shall obtain and maintain throughout the Delivery Period all regulatory authorizations necessary to perform their respective obligations under this Agreement, and with respect to SSO Suppliers only, each SSO 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.

b) Each SSO Supplier shall cooperate in good faith with AES 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 SSO Supply before the PUCO, FERC or any other Governmental Authority.

2.11 Retail Distribution

AES Ohio will be responsible for (i) metering, billing and delivery with respect to SSO Customers (and SSO Suppliers will have no responsibility with respect thereto) and (ii) distribution services (and SSO Suppliers will have no responsibility with respect thereto).

2.12 PJM Member Default Cost Allocation

In the event PJM imposes a Default Allocation Assessment upon AES Ohio relating to a default during the Term, AES Ohio may, in its sole discretion, invoice each SSO Supplier, based on its SSO Supplier Responsibility Share, for amounts determined, in AES Ohio's sole discretion, to be properly payable by such SSO Supplier from the Default Allocation Assessment and each SSO Supplier shall pay such amounts within three (3) Business Days after receipt of such invoice, subject to the dispute resolution procedures set forth in Section 8.1(f).

2.13 Status of SSO Supplier

In order to meet AES Ohio's service obligations under Applicable Legal Authorities, it is the intent of the Parties that each SSO Supplier shall be deemed a Load Serving Entity for the duration of the Delivery Period pursuant to the PJM Agreements and Applicable Legal Authorities.

2.14 Sales for Resale

All SSO Supply provided by an SSO Supplier to AES Ohio shall be sales for resale, with AES Ohio reselling such SSO Supply to SSO Customers.

ARTICLE 3: REPRESENTATIONS AND WARRANTIES**3.1 SSO Supplier's Representations and Warranties**

Each SSO Supplier hereby represents and warrants to AES Ohio as follows:

a) it is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and, if organized outside the State of Ohio, is duly registered and authorized to do business and is in good standing in the State of Ohio;

b) it has all requisite power and authority to execute and deliver this Agreement, to carry on the business to be conducted by it under this Agreement and to enter into and perform its obligations hereunder, including the satisfaction of all applicable PUCO, FERC and PJM requirements;

c) the execution, delivery and performance of 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 decree of any Governmental Authority;

d) this Agreement is the legal, valid and binding obligation of such SSO Supplier, enforceable in accordance with its terms, except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium or other laws affecting creditors' rights generally;

e) as of the commencement of the Original Delivery Period, it has duly obtained all authorizations from any Governmental Authority necessary for it to perform its obligations under this Agreement;

f) there are no pending, or to its knowledge threatened, actions, suits or proceedings against it or any of its Affiliates, or any legal proceedings before any Governmental Authority that could reasonably be expected to adversely affect its ability to perform its obligations under this Agreement;

g) it is not relying upon the advice or recommendations of any other Party in entering into this Agreement, it is capable of understanding, understands and accepts the terms, conditions and risks of this Agreement, and no other Party is acting as a fiduciary for or advisor to it in respect of this Agreement;

h) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance will occur as a result of its entering into or performing its obligations under this Agreement;

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

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;

k) as of the commencement of the Original Delivery Period, it is (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;”

l) as of the commencement of the Original Delivery Period, it has duly executed the Declaration of Authority in the form attached hereto as Appendix F, which is in full force and effect; and

m) as of the commencement of the Original Delivery Period, it has duly obtained all FERC authorization necessary or desirable to make sales of Energy, Capacity, and Ancillary Services at market-based rates within PJM.

3.2 Company’s Representations and Warranties

AES Ohio hereby represents and warrants to the SSO Suppliers 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 to carry on the business to be conducted by it under this Agreement and to enter into and perform its obligations hereunder;

c) the execution, delivery and performance of 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 decree of any Governmental Authority;

d) this Agreement is the legal, valid and binding obligation of the Company, enforceable in accordance with its terms, except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium or other laws affecting creditors' rights generally;

e) as of the commencement of the Original Delivery Period, it has duly obtained all authorizations from any Governmental Authority necessary for it to perform its obligations under this Agreement;

f) there are no pending, or to its knowledge threatened, actions, suits or proceedings against it or any of its Affiliates, or any legal proceedings before any Governmental Authority that could reasonably be expected to adversely affect its ability to perform its obligations under this Agreement;

g) it is not relying upon the advice or recommendations of any other Party in entering into this Agreement, it is capable of understanding, understands and accepts the terms, conditions and risks of this Agreement, and no other Party is acting as a fiduciary for or advisor to it in respect of this Agreement;

h) 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; 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.

3.3 Notice

If a Party becomes aware that any of the representations, warranties, or covenants in this Agreement are no longer true during the Term, such Party must immediately notify the other Parties in accordance with the notice provisions of Section 13.1, provided that if the notifying Party is an SSO Supplier, the SSO Supplier does not have to notify any other SSO Supplier.

ARTICLE 4: COMMENCEMENT AND TERMINATION OF AGREEMENT

4.1 Term

The term of this Agreement will commence upon the Effective Date and continue through the end of the Delivery Period (the "Term"); provided, however, that the provision of SSO Supply by SSO Suppliers will commence on _____ at

12:00:01 a.m. prevailing Eastern Time.

4.2 Effect of Termination on Obligations; Survival

Termination of this Agreement, including Early Termination as between AES Ohio and an SSO Supplier for any reason, shall not relieve AES Ohio or such SSO Supplier of any obligation accruing on or prior to such termination. Any termination of this Agreement, including Early Termination, as between AES Ohio and an SSO Supplier, shall not relieve or otherwise affect AES Ohio or other SSO Suppliers with respect to their other obligations under this Agreement, absent a written agreement to the contrary among the remaining parties. All provisions of this Agreement which must, in order to give full force and effect to the rights and obligations of the Parties, survive termination or expiration of this Agreement shall so survive, including Articles 5, 10, 11, 12 and 13 and Sections 2.6, 6.8, 6.11, 8.1(d) and (h), in accordance with the terms thereof.

4.3 Mutual Termination

AES Ohio and any SSO Supplier may agree at any time during the Term to terminate their respective rights and obligations hereunder on such terms and under such conditions as they mutually deem to be appropriate as set forth in a mutual termination agreement acceptable in form and substance to AES Ohio and such SSO Supplier.

4.4 Early Termination

This Agreement may be terminated as between AES Ohio and an SSO Supplier prior to the end of the Term due to the occurrence of an Event of Default and the declaration of an Early Termination Date by the Non-Defaulting Party pursuant to Section 5.2 (an "Early Termination").

ARTICLE 5: BREACH AND DEFAULT

5.1 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 8.2(b)) if such failure is not remedied within one (1) Business Day after receipt of written notice of non-payment;

b) with respect to an SSO Supplier, the failure of the Defaulting Party to provide Margin Collateral, or with respect to AES Ohio, the failure of the Defaulting Party to return Excess Collateral, in each case pursuant to Section 6.7;

c) failure of the Defaulting Party to comply with its obligations pursuant to Article 6 (except to the extent constituting a separate Event of Default under Section 5.1(b)) if such failure is not remedied within three (3) Business Days of such failure;

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

e) the failure of the Defaulting Party to comply with the requirements of Sections 2.9 and 2.11 if such failure is not remedied within three (3) Business Days of such failure;

f) 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;

g) the failure of the Defaulting Party to perform any material obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) if such failure is not remedied within three (3) Business Days after written notice;

h) the Defaulting Party becomes Bankrupt;

i) PJM holds AES Ohio responsible for the provision of SSO Supply, including Energy, Capacity or Ancillary Services, to meet the Defaulting Party's SSO 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 indebtedness for borrowed money in an aggregate amount of not less than five percent (5%) of such Defaulting Party's or Guarantor's (as the case may be) NW, which results in such 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 five percent (5%) of such Defaulting Party's or Guarantor's (as the case may be) NW; or (iii) a default, event of default or other similar condition or event by the Defaulting Party under any Other SSO Supply Agreement or by its Guarantor under any guaranty with respect to any Other SSO Supply Agreement; and

k) with respect to a 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 shall not be 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 AES 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.

5.2 Rights Upon an Event of Default

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

a) immediately suspend performance upon written notice to the Defaulting Party; provided, however, that if an SSO Supplier is the Non-Defaulting Party, such SSO Supplier may only suspend performance if the default of the Defaulting Party constitutes an Event of Default under Sections 5.1(a) or (h);

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 an SSO Supplier is the Non-Defaulting Party, such SSO Supplier may only declare on Early Termination if the default of the Defaulting Party constitutes an Event of Default under Sections 5.1(a) or (h);

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.

5.3 Default Damages; Settlement Amount; Termination Payment

a) **Default Damages.** Subject to Section 5.3(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 5.2(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.

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 similar settlement amounts payable to the Defaulting Party under any other agreements between AES Ohio and the applicable SSO Supplier for the provision of SSO Supply or similar service (each, an "Other SSO Supply Agreement") being terminated due to the event giving rise to the Event of Default plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party under this Agreement or Other SSO Supply Agreements and actually received, liquidated and retained by the Non-Defaulting Party, plus any or all other amounts due to the Defaulting Party under this Agreement and, at the option of the Non-Defaulting Party, Other SSO Supply Agreements, and (ii) the sum of the Settlement Amount under this Agreement payable to the Non-Defaulting Party, plus similar settlement amounts payable to the Non-Defaulting Party under any Other SSO Supply Agreement plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Defaulting Party under this Agreement or Other SSO Supply Agreements and actually received,

liquidated and retained by the Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement and, at the option of the Non-Defaulting Party, Other SSO Supply Agreements. The Termination Payment will be due to or due from the Non-Defaulting Party as appropriate; provided, however, that if an SSO Supplier is the Defaulting Party and the Termination Payment is due to such SSO Supplier, AES 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 security for additional amounts that may be determined to be due and owing by such SSO Supplier as Default Damages; and further provided that any previously attached security interest of AES Ohio in such retained amounts will continue. If the Termination Payment has been retained by AES Ohio as security for additional amounts that may be determined to be due and owing by the SSO 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 SSO Supplier, AES Ohio will pay simple interest on the Termination Payment amount being made to the SSO Supplier for the period of such retention. Simple interest will be calculated at the lower of the Interest Index or six percent (6%) per annum.

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 5.3(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: (1) a detailed written explanation of the basis for such dispute; (2) a notice triggering the dispute resolution procedures in Article 10; and (3) if Default Damages or a Termination Payment is allegedly due from the Defaulting Party, the Defaulting Party must make the payment subject to potential repayment based on the outcome of the dispute resolution process, or provide financial assurances to the Non-Defaulting Party in an amount equal to the Default Damages or Termination Payment, as the case may be and in a form acceptable to the Non-Defaulting Party in its sole and exclusive judgment.

5.4 Step-up Provision

If an SSO Supplier defaults in its obligations hereunder resulting in the exercise of the right of Early Termination by AES Ohio with respect to such SSO Supplier, then AES Ohio, subject to Applicable Legal Authorities, may offer one or more of the non-defaulting SSO Suppliers the right to assume under this Agreement additional Tranches of SSO Load, subject to further compliance with the creditworthiness provisions of Article 6. The provision of any such offer by AES Ohio to non-defaulting SSO Suppliers shall indicate the duration of the offer and the manner of acceptance thereof. Following the assumption by an SSO Supplier of additional Tranches hereunder, such SSO

Supplier and AES Ohio shall execute an amendment to this Agreement modifying Appendix A to reflect the revised SSO Supplier Responsibility Share of the non-defaulting SSO Supplier accepting such offer. An SSO Supplier will not suffer any prejudice under this Agreement or otherwise arising from its election to decline an offer to assume additional Tranches upon the default of another SSO Supplier.

5.5 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 SSO 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 SSO Supply Agreement that are unsecured and not subject to any Guaranty; (ii) second, to satisfy any payment obligations of the Defaulting Party to the Non-Defaulting Party pursuant to this Agreement or any Other SSO 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 SSO Supply Agreement.

5.6 Preservation of Rights of Non-Defaulting Party

The rights of the Non-Defaulting Party under this Agreement, including Sections 5.2, 5.3 and 5.5, 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 6: CREDITWORTHINESS; PERFORMANCE ASSURANCE**6.1 Applicability**

Each SSO Supplier agrees that it will meet the creditworthiness standards of this Article 6 at all times during the Term and will inform AES Ohio immediately of any changes in its credit rating or financial condition. Without limiting the foregoing, each SSO Supplier shall, upon the written request of AES Ohio, affirmatively demonstrate to AES Ohio in a manner satisfactory to AES Ohio its compliance with the creditworthiness standards set forth hereunder. AES Ohio may establish less restrictive creditworthiness standards under this Article 6 in a non-discriminatory manner.

6.2 Creditworthiness Determination

AES Ohio will determine the creditworthiness of an SSO 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 corporate or issuer credit rating and assessment of financial statements and creditworthiness. AES Ohio will have full discretion, without liability or recourse to such SSO Supplier or its Guarantor, if applicable, to evaluate the evidence of creditworthiness submitted by such SSO Supplier or Guarantor. AES Ohio may re-evaluate the creditworthiness of an SSO Supplier or Guarantor from time to time, including whenever they become aware of an adverse change in such SSO Supplier's or Guarantor's credit standing. In addition, the SSO Supplier may petition AES Ohio to re-evaluate its creditworthiness whenever an event occurs that the SSO Supplier reasonably believes would improve the determination made by AES Ohio of its or its Guarantor's creditworthiness. AES 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. AES 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. AES Ohio shall perform its credit re-evaluation and associated security calculation in a non-discriminatory manner. Each SSO Supplier or its Guarantor shall provide unrestricted access to its audited financial statements; however, if audited financial statements are not available, AES Ohio may specify other types of financial statements that will be accepted. If AES Ohio determines in its sole discretion that it is unable to adequately assess an SSO Supplier's or Guarantor's creditworthiness or the credit rating of an SSO Supplier or its Guarantor is insufficient, such SSO Supplier shall be required to post ICR Collateral in accordance with Section 6.4 and Margin Collateral in accordance with Section 6.7.

6.3 Independent Credit Requirement

The Independent Credit Requirement ("ICR") per Tranche ("ICRT") that will be required of each SSO Supplier under this Agreement will initially be the sum of the amounts set forth in Attachment C-1 at inception of the Original Delivery Period for each tranche and will decline throughout the term in accordance with the schedule set forth in Attachment C-1.

6.4 Independent Credit Threshold

Each SSO Supplier that qualifies under the following criteria will be granted an Independent Credit Threshold (ICT).

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

(i) the SSO 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 corporate or issuer credit rating of at least "BB-" from S&P, "Ba3" from Moody's or "BB-" from Fitch (a "Minimum Rating"). If the SSO Supplier or its Guarantor is rated by only two rating agencies, and the ratings are split, the higher rating will be used. If the SSO Supplier is rated by three rating agencies, and the ratings are split, the highest ratings will be used. The maximum level of the ICT will be determined based on the following table:

Independent Credit Threshold				
Credit Rating of the SSO Supplier or its Guarantor			Max Independent Credit Threshold (Calculated as the lesser of the % of Net Worth (NW) and the applicable Credit Limit Cap below)	
S&P	Moody's	Fitch	%of NW	Credit Limit Cap
BBB+ and above	Baa1	BBB+ and above	10%	N/A
BBB	Baa2	BBB	10%	N/A
BBB-	Baa3	BBB-	10%	N/A
BB+	Ba1	BB+	7%	\$3,000,000
BB	Ba2	BB	2%	\$2,000,000
BB-	Ba3	BB-	1%	\$1,000,000
Below BB-	Below Ba3	Below BB-	0.0%	\$0

(ii) for SSO Suppliers having a Guarantor, the maximum level of the ICT that can be granted based on an ICT Guaranty will be determined in accordance with section 6.4(a)(i) above, with reference to the credit rating of the Guarantor. The SSO Supplier will be granted an ICT up to the amount of the ICT Guaranty but not exceeding the maximum ICT shown in the table above. If an ICT Guaranty is provided

for an unlimited amount, the SSO Supplier will be granted an ICT up to the maximum ICT shown in the table above. The ICT Guaranty tendered by the SSO Supplier to satisfy the ICT requirement arising under this Section 6.4 shall be a separate guaranty from the Total Exposure Amount Guaranty, if any, tendered by the SSO Supplier to satisfy any requirement for a Credit Limit to cover the Total Exposure Amount arising under Section 6.6; provided, however, that a single Guaranty may be provided if such Guaranty is for an unlimited amount.

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

(i) the SSO Supplier must supply such evidence of creditworthiness as to provide AES Ohio with comparable assurances of creditworthiness as applicable above for SSO Suppliers that have been organized under the laws of the United States; or

(ii) the Guarantor of an SSO Supplier must supply such evidence of creditworthiness as to provide AES Ohio with comparable assurances of creditworthiness as applicable above for Guarantors of SSO Suppliers that have been organized under the laws of the United States. AES Ohio may reject such Guarantors that do not meet the creditworthiness requirements.

(iii) for an SSO Supplier: (1) a legal opinion of counsel qualified to practice in the foreign jurisdiction in which the SSO Supplier is organized that (A) the SSO Supplier is duly incorporated and existing in such foreign jurisdiction; (B) this Agreement is the binding and enforceable obligation of the SSO Supplier in such foreign

jurisdiction and does not violate any local law or the SSO 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 the Agreement and the performance by the SSO Supplier of its obligations hereunder; and (2) the sworn certificate of the corporate secretary (or similar officer) of such SSO Supplier that the Person executing the Agreement on behalf of the SSO Supplier has the authority to execute the Agreement and that the governing board of such SSO Supplier has approved the execution of the Agreement. AES Ohio will have full discretion, without liability or recourse to the SSO Supplier, to evaluate the sufficiency of the documents submitted by the SSO Supplier; or

(iv) for the Guarantor of an SSO 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 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 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 Guaranty on behalf of the Guarantor has the authority to execute the Guaranty and that the governing board of such Guarantor has approved the execution of the Guaranty.

c) SSO Suppliers who do not qualify for an ICT or whose ICT plus the amount of any cash or Letter of Credit already posted in accordance with Section 6.9 to satisfy its aggregate ICR under this Agreement and any Other SSO Supply Agreement (the "ICR Collateral") does not meet its aggregate ICR under this Agreement and any Other SSO Supply Agreement, 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 SSO Supply Agreement exceeds its ICT.

d) AES Ohio will have full discretion, without liability or recourse to the Guarantor or the SSO Supplier, to evaluate the sufficiency of the documents submitted by such Guarantor.

6.5 Mark-to-Market Credit Exposure Methodology

To calculate the Mark-to-Market Exposure Amount for each SSO Supplier, the following mark-to-market credit exposure methodology will be used. The "mark" for each Billing Month will be determined at the time the Solicitation is completed based on the then prevailing Forward Market Prices. At the time the Solicitation is completed, the Mark-to-Market Exposure Amount for each SSO Supplier shall be equal to zero. Subsequently, the differences between the prevailing Forward Market Prices on a valuation date and the "mark" prices will be used to calculate the Mark-to-Market Exposure Amounts for each SSO Supplier. The total Mark-to-Market Exposure Amount will be equal to the

sum of the Mark-to-Market Exposure Amounts for each Billing Month during the Original Delivery Period limited to a rolling forward 24 month period starting from this Agreement's Effective Date, as applicable. Forward Market Prices will be determined by publicly available market quotations obtained by AES Ohio; provided, however, if such quotations are not publicly available, Forward Market Prices will be determined by AES Ohio using any method which AES Ohio deems appropriate and which reasonably reflects forward market pricing conditions in PJM. The methodology for calculation of the Mark-to-Market Exposure Amount is illustrated in the example (using hypothetical numbers) in Appendix C-2, including, but without limiting the preceding sentence, a methodology AES Ohio expects to use to derive off-peak Forward Market Prices.

6.6 Credit Limit

The following criteria constitute AES Ohio's creditworthiness requirements for the SSO Suppliers to cover the Total Exposure Amount:

a) for SSO Suppliers to be granted a Credit Limit without delivering a Total Exposure Amount Guaranty or other performance assurances acceptable to AES Ohio, in the case of an SSO Supplier organized under the laws of the United States, the SSO Supplier must (1) be rated by at least one of the following rating agencies: S&P, Moody's, or Fitch, and (2) have a minimum corporate or issuer credit rating equal to the Minimum Rating. If the SSO Supplier is rated by only two rating agencies, and the ratings are split, the higher rating will be used. If the SSO Supplier is rated by three rating agencies, and the ratings are split, the highest 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 SSO Supplier or its Guarantor			Max Credit Limit (calculated as the lesser of the % of Net Worth (NW) and the applicable Credit Limit Cap below)	
S&P	Moody's	Fitch	%of NW	Credit Limit Cap
BBB+ and above	Baa1	BBB+ and above	10%	\$50,000,000
BBB	Baa2	BBB	10%	\$40,000,000
BBB-	Baa3	BBB-	10%	\$30,000,000
BB+	Ba1	BB+	7%	\$15,000,000
BB	Ba2	BB	2%	\$7,500,000
BB-	Ba3	BB-	1%	\$5,000,000
Below BB-	Below Ba3	Below BB-	0.0%	\$0

The SSO Supplier will be required to post cash or a Letter of Credit in an acceptable form as defined in Section 6.9 below (see standard format in Appendix D) for the Margin due the Company as set forth in Section 6.7 of this Agreement; or

b) for SSO Suppliers delivering a Total Exposure Amount Guaranty, in the case of a Guarantor 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 the subsection (a) above, with reference to the credit rating of the Guarantor, except that the Credit Limit granted to the SSO Supplier will not exceed the amount of the Total Exposure Amount Guaranty.

c) For an SSO Supplier or Guarantor, if applicable, that has not been organized under the laws of the United States, the following additional standards will apply:

(i) the SSO Supplier must supply such evidence of creditworthiness as to provide AES Ohio with comparable assurances of creditworthiness as applicable

above for SSO Suppliers that have been organized under the laws of the United States;
or

(ii) if the SSO Supplier is providing a Total Exposure Amount Guaranty, the Guarantor of an SSO Supplier must supply such evidence of creditworthiness as to provide AES Ohio with comparable assurances of creditworthiness as applicable above for Guarantors of SSO Suppliers that have been organized under the laws of the United States. AES Ohio may reject Total Exposure Amount Guaranties from Guarantors that do not meet the creditworthiness requirements.

d) All SSO Suppliers or Guarantors of SSO Suppliers, if applicable, that have not been organized under the laws of the United States must, in addition to all documentation required elsewhere in this Section 6.6, supply the following to AES Ohio:

(i) for an SSO Supplier: (1) a legal opinion of counsel qualified to practice in the foreign jurisdiction in which the SSO Supplier is organized that (A) the SSO Supplier is duly incorporated and existing in such foreign jurisdiction; (B) this Agreement is the binding and enforceable obligation of the SSO Supplier in such foreign jurisdiction and does not violate any local law or the SSO 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 the Agreement and the performance by the SSO Supplier of its obligations hereunder; and (2) the sworn certificate of the corporate secretary (or similar officer) of such SSO Supplier that the

Person executing the Agreement on behalf of the SSO Supplier has the authority to execute the Agreement and that the governing board of such SSO Supplier has approved the execution of the Agreement. AES Ohio will have full discretion, without liability or recourse to the SSO Supplier, to evaluate the sufficiency of the documents submitted by the SSO Supplier; or

(ii) for the Guarantor of an SSO 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 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 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 Guaranty on behalf of the Guarantor has the authority to execute the Guaranty and that the governing board of such Guarantor has approved the execution of the Guaranty. AES Ohio will have full discretion, without liability or recourse to the Guarantor or the SSO Supplier, to evaluate the sufficiency of the documents submitted by such Guarantor.

e) For an SSO Supplier with a Total Exposure Amount Guaranty, the SSO 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 AES Ohio on or prior to the Effective Date, but may be modified in any amended or substitute Total Exposure Amount Guaranty provided to AES Ohio during the Term. The SSO 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 AES Ohio has made a demand of the SSO Supplier to cover Margin (a "Margin Call") but before the SSO Supplier has provided AES Ohio with cash credited to a deposit account of AES Ohio or a Letter of Credit in accordance with Section 6.9, in each case in an amount equal to the Margin (the "Margin Collateral"). Notwithstanding anything herein to the contrary, the SSO Supplier may increase the limit of its Total Exposure Amount Guaranty after satisfying a Margin Call. Upon AES Ohio's receipt of an amended or substitute Total Exposure Amount Guaranty increasing the limit of the Total Exposure Amount Guaranty, the SSO Supplier may request a return of Margin Collateral in accordance with Section 6.7. The SSO Suppliers will be required to post cash, or a Letter of Credit in an acceptable form as defined in Section 6.9 below (see standard format in Appendix D), for the Margin due AES Ohio as set forth in Section 6.7 of this Agreement; or

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

6.7 Posting Margin Collateral and Return of Excess Collateral

a) If at any time and from time to time during the Delivery Period, Margin exists with respect to an SSO Supplier, then AES Ohio on any Business Day may make

a Margin Call of such SSO Supplier; provided however that AES Ohio may not make a Margin Call unless the Margin exceeds the Minimum Margin Threshold. Upon receipt of a Margin Call, the applicable SSO Supplier shall provide to AES Ohio Margin Collateral, which shall comprise of cash, or a Letter of Credit. The Margin Collateral shall be in an amount equal to the Margin less the amount of any Margin Collateral already posted by the SSO Supplier in which AES Ohio has a first priority, perfected security interest to secure the obligations of the SSO Supplier under this Agreement. For the avoidance of doubt, any ICR Collateral posted pursuant to Section 6.4 shall not constitute Margin Collateral.

b) If an SSO Supplier receives a Margin Call from AES Ohio by 1:00 p.m. prevailing Eastern Time on a Business Day, then such SSO 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 AES Ohio agrees in writing to extend the period to provide Margin Collateral. If the SSO 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 SSO Supplier must post Margin Collateral on the second Business Day following the Margin Call unless AES Ohio agrees in writing to extend the period to provide Margin Collateral. AES Ohio will not unreasonably deny a request for a one-day extension of such period.

c) Margin Collateral being held by AES Ohio not needed to satisfy the Margin ("Excess Collateral"), will be returned to the SSO Supplier upon receipt of a written request from the SSO Supplier; provided, however, that the SSO Supplier may not request Excess Collateral until such Excess Collateral exceeds the Minimum Margin

Threshold. If the SSO Supplier posted cash and notice is received 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 SSO Supplier posted cash and notice is received by AES 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 SSO 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 SSO Supplier agrees in writing to extend such period for returning the Excess Collateral. The SSO Supplier will not unreasonably deny a request for a one-day extension of the period for returning the Excess Collateral.

6.8 Grant of Security Interest; Remedies

To secure its obligations under this Agreement, the SSO Supplier hereby grants to AES 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 AES Ohio or partially in the name of AES Ohio or held for the benefit of AES 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 AES Ohio (or its agents or custodians) and (iii) all proceeds (as defined in the UCC) of any and all of the foregoing. The SSO Supplier agrees to take such action as reasonably required to create and perfect AES 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 an SSO Supplier is the Defaulting Party or an Early Termination Date (whether or not such SSO Supplier was the Defaulting Party), AES Ohio may do any one or more of the following in any order: (i) exercise any of the rights and remedies of AES Ohio, including the right to set-off and liquidation, against any and all ICR Collateral, Margin Collateral or other collateral of such SSO Supplier in the possession of AES Ohio, whether held in connection with this Agreement or any Other SSO Supply Agreement, including any such rights and remedies under law then in effect, free from any claim or right of any nature whatsoever of such SSO Supplier; and (ii) draw on any outstanding Letter of Credit provided by such SSO Supplier. AES Ohio will apply the proceeds of

the collateral realized upon the exercise of such rights or remedies to reduce such SSO Supplier's obligation under this Agreement and under any Other SSO Supply Agreement, and such SSO Supplier shall remain liable for any amounts owing to AES Ohio after such application, subject to AES 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 13.1.

6.9 Acceptable Forms of Security

a) At each SSO Supplier's choice, the following are deemed to be acceptable for posting Margin Collateral or ICR Collateral, if required:

(i) cash credited to a deposit account of AES Ohio; or

(ii) a Letter of Credit in the form set forth in Appendix D and 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.

b) If AES Ohio receives notice from the issuing financial institution that a Letter of Credit is being cancelled, the SSO Supplier will be required to provide a substitute Letter of Credit from an alternative bank satisfying the minimum credit rating set forth in the definition of "Letter of Credit". The receipt of the substitute Letter of Credit must be effective as of the cancellation date and delivered to AES Ohio thirty (30) days before the cancellation date of the original Letter of Credit. If the SSO Supplier fails to supply a substitute Letter of Credit as required, then AES 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.

c) If the credit rating of a bank or other financial institution from which an SSO Supplier has obtained a Letter of Credit falls below the levels set forth in the definition of "Letter of Credit", the SSO Supplier will immediately notify AES Ohio and, within fifteen (15) Business Days of the failure of the financial institution to meet the required credit rating,

(i) 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 AES Ohio; or (ii) cash. If the SSO Supplier fails to supply a suitable Letter of Credit or deposit cash as required, then AES Ohio will have the right to draw on the existing Letter of Credit and hold the amount as Margin Collateral or ICR Collateral, as applicable.

d) Notwithstanding anything in this Agreement to the contrary, AES 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, and i are not required to exercise any remedies whatsoever prior to applying any cash collateral against, or making a drawing under any letter of credit in respect of, any liabilities of the SSO Supplier hereunder or its Guarantor under the Guaranty to AES Ohio.

6.10 Reporting; Maintenance of Creditworthiness

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

b) If the corporate or issuer credit rating used to determine the SSO Supplier's ICT or its Credit Limit adversely changes, AES Ohio will require ICR Collateral or Margin Collateral from such SSO Supplier in accordance with Sections 6.4, 6.6 and 6.7. The additional security must be in a form acceptable to AES Ohio, as specified in Section 6.9.

6.11 Interest on Cash Held by Companies

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

6.12 No Endorsement of SSO Supplier

AES Ohio's determination of an SSO Supplier's creditworthiness pursuant to the process set forth in this Article 6 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 such SSO Supplier. AES Ohio will treat all SSO Suppliers in a non-

discriminatory manner and shall provide no preference to any SSO Supplier.

ARTICLE 7: SCHEDULING, FORECASTING AND INFORMATION SHARING

7.1 Scheduling

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

b) AES Ohio will provide to each SSO Supplier and to PJM all information required by PJM for the purpose of calculating each SSO Supplier's SSO Supply obligations, including the magnitude and location of each SSO Supplier's SSO Supply obligation, as required by the PJM Office of Interconnection.

7.2 Load Forecasting

AES Ohio shall not be required to provide to any SSO Supplier any load forecasting services.

ARTICLE 8: BILLING AND SETTLEMENT

8.1 Statement

Subject to Section 8.2, AES Ohio and each SSO Supplier shall pay all amounts due to each other hereunder in accordance with the following provisions:

a) for each Billing Month, AES Ohio will prepare and provide an invoice to each SSO Supplier, which will show (i) amounts due to the SSO Supplier equal to the Price multiplied by the PMEA, (ii) the PMEA/FMEA Adjustment from such Billing Month,

if any, and (iii) all Charges due to AES Ohio incurred during the Billing Month (the "Statement"). AES 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. For any amounts due and owing AES Ohio, AES Ohio will specify in each Statement how the amounts will be allocated among AES Ohio. In the case of the PMEA/FMEA Adjustment, the allocation will be based on the respective SSO Loads of AES Ohio.

b) The Statement will be sent to each SSO Supplier within six (6) Business Days after the end of the Billing Month as provided in Section 13.1.

c) AES Ohio or the SSO Supplier, as the case may be, will make payment on the first (1st) Business Day after the nineteenth (19th) day of each calendar month.

d) 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) end of the Term or (ii) the Early Termination Date.

e) AES Ohio or the SSO Supplier, as the case may be, shall make payments of funds by electronic transfer to a bank designated by AES Ohio and the SSO Supplier, as applicable.

f) If a good faith dispute arises between AES Ohio and the SSO Supplier regarding a Statement, the disputing Party shall be obligated to pay only the undisputed portion of the Statement, if any, and shall present the dispute in writing and submit

supporting documentation to the non-disputing Party within one hundred twenty (120) calendar days from the date of the Statement in dispute. Statement disputes must be addressed promptly, and in accordance with the dispute resolution procedures set forth in Article 10. Upon resolution of a Statement dispute, any payments made to either Party will include simple interest on the payment at the lower of the Interest Index or six percent (6%) per annum payable from the date that notice of a Statement dispute was received by the non-disputing Party.

g) If payment is made to the SSO Supplier after the due date shown on the Statement, a late fee will be added to the unpaid balance until the entire Statement is paid. This late fee will be calculated at the prime rate J.P. Morgan Chase (or, if not available, another financial institution selected by AES Ohio) charges commercial borrowers.

h) In the event of a good faith dispute regarding any Statement, each SSO Supplier will have the right to verify, at its sole expense, the accuracy of the Statement or the calculation of the payment due by obtaining copies of the relevant portions of the books and records of the applicable Company. The right of verification will survive for one (1) year following the earlier of (i) the end of the Term or (ii) the Early Termination Date.

8.2 PJM Billing; Third Party Billing

a) AES Ohio and each SSO Supplier shall direct PJM to invoice AES Ohio and such SSO Supplier for PJM charges and credits relating to such SSO Supplier's and AES Ohio's rights and obligations under this Agreement. If PJM is unable to

invoice charges or credits in accordance with the foregoing sentence, AES Ohio shall rectify such PJM invoice discrepancy in the Statement sent pursuant to Section 8.1.

b) For Capacity purchased by an SSO Supplier pursuant to Section 2.1(b), such SSO Supplier shall be invoiced and submit payment for such Capacity directly to PJM in accordance with the billing practices set forth in the PJM Agreements.

c) 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 Appendix G will be determined pursuant to Sections 2.3, 2.4, 2.5, and 13.12.

d) AES Ohio shall have no responsibility for billing between an SSO Supplier and any other third party. AES Ohio shall be solely responsible for billing SSO Customers for SSO Supply.

ARTICLE 9: SYSTEM OPERATION

9.1 Disconnection and Curtailment by AES Ohio

AES Ohio shall have the right, without incurring any liability to any SSO Supplier, to disconnect (or otherwise curtail, interrupt or reduce deliveries from) the SSO Suppliers or to disconnect (or otherwise curtail, interrupt or reduce deliveries to) any Customer whenever AES 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 AES Ohio's facilities; or due to any other reason affecting the safe and reliable operation of any of AES Ohio's or a Customer's facilities, including Emergencies, forced outages or

potential overloading of any of AES Ohio's transmission or distribution circuits, potential damage to any Customer's facilities or any risk of injury to persons, or when AES Ohio is directed by PJM. AES Ohio shall not show any preference for any entity affiliated with it in connection with any such disconnection, curtailment or reduction.

9.2 Loss of Service to SSO Customers

The Parties agree and acknowledge that service to SSO Customers may be lost due to storms, weather, accidents, breakage of equipment or other events beyond the reasonable control of AES Ohio affecting the transmission and distribution facilities of AES 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.

9.3 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. Each SSO Supplier acknowledges and agrees that it will cooperate with AES Ohio, PJM and the applicable balancing authority and reliability coordinator so that AES 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 or full interruption of Customer load by either manual or automatic means.

9.4 Compliance with Governmental Directives

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

ARTICLE 10: DISPUTE RESOLUTION

10.1 Informal Resolution of Disputes

Any dispute arising out of or relating to this Agreement shall be subject to the dispute resolution procedures specified in this Article 10. If any dispute arises between any Parties in connection with this Agreement, such Parties in dispute shall first attempt in good faith to resolve such dispute between themselves. The disputing Parties shall comply in good faith with the procedures in this Section 10.1 before commencing litigation under Section 10.2. When any such dispute arises, a disputing Party shall deliver a notice of dispute to the other Party subject to the dispute in accordance with the notice procedures set forth in Section 13.1, such notice of dispute to include the nature of the dispute, the amount involved, if any, and the remedies sought. Within ten (10) Business Days after the receipt of such notice, members of the senior management of the Parties in dispute shall meet in person or by telephone to discuss the dispute. If such Parties have not resolved such dispute or if a meeting of senior management has not occurred within thirty (30) Business Days after receipt of the notice of dispute, then any such Party may bring such action at law or in equity as it deems necessary or desirable, in accordance with the provisions of Section 10.2. Any amounts that are

owed by one Party to another Party as a result of resolution of a dispute pursuant to this Section 10.1 shall be paid within two (2) Business Days of such resolution and the payment shall include interest calculated at the Interest Index from the original due date through the date of payment.

10.2 Formal Dispute Resolution

After the requirements of Section 10.1 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.

10.3 Recourse to Agencies or Courts of Competent Jurisdiction

Notwithstanding Section 10.2, nothing in this Agreement shall restrict the rights of either Party to file a complaint with the FERC under relevant provisions of the Federal Power Act or with the PUCO under relevant provisions of the Applicable Legal Authorities. The Parties' agreement under this Section 10.3 is without prejudice to any Parties' right to contest the jurisdiction of the FERC or PUCO to which a complaint is brought.

ARTICLE 11: LIMITATION OF LIABILITY; RISK OF LOSS

11.1 Limitation of Liability

Except to the extent expressly set forth in this Agreement, including Article 12, as between AES Ohio and each SSO Supplier, each Party will be liable to the other for direct damages incurred as a result of such Party's failure to comply with this

Agreement and no Party will have any liability to the other Party for consequential, indirect, special or punitive damages, including lost profits or lost revenues, arising out of such Party's failure to comply with its obligations under this Agreement. Notwithstanding anything to the contrary in this Agreement, nothing herein shall impose any obligations or liability from one SSO Supplier to any other SSO Supplier, except as provided in Article 12.

11.2 Risk of Loss

Title to and risk of loss with respect to SSO Supply shall pass from each SSO Supplier to AES Ohio when such SSO Supply is delivered to the Delivery Point. Until title passes, each SSO Supplier shall be deemed in exclusive control of SSO Supply provided by it and shall bear sole responsibility for any damage or injury caused thereby, subject to the provisions of Section 12.1. After title to such SSO Supply passes to AES Ohio, AES Ohio shall be deemed in exclusive control of such SSO Supply and shall bear sole responsibility for any damage or injury caused thereby, subject to the provisions of Section 12.1. Notwithstanding the foregoing, nothing contained in this Agreement is intended to create or increase liability of AES Ohio to any third party beyond such liability, if any, as would otherwise exist under the PJM Agreements or other applicable law if AES Ohio had not taken title.

ARTICLE 12: INDEMNIFICATION

12.1 Indemnification

a) Each SSO Supplier must defend (at AES Ohio's option), indemnify and hold harmless AES Ohio, its shareholders, parent companies, and board members,

directors, officers and employees, agents and attorneys of AES Ohio or any of its parent companies from and against any and all third party (including PJM and each other SSO Supplier) claims or liabilities for losses, penalties, expenses, damage to property, injury to or death of any Person including a Party's employees or any third parties, that were caused by or occur in connection with an act or omission of such SSO Supplier with respect to an obligation arising under or in connection with this Agreement (including such SSO Supplier's failure to submit payments to PJM pursuant to Section 8.2(b)), or for which such SSO Supplier has otherwise assumed liability under the terms of this Agreement, except to the extent that a court of competent jurisdiction determines that the losses, penalties, expenses or damages were caused wholly or in part by the gross negligence or willful misconduct of AES Ohio. AES Ohio may, at its own expense, retain counsel and participate in the defense of any such suit or action.

b) AES Ohio and each SSO Supplier must defend (at the option of the Indemnified Supplier), indemnify and hold harmless each other SSO Supplier (the "Indemnified Supplier"), its shareholders, board members, directors, officers, employees, agents and attorneys from and against any and all third party (including another SSO Supplier) claims or liabilities for losses, penalties, expenses, damage to property, injury to or death of any Person including a Party's employees or any third parties, that were caused by or occur in connection with an act or omission of AES Ohio or such SSO Supplier with respect to an obligation arising under or in connection with this Agreement, or for which AES Ohio or such SSO Supplier has otherwise assumed liability under the terms of this Agreement, except to the extent that a court of competent jurisdiction determines that the losses, penalties, expenses or damages

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

c) The obligation of a Party to defend, indemnify, and hold harmless another Party under this Article will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for either Party under any statutory scheme, including any Worker's Compensation Acts, Disability Benefit Acts or other Employee Benefit Acts.

d) If a Party intends to seek indemnification under Sections 12.1(a) or 12.1(b), as applicable, from any other Party, the Party seeking indemnification shall give the other Party notice of such claim within thirty (30) days of the later of the commencement of, or the Party's actual knowledge of, such claim or action. Such notice shall describe the claim in reasonable detail, and shall indicate the amount, estimated if necessary, of the claim that has been, or may be, sustained by said Party. To the extent the other Party will have been actually and materially prejudiced as a result of the failure to provide such notice, such notice will be a condition precedent to any liability of the other Party under the provisions for indemnification contained in this Agreement. No Party may settle or compromise any claim without the prior consent of AES Ohio (for an indemnification under Section 12.1(a)) or the Indemnified Parties involved (for an indemnification under Section 12.1(b)); provided, however, such consent shall not be unreasonably withheld or delayed.

ARTICLE 13: MISCELLANEOUS PROVISIONS

13.1 Notices

All notices, demands or requests required or permitted under this Agreement must be in writing and must be personally delivered or sent by email, overnight express mail, courier service or facsimile transmission (provided that in the case of an email or facsimile, the original shall then be transmitted by any of the other aforementioned delivery methods) addressed as follows:

If to an SSO Supplier:

Notification information for each SSO Supplier is set forth on Appendix A.

If to AES Ohio:

In the case of all notices except those required under Article 6, to:

Copy to:

In the case of all notices required under Article 6, to:

Copy to:

and:

and:

or to such other person or such other address as a Party may designate by like notice to the other Party. Notice received after the close of the Business Day will be deemed received on the next Business Day. Notice by email or facsimile transmission will be deemed to have been received by the recipient on the date the recipient confirms receipt either orally or in writing.

13.2 No Waiver or Prejudice of Rights

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

13.3 Assignment

a) AES Ohio may not assign this Agreement or its rights or obligations hereunder without the prior written consent of the other SSO Suppliers, which consent may not be unreasonably withheld; provided, however, that AES Ohio may, without the consent of the other SSO Suppliers:

(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 AES Ohio.

b) In the case of an assignment pursuant to Section 13.3(a)(ii) and (iii) above, AES Ohio may assign its obligations under this Agreement and shall be relieved of such obligations upon the assignment and assumption of the assignee of such obligations and SSO Supplier's receipt of notice thereof, except for such obligations of AES Ohio which have arisen prior to the date of the assignment.

c) An SSO Supplier may not assign this Agreement or its rights or obligations hereunder without the prior written consent of AES Ohio, which consent may not be unreasonably withheld, it being understood that any assignee of such SSO Supplier must meet the creditworthiness requirements set forth in Article 6; provided, however, that such SSO Supplier may, without the consent of AES Ohio (and without relieving itself from liability hereunder) pledge or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements; provided further, however, that if any of the lenders receiving the collateral assignment foreclose or otherwise exercise remedies against the SSO Supplier, such lenders may not transfer, pledge or assign this Agreement to a Person who does not meet the creditworthiness requirements set forth in Article 6. For the avoidance of doubt, an SSO Supplier is not required to obtain the consent of any other SSO Supplier under this Section 13.3.

13.4 Governing Law

To the extent not subject to the jurisdiction of the FERC, questions including those concerning the formation, validity, interpretation, execution, amendment, termination and construction of this Agreement will be governed by the laws of the State of Ohio, without regard to principles of conflicts of law.

13.5 Third Party Beneficiaries

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

13.6 Unenforceability or Invalidity

Should any provision of this Agreement be held invalid or unenforceable, such provision will be invalid or unenforceable only to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable any other provision hereof, unless it materially changes the agreement of the Parties.

13.7 Entire Agreement

a) Each of the Parties acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms. This Agreement is intended by the Parties as a final expression of their agreement with respect to the subject matter hereof. The Parties further agree that this Agreement is the complete and exclusive statement of agreement with respect to the subject matter hereof and supersedes all proposals (oral or written), understandings, representations, conditions, warranties, covenants and all other communications between the Parties relating thereto.

13.8 Taxes

All present and future federal, state, municipal or other taxes imposed by any taxing authority by reason of the provision of SSO Supply by an SSO Supplier under this Agreement (collectively, the "Taxes") will be the liability of the SSO 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 AES Ohio's responsibility. Should an SSO 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 SSO Supplier on behalf of AES Ohio, AES Ohio will defend and indemnify the SSO Supplier for such Ohio Sales and Use Taxes and will pay to the SSO Supplier all such tax amounts upon demand. Each SSO 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 affected SSO Supplier will, if requested, provide AES Ohio with valid tax exemption certificates. Should AES 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 AES Ohio directly from an SSO Supplier), the SSO Supplier will defend and indemnify AES Ohio and will pay to AES 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 an SSO 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.

13.9 Rules of Interpretation

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

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

b) all titles and headings used herein are for convenience and reference purposes only, do not constitute a part of this Agreement and shall be ignored in construing or interpreting the obligations of the parties under this Agreement;

c) references to the singular include the plural and vice versa;

d) any references to “and” or “or” shall mean “and/or” as the context so requires;

e) references to Articles, Sections, Appendices and the preamble are, unless the context indicates otherwise, references to Articles, Sections, Appendices and the preamble of this Agreement;

f) any reference to laws, rules, regulations, ordinances or decrees in this Agreement shall mean such law, rules, regulations, ordinances and decrees as may be amended, modified, replaced, codified or superseded from time to time; and

g) this Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties (or any of them), or to impose any partnership obligation or liability upon any Party.

13.10 Confidentiality

a) Each Party shall hold in confidence and not release or disclose any document or information furnished by the other Party in connection with this Agreement, unless (i) compelled to disclose such document or information by judicial, regulatory or administrative process or other provisions of law or it reasonably believes it is necessary or advisable to disclose such document or information in connection with any PUCO or FERC regulatory proceeding; (ii) such document or information is generally available to the public; or (iii) such document or information was available to the receiving Party on a non-confidential basis from a third party, provided that the receiving Party does not know that such third party is prohibited from transmitting the document or information to the receiving Party by a contractual, legal or fiduciary obligation.

b) Notwithstanding any other provision of this Section 13.10, a Party may disclose to its employees, representatives, agents and rating agencies all documents and information furnished by the other Party in connection with this Agreement, provided that they have been advised of the confidentiality provisions of this Section 13.10, and further provided that in no event shall a document or information be disclosed in violation of the standard of conduct requirements established by FERC.

c) Each SSO Supplier agrees that the SSO Supplier's data and information submitted in the Solicitation will be disclosed if required by any federal, state or local

agency (including the PUCO) or by a court of competent jurisdiction. However, AES Ohio will endeavor to notify the SSO Supplier in advance of such disclosure. In any event, neither AES Ohio, nor any of its employees or agents, will be responsible to the SSO Suppliers or any other party, or liable for any disclosure of such data or information. Notwithstanding the above, AES Ohio reserves the right to use and communicate publicly to third parties any and all information and data submitted as part of the Solicitation in any proceedings before FERC, the PUCO, and any other regulatory body and the courts, if AES Ohio deems it necessary or advisable, without the prior consent of, or notice to, any such SSO Supplier.

d) The Parties agree that monetary damages may be inadequate to compensate a Party for the other Party's breach of its obligations under this Section 13.10. Each Party accordingly agrees that the other Party shall be entitled to equitable relief, by way of injunction or otherwise, if the Party breaches or threatens to breach its obligations under this Section 13.10, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law.

13.11 Amendment

Except as provided in Sections 5.4 and 13.12, 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 13.12, 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 mutual written agreement of the Parties. Absent the agreement of all Parties, the standard of review

for changes to this Agreement proposed by a Party, a non-Party or the FERC acting sua sponte shall be the “public interest” 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) and affirmed by Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County, Washington, et al., 554 U.S. 527, 128 S. Ct. 2733 (June 26, 2008).

13.12 PJM Agreement Modifications

a) If the PJM Agreements are amended or modified so that any term, schedule or Section reference herein to such agreements 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 in the PJM Agreements which replaces that originally referred to in this Agreement.

b) If the applicable provisions of the PJM Agreements referenced herein, or any other PJM rules relating to the implementation of this Agreement, are changed materially from those in effect on the Effective Date, the Parties shall cooperate to make conforming changes to this Agreement to fulfill the purposes of this Agreement.

13.13 Agent

AES Ohio shall have the right at any time and from time to time during the Term to appoint an agent to act on its behalf to exercise or pursue any of its rights or remedies and to perform any of its obligations or duties under this Agreement. AES Ohio shall give each SSO Supplier thirty (30) days prior written notice before the appointment of an agent.

13.14 Counterparts

This Agreement may be executed in counterparts, each of which will be considered an original, but all of which will constitute one instrument.

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.

THE DAYTON POWER AND LIGHT COMPANY d/b/a AES OHIO

By: _____

Name:

Title:

[SSO SUPPLIER SIGNATURES APPEAR ON SUCCEEDING PAGES]

SIGNATURE PAGES

[SSO SUPPLIER]

By: _____

Name:

Title: