



BUSINESS ELECTRICITY AUTHORIZATION TEXAS LARGE COMMERCIAL SALES

CUSTOMER INFORMATION

Customer Name ("Customer"): Anna Independent School District

Contract Type: ☒ New Service

Customer Contact Name: MICHAEL COMEAUX

Email: michael.comeaux@annaisd.org

Primary Phone: (972) 924-1072 Secondary Phone: Fax:

Duns #: 11-310-7882 Tax ID#:

Tax Exemption: If a non-renewing customer, a completed tax exemption certificate must accompany this Agreement. If no certificate is attached, Company will assume that sales to Customer are subject to Taxes and will process Customer's account accordingly.

☒ See attached Addendum A for ESI ID information

CONTRACT SUMMARY

Price or Retail Adder: See Addendum B

Start Month/Year: June/2023

Pay Terms: Net Forty Five (45) Days

Initial Term: 36 Months

AUTHORIZATION INFORMATION

Agreement: This Business Electricity Authorization, including any addenda and exhibits (collectively, the "BEA"), together with the Electric Supply Terms of Service ("TOS") (version ELGCTXANNAISDTOS033123) and incorporated herein by reference will form the electricity sales agreement (collectively, the "Agreement") between Gexa Energy, LP ("Company" or "Gexa Energy") and Customer. Any capitalized terms not defined in this BEA shall have the meanings set forth in the TOS. Any inconsistency between the BEA and the TOS shall be governed by the BEA.

ESI ID Additions and Deletions: Notwithstanding any provision to the contrary in the TOS, the following provisions shall apply:

Customer may add/delete ESI ID(s) to/from the list of ESI IDs set forth in Addendum A as a result of Customer's decision in the ordinary course of business to open, close or sell one or more facilities owned or leased by Customer. Customer shall provide to Company written notice of any such proposed change reasonably in advance. The following provisions apply to each such change:

- (i) If the Net Change results in an increase or decrease of the remaining Expected Usage amounts by an amount not exceeding the Covered Bandwidth, as reasonably estimated by Company, the Parties will amend Addendum A to reflect the change to the ESI IDs and use commercially reasonable efforts to implement such amendment.
- (ii) If the Net Change results in an increase in the remaining Expected Usage amounts by an amount greater than the Covered Bandwidth, as reasonably estimated by Company, Company will, at its discretion, offer to Customer a new unit price applicable to the ESI IDs being added, which price will be the Holdover Price if added during the Holdover Period. In such event, no ESI IDs will be added unless and until the Parties agree to such new unit price and this Agreement is amended.
- (iii) If the Net Change results in a decrease in the remaining Expected Usage amounts by an amount greater than the Covered Bandwidth (such greater amount being the "Excess Decrease"), as reasonably estimated by Company, Company will allow each ESI ID contributing to the Excess Decrease to be deleted without an amendment to this Agreement; provided, however, Customer shall pay Company the Early Termination Fee plus any amounts due to

Company with respect to each such deleted ESI ID, as invoiced by Company through the deletion date (date of switch or disconnection, as applicable).

(iv) "Covered Bandwidth" means an amount equal to Ten Percent (10%) of Expected Usage.

(v) "Expected Usage" means the total electricity usage of the original ESI IDs listed as of the Effective Date forecasted by Company as of the Effective Date.

(vi) "Net Change" means the positive or negative amount of energy usage which results from Company's reasonable estimate of (a) the proposed addition and/or deletion of ESI IDs, and (b) all previous additions and/or deletions of ESI IDs, if any.

Authorization and Acknowledgement: Customer hereby authorizes Company, for the duration of this Agreement, to become its REP and to perform the necessary tasks to establish electricity service with Company. By signing this BEA, Customer hereby agrees, as of the Effective Date, that Customer has read the Agreement and agrees to the terms and conditions set forth in the Agreement. The undersigned below warrants and represents that he/she is legally authorized to enter into this Agreement on behalf of Customer. **This Agreement is not valid or binding unless and until signed by both Parties.**

Customer: Anna Independent School District

Gexa Energy, LP,
By: Gexa Energy GP, LLC, its General Partner:

Authorized Signature: Michael S. Comeaux

Authorized Signature: _____

Print Name: Michael Comeaux

Print Name: _____

Title: Purchasing Coordinator

Title: _____

Date: 03/31/2023

Effective Date: _____

Sales Representative: JuRee Presco



**BUSINESS ELECTRICITY AUTHORIZATION
TEXAS LARGE COMMERCIAL SALES**

Addendum A

CUSTOMER NAME: Anna Independent School District

ESI IDS INCLUDED IN AGREEMENT:

ESI ID	Service Address City, State and Zip	Billing Address City, State and Zip	Account Type *	Estimated Service Commencement Date **	Estimated End Date **
10443720000774024	1107 W ROSAMOND PKWY FIELD ANNA, TX 75409	501 S SHERLEY AVE ANNA, TX 75409	N	06/16/2023	06/15/2026
10443720001003966	00401 S SHIRLEY AVE ANNA, TX 75409- 0000	501 S SHERLEY AVE ANNA, TX 75409	N	06/16/2023	06/15/2026
10443720001003997	200 E 7TH ST ANNA, TX 75409- 3300	501 S SHERLEY AVE ANNA, TX 75409	N	06/16/2023	06/15/2026
10443720001432231	01008 S RIGGINS ODLT BLL ANNA, TX 75409	501 S SHERLEY AVE ANNA, TX 75409	N	06/16/2023	06/15/2026
10443720001432262	1008 S RIGGINS UNIT SCBRD ANNA, TX 75409	501 S SHERLEY AVE ANNA, TX 75409	N	06/16/2023	06/15/2026
10443720001432448	00000 @FBALL FLD E-SIDE ANNA, TX 75409- 0000	501 S SHERLEY AVE ANNA, TX 75409	N	06/16/2023	06/15/2026
10443720004484499	200 E 7TH ST GRDL ANNA, TX 75409- 3300	501 S SHERLEY AVE ANNA, TX 75409	N	06/16/2023	06/15/2026
10443720006006746	GUARD LIGHTS GRDL ANNA, TX 75409	501 S SHERLEY AVE ANNA, TX 75409	N	06/23/2023	06/22/2026
10443720006480178	1008 S RIGGINS BARN AG ANNA, TX 75409	501 S SHERLEY AVE ANNA, TX 75409	N	06/16/2023	06/15/2026
10443720006547665	6011 S SHERLEY AVE GYM ANNA, TX 75409- 3631	501 S SHERLEY AVE ANNA, TX 75409	N	06/16/2023	06/15/2026
10443720007349697	601 N SHERLEY AVE BLDG ANNA, TX 75409- 3530	501 S SHERLEY AVE ANNA, TX 75409	N	06/16/2023	06/15/2026
10443720007975075	01430 COUNTY ROAD 371	501 S SHERLEY AVE	N	06/16/2023	06/15/2026

	ANNA, TX 75409	ANNA, TX 75409			
10443720008268351	601 N SHERLEY AVE ROOM CAFET ANNA, TX 75409-3530	501 S SHERLEY AVE ANNA, TX 75409	N	06/16/2023	06/15/2026
10443720008524612	1221 S FERGUSON PKWY ANNA, TX 75409-4514	501 S SHERLEY AVE ANNA, TX 75409	N	06/16/2023	06/15/2026
10443720008641699	01201 N POWELL PKWY STE A ANNA, TX 75409	501 S SHERLEY AVE ANNA, TX 75409	N	06/16/2023	06/15/2026
10443720008646225	01201 N POWELL PKWY STE B ANNA, TX 75409	501 S SHERLEY AVE ANNA, TX 75409	N	06/16/2023	06/15/2026
10443720009255964	912 S RIGGINS ST CONC ANNA, TX 75409	501 S SHERLEY AVE ANNA, TX 75409	N	06/16/2023	06/15/2026
10443720009493812	1201 N POWELL PKWY HSMT FIELD ANNA, TX 75409-2580	501 S SHERLEY AVE ANNA, TX 75409	N	06/16/2023	06/15/2026
10443720009534732	1201 N POWELL PKWY ANNA, TX 75409-2580	501 S SHERLEY AVE ANNA, TX 75409	N	06/16/2023	06/15/2026
10443720009790621	501 S SHERLEY AVE BARN BUS ANNA, TX 75409-3596	501 S SHERLEY AVE ANNA, TX 75409	N	06/16/2023	06/15/2026
10443720009152331	1107 W ROSAMOND PKWY ANNA, TX 75409	501 S SHERLEY AVE ANNA, TX 75409	N	06/16/2023	06/15/2026
10443720006741196	1107 W ROSAMOND PKWY BLDG B ANNA, TX 75409-5380	501 S SHERLEY AVE ANNA, TX 75409	N	06/06/2023	06/05/2026

* N = New Account, or E = Renewal/Existing Account

** The Service Commencement dates and end dates in the table above are solely dependent on the Utility's provision of services. Utility meter read schedules are subject to change for any reason, including events of force majeure. The Utility may change any of these dates without notice to Customer or Company.

Customer Initials: MC Date: 03/31/2023

Company Initials: _____ Date: _____



BUSINESS ELECTRICITY AUTHORIZATION TEXAS LARGE COMMERCIAL SALES

Addendum B

CUSTOMER NAME: Anna Independent School District

PRICING DETAILS:

Monthly Base Charge: None

Energy Price: \$0.05683 per kWh

The Energy Price includes the charge to Customer for electricity and any components indicated in the Component Table as "Included". The Energy Price excludes all Taxes and Pass-Through Charges. Customer pays all Taxes and Pass-Through Charges, including costs or charges related to a Change in Law. Pass-Through Charges also include each "Pass-Through Charge" indicated in the Component Table, which charge may vary in amount.

For each Settlement Interval during the Initial Term, Customer shall pay Company the Fixed Energy Charge. The amount due to Company is calculated as the sum of the Fixed Energy Charges for the Settlement Intervals during each Billing Cycle of the Initial Term ("Customer's Energy Charge").

Hedge Adjustments to the price structure can be made pursuant to the Transaction Execution Procedures of this Agreement.

DEFINITIONS:

In addition to capitalized terms defined elsewhere in this Agreement, the following definitions apply:

"Ancillary Service" shall have the meaning set forth in the ERCOT Protocols and "Ancillary Services" shall include, without limitation, all charges and credits assessed by ERCOT applicable to load serving entities except those directly related to electricity commodity. For avoidance of doubt, Ancillary Services shall include Reliability Unit Commitment charges assessed by ERCOT, and as used herein Ancillary Services shall include those services currently charged by ERCOT as well as any new services for which ERCOT may charge in the future, whether or not such charges are referred to as "Ancillary Services" by ERCOT.

"ERCOT Contingency Reserve Service" is defined in the ERCOT protocols or otherwise used by ERCOT.

"Fixed Energy Charge" means a dollar amount equal to the Energy Price x all Energy Usage for the relevant period.

"Market-Based Ancillary Services" are the following Ancillary Services: Regulation Service; Responsive Reserve; and Non-Spinning Reserve, as each is defined in the ERCOT protocols or otherwise used by ERCOT.

"Non-Market-Based Ancillary Services" are all Ancillary Services other than Market-Based Ancillary Services and ERCOT Contingency Reserve Service. Examples of Non-Market-Based Ancillary Services include, but are not limited to, those with respect to Base-Point Deviation, Black Start Service, Emergency Power Increase, Day-Ahead Make-Whole, ERCOT System Administration, Load Allocated Emergency Response Service, Load-Allocated Ancillary Service Imbalance Revenue Neutrality, Real-Time Load Allocated Voltage Charge Amount, Real-Time Revenue Neutrality Allocation, RMR Adjustment, the Load-Allocated (LA) Reliability Deployment Ancillary Service (AS) Imbalance Revenue Neutrality Amount and Firm Fuel Supply Service.

"Securitization Uplift Charge" means the Securitization Uplift Charge as defined in the ERCOT Protocols and any other cost, charge, or assessment imposed on Company or any of its qualified scheduling entities related directly or indirectly to the repayment of the

Securitization Uplift Balance, as defined in the ERCOT Protocols, and additional interest charges and related expenses, whether existing now or in the future.

“Settlement Interval” means the time period(s) for which electricity markets are settled, as determined by ERCOT.

COMPONENT TABLE:

Component (ERCOT-LG)	Included	Pass-Through Charge
Market-Based Ancillary Services	X	
Non-Market-Based Ancillary Services, PUCT and ERCOT Fees	X	
ERCOT Contingency Reserve Service		X
Securitization Uplift Charge	X	
Performance Credit Mechanism Reliability Service		X
Hub to Load Zone Basis		X
Transmission and Distribution Losses, and UFE Line Losses	X	
RECs to Meet State Renewable Portfolio Standards	X	

Notwithstanding any provision in this Agreement to the contrary, all charges associated with retail electric supply are subject to provisions in this Agreement regarding Change in Law which may increase Customer's cost. These charges include, but are not limited to, charges to Customer for any components listed in the table above as “Included” in the Energy Price.

In addition to other Pass-Through Charges, Customer shall pay Company as Pass-Through Charges any new or increased costs or charges attributable to a capacity market, application of, or changes to, the operating reserve demand curves, Ancillary Service obligations (including, without limitation, increases in Ancillary Service obligation quantities or new Ancillary Service obligations), and resource adequacy plans, or any other similar plan approved or adopted by ERCOT and/or the PUCT.

For any cost or charge which Company has the right to bill to Customer under this Agreement, Company reserves the right not to impose such cost or charge during any given billing period (e.g., if the amount is de minimis or Company chooses not to incur the administrative costs of billing). Customer understands that Company's lack of billing of a cost or charge will not be a waiver of such billing right, and Company has the right, but not the obligation, to bill such cost or charge, or cost or charge category, at a later date if it chooses. Costs or charges assessed against Company on a load ratio share basis will be passed through in a similar manner. Costs or charges assessed against Company not on a load ratio share basis will be aggregated for the period in question and then assessed to Customer based on its load ratio share during the same period, or assessed using another reasonable pass through method, depending on the cost or charge. Customer shall reimburse and pay Company for such Pass-Through Charges. The Energy Price includes the charge to Customer for electricity and any components indicated in the Component Table as “Included”. The Energy Price excludes all Taxes and Pass-Through Charges. Customer pays all Taxes and Pass-Through Charges, including costs or charges related to a Change in Law. Pass-Through Charges also include each “Pass-Through Charge” indicated in the Component Table, which charge may vary in amount.

[Signature page follows]

Addendum B Signature Page:

Customer: Anna Independent School District	Gexa Energy, LP, By: Gexa Energy GP, LLC, its General Partner:
Authorized Signature: <u>Michael S. Comeaux</u>	Authorized Signature: _____
Print Name: <u>Michael Comeaux</u>	Print Name: _____
Title: <u>Purchasing Coordinator</u>	Title: _____
Date: <u>03/31/2023</u>	Effective Date: _____
	Sales Representative: JuRee Presco

State-Required Acknowledgement of Risk

(Market Energy Index and Holdover Pricing)

Customer hereby agrees and acknowledges that the unit price charged with respect to the ESI IDs will be based on ERCOT wholesale energy prices in these cases: during the Initial Term, Customer pays Gexa Energy the Energy Price (per unit) under an energy index or market price structure (which includes Gexa Energy's Market Energy Index product); and/or after the end of the Initial Term, Customer pays Gexa Energy the Holdover Price (per unit) as defined in the TOS.

Accordingly, the undersigned, for himself/herself or on behalf of Customer, hereby acknowledges and agrees as follows: **I understand that the volatility and fluctuation of wholesale energy pricing may cause my energy bill to be multiple times higher in a month in which wholesale energy prices are high. I understand that I will be responsible for charges caused by fluctuations in wholesale energy prices.**

(Ancillary Service Charges)

If costs and charges for Market-Based Ancillary Services and/or Non-Market-Based Ancillary Services are Pass-Through Charges for which Customer is required to pay, Customer hereby agrees and acknowledges that such costs and charges are variable and potentially volatile.

I understand that the volatility and fluctuation of costs and charges for Market-Based Ancillary Services and/or Non-Market-Based Ancillary Services, if Pass-Through Charges, may cause my energy bill to be multiple times higher in a month in which these costs and charges are high. I understand that in all cases I will be responsible for charges caused by fluctuations in costs and charges for Market-Based Ancillary Services and/or Non-Market-Based Ancillary Services.

Customer: Anna Independent School District

Authorized Signature: Michael S. Comeaux

Print Name: Michael Comeaux

Title: Purchasing Coordinator

Date: 03/31/2023

GEXA ENERGY ELECTRIC SUPPLY TERMS OF SERVICE (LARGE COMMERCIAL)
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24 HOUR SERVICE OUTAGE REPORTING: If an electric outage occurs, Customer should call the appropriate Utility:

ONCOR: (888) 313-4747
CENTERPOINT ENERGY: (800) 332-7143
AEP TEXAS: (866) 223-8508
TEXAS NEW MEXICO POWER: (888) 866-7456

GEXA ENERGY AND PUCT CONTACT INFORMATION:

REP NAME	Gexa Energy, LP
BUSINESS NAME	Gexa Energy
CERTIFICATE NO.	10027
INTERNET ADDRESS:	www.gexaenergy.com
EMAIL ADDRESS:	tx@gexaenergy.com
MAILING ADDRESS:	20455 State Highway 249, Suite 200 ATTN: Contract Administration Houston, TX 77070
TELEPHONE NUMBER:	866-531-GEXA (4392)
FAX:	866-578-GEXA (4392)
OFFICE HOURS OF OPERATION:	8:00 a.m. to 5:00 p.m., Houston, Texas time
PUCT:	1-888-782-8477 customer@puc.state.tx.us

THE FOLLOWING SETS FORTH CUSTOMER'S ELECTRIC SUPPLY TERMS OF SERVICE ("TOS"):

1. DEFINITIONS:

As used in this Agreement, the following capitalized terms set forth below shall have the respective meanings ascribed to them below:

"Additional Block(s)" is defined the in the Transaction Execution Procedures section of this TOS.

"Agreement" is defined in the BEA and includes any amendments signed by the Parties.

"Ancillary Service" is defined in the BEA and/or any addenda to this Agreement.

"Billing Cycle" means, for each ESI ID, the period between successive monthly meter read dates during the term of this Agreement.

"BEA" means the binding Business Electricity Authorization associated with this TOS, including any addenda and exhibits.

"Change in Law" means a change in law, regulation, rule, ordinance, order or decree by a governmental authority (including ERCOT) or the implementation of an existing law, regulation, rule, ordinance, order or decree by a governmental authority (including ERCOT) including, without limitation, Utility tariffs and ERCOT Protocols (including, without limitation, those affecting any fees, costs, or charges imposed by ERCOT), changes in market rules, changes in load profiles, changes in how ERCOT calculates usage, changes in nodal and zonal definitions, changes in nodal protocols as currently constituted and documented), and/or implementation or changes in the ERCOT market of a capacity market, reliability market, resource adequacy plan or other similar plan(s), any or all of which affects Company's cost to provide electric supply and related services to Customer. A "change", as used above, includes, without limitation,

any amendment, modification, nullification, suspension, repeal, finding of unconstitutionality or unlawfulness or any change in construction or interpretation or administration.

"Company Electricity Charge" means the sum of: (i)(a) Customer's Energy Charge, or (b) or the product of Customer's Energy Usage during a Billing Cycle and the Holdover Price, whichever of (a) or (b) is applicable; (ii) the Monthly Base Charge, if any; (iii) Pass-Through Charges; (iv) Delivery Charges; and (iv) Taxes.

"Contract Value" means, as of the date of early termination of this Agreement prior to the end of the Initial Term, the product of (i) the Price, and (ii) the electricity which would have been delivered during the remainder of the Initial Term had the Agreement not been terminated in whole, or in part as to any affected ESI ID(s).

"Costs" means (without duplication) any loss, cost or expense reasonably incurred by Company, including, but not limited to, those related to terminating, liquidating or obtaining any arrangement pursuant to which it has hedged its obligations, in whole or in part as to any affected ESI IDs, or incurred in connection with enforcing its rights under this Agreement.

"Customer's Energy Charge" is defined in Addendum B to this Agreement.

"Delivery Charges" means those recurring and non-recurring charges payable to the Utility in connection with transmission and distribution of electricity including, without limitation, all charges allowed or required by the PUCT, ERCOT or any other governmental or regulatory authority or any third parties. Examples of non-recurring Delivery Charges are those arising from a move-in or switch, such as self-selected meter reads; service connection, disconnection, or reconnection fees, as well as meter tampering charges.

"Delivery Point" means the point of interconnection between a third-party transmission or delivery system and the Utility transmission or delivery system.

"Early Supply Switch" means the electric supply of any ESI ID(s) is switched to a different supplier before the end of the Initial Term.

"Early Termination Fee" means the positive amount, if any, by which the non-defaulting Party's Losses exceed the non-defaulting Party's Gains.

"Effective Date" means the date the BEA is signed by both Parties, or the date of the telephonic third party verification of the Customer's verbal authorization, as applicable.

"Energy Usage" means Customer's total metered electricity usage for the meters associated with the ESI ID(s), which usage is measured in kilowatt hours ("kWh") (or megawatt hours ("MWh"), if applicable) for the applicable period; *provided, that*, (i) in the event that any master metered ESI ID or any other ESI ID is sub-metered at any time during the Initial Term or Holdover Period, such usage shall include any and all electricity usage lost as a result of such sub-metering; and (ii) such usage shall be grossed-up for Transmission & Distribution Losses for the purpose of calculating charges for hub-to-zone basis where such basis is a Pass-Through Charge.

"ERCOT" means the Electric Reliability Council of Texas.

"Event of Default" means that Customer has: (i) failed to make timely payment of all amounts due Company; (ii) failed to post performance assurance as required under the provisions of the Credit and Deposit Requirements section of this TOS within ten (10) days after the date on which Company made a demand for initial or additional performance assurance; (iii) breached any representation or warranty set forth in this Agreement; (iv) breached an obligation under this Agreement; (v)(A) makes an assignment for the benefit of creditors, (B) files a petition or otherwise authorizes the commencement of a proceeding under the U.S. Bankruptcy Code or similar law for protection of creditors, or has such petition filed against it, (C) otherwise becomes bankrupt or insolvent, or (D) is unable to pay its debts as they fall due; and/or (vi) enters into a merger with, or sells substantially all of its assets to, another entity that fails to assume Customer's obligations under this Agreement.

"ESI ID" means the Customer's Electric Service Identifier referenced in the BEA (including any Addendum to the BEA).

“Force Majeure” means any act, condition, event or occurrence that is beyond Company’s reasonable control, including, without limitation, an act of God or public enemy, storm, earthquake, or other natural forces, war, riot, public disturbance, criminal activity, labor action, pandemics, or the acts or omissions of anyone not a party to this Agreement, including the Utility.

“Gains” means an amount equal to the value of the economic benefit, if any, to the non-defaulting Party resulting from the termination of this Agreement in whole, or in part as to any affected ESI ID(s), determined by comparing Contract Value to Market Value. “

“Hedge Adjustment(s)” means one or more hedge transactions including, without limitation, block electricity transactions and natural gas index price transactions as agreed by the Parties in a confirmation entered into pursuant to the Transaction Execution Procedures.

“Holdover Period” means the period of the Agreement between the expiration of the Initial Term and termination of this Agreement.

“Holdover Price” means the price per unit for electricity delivered during the Holdover Period, which shall be equal to the real time Settlement Point Price for the applicable ERCOT load zone (adjusted to a per kWh basis), plus an adder of \$0.01 per kWh, during each Settlement Interval (as defined in the ERCOT Protocols). The Holdover Price excludes all Taxes and Pass-Through Charges, including costs and charges for the components described in the “Price” Section of this TOS.

“Initial Term” means the period commencing on the Effective Date and continuing to the meter read date of the billing month which occurs those number of months set forth for the Initial Term in the BEA after the Service Commencement Date; *provided* that if the Service Commencement Date is delayed past the Start Month, the Initial Term shall still expire in the same billing month as if the Service Commencement Date not been delayed past the Start Month.

“Insufficient Notice Fee” means fifty dollars (\$50).

“Losses” means an amount equal to the value of the economic loss, if any, to the Non-Defaulting Party resulting from the termination of this Agreement in whole, or as to any affected ESI ID(s), determined by comparing Contract Value to Market Value.

“Market-Based Ancillary Services” is defined in the BEA and/or any addenda to this Agreement.

“Market Value” means, as of the date of early termination of this Agreement prior to the end of the Initial Term, the product of the (i) electricity that would have been delivered during the remainder of the Initial Term had the Agreement (in whole, or in part as to any affected ESI IDs) not been terminated, and (ii) the market prices at which such electricity are commercially available to the Non-Defaulting Party. In determining Market Value, the non-defaulting Party, may consider, among other things, settlement prices of applicable NYMEX futures contracts, quotations from leading dealers in energy swap contracts and other bona fide offers from parties participating in the wholesale and/or retail power markets, which may include Company and/or its affiliates, all as commercially available to the non-defaulting Party, and all as adjusted for the length of the remaining Initial Term and differences in transmission costs and volume, and applicable retail pricing adjustments.

“MC Event” is defined in the Customer Information section of this TOS

“Monthly Base Charge” means (i) for the Initial Term, a fixed monthly charge per ESI ID, if any, as set forth in the BEA, and (ii) for the Holdover Period, a fixed monthly charge per ESI ID.

“Non-Market-Based Ancillary Services” is defined in the BEA and/or any addenda to this Agreement.

“Party” means either Company or Customer, and “Parties” means both Company and Customer.

“Pass-Through Charges” means (i) Delivery Charges, (ii) charges for any and all components indicated as Pass-Through Charges in this Agreement, (iii) charges associated with additions or deletions of ESI IDs outside the designated bandwidth, if applicable, one or more MC Events and/or Change in Law events, and/or (iv) all recurring or non-recurring third-party fees and charges with respect to the purchase, sale, acquisition, delivery, transmission and/or

distribution of electricity including, without limitation, new or increased ERCOT and PUCT fees, Market-Based Ancillary Services charges and Non-Market-Based Ancillary Services charges. All of the foregoing will be passed through directly to Customer by Company; *provided, however*, that any or all Pass-Through Charges may be calculated by Company on a load-sharing basis, as determined by Company.

“Price” means a unit dollar amount with respect to electric supply provided to the ESI IDs by Company.

“PUCT” means the Public Utility Commission of Texas, or its successor.

“Retail Adder” means a unit dollar amount with respect to electric supply provided to the ESI IDs by Company.

“REP” means retail electric provider.

“Securitization Uplift Charge” is defined in the BEA and/or any addenda to this Agreement.

“Service Commencement Date” means the meter read date during or after the Start Month on which the Utility successfully switches each ESI ID(s) to electric generation supply from Company; provided that, in the case of electric generation supply already being provided by Company to Customer, the Service Commencement Date means the meter read date during or after the Start Month.

“Settlement Interval” means, for purposes of the Holdover Price, means the time period(s) for which electricity markets are settled, as determined by ERCOT.

“Settlement Point Price” means, for purposes of the Holdover Price, the settlement point price upon which ERCOT bases the charge or credit to Company for electric energy purchased or sold at the ERCOT load zone, published by ERCOT at “<http://www.ercot.com/mktinfo/prices/>”, under the heading “Market Information: Market Prices”, or its successor location that reports prices effective on the relevant date. The Settlement Point Price has no minimum price per unit and will be expressed in \$/kWh.

“Start Month” is the calendar month/year specified in the BEA.

“Transaction Execution Procedures” means the terms and conditions set forth in the Transaction Execution Procedures section of this TOS.

“Taxes” means all federal, state, municipal or other governmental taxes, duties, fees, levies, premiums, assessments, surcharges, withholdings, or any other charges of any kind relating to the sale, purchase or delivery of electricity and other products and services provided to Customer, together with all interest, penalties or other additional amounts imposed thereon, but excluding taxes on net income.

“Utility” means a cooperative association or state regulated utility that owns and/or operates the transmission, transportation, delivery and/or distribution facilities that deliver the electricity to the facilities to which each ESI ID pertains. A Utility may be referred to as the “Transmission and Distribution Utility”, “TDU”, Transmission and Distribution Service Provider, or “TDSP”.

2. ELECTRIC SUPPLY. During the Initial Term and any Holdover Period, Company shall supply Customer’s full electricity requirements for the ESI ID(s), and Customer shall obtain its full electricity requirements for such ESI ID(s) exclusively from Company, all based on the terms and conditions specified in this Agreement. Subject to terms and conditions of this Agreement, Company shall cause electricity to be delivered to the Delivery Point(s) and Customer shall receive such electricity at the Delivery Point(s). Notwithstanding the foregoing, Company shall be under no obligation to supply any ESI IDs under a residential rate class and, if Company does supply such ESI IDs, Customer hereby represents and warrants to Company that such ESI IDs are used for commercial or governmental purposes.

3. CUSTOMER INFORMATION. Customer hereby authorizes Company to obtain or access from the Utility and/or Customer current and historical electricity cost and usage data of Customer, Customer’s payment and credit history, and other information generally relevant to the supply and associated services to be supplied under this Agreement. Customer agrees to provide additional documentation regarding such authorization as requested by Company. Customer agrees, upon request, to provide Company with facility descriptions, operating information, meter identification numbers and locations, and such other information available to Customer as Company may reasonably require to provide electric supply and other applicable products and services pursuant to this Agreement. Customer’s

expected energy usage for the ESI IDs may change for various reasons including, without limitation, additional equipment going on-line, ramp-up in equipment use, equipment modifications, increasing operating hours, remodel of facilities, new construction, applications for new construction permits, participation in demand response programs, participation in special government electricity supply programs or on-site electric generation of any type or size. Customer shall provide Company at least thirty (30) days' advance notice whenever it believes that it will experience a "MC Event," as defined below, and shall provide good faith estimates of the associated usage change. As used in this Agreement, a "MC Event" is deemed to have occurred when the monthly aggregate usage of the ESI IDs, for two (2) or more consecutive months, is either less than eighty percent (80%) or greater than one hundred twenty (120%) of the usage for such months reasonably expected by Company. Irrespective of whether Customer has provided notice to Company, Customer shall pay Company, as Pass-Through Charges, the full amount of any losses, and/or new or increased costs and charges, reasonably associated with each MC Event.

4. ENROLLMENT. Company shall use commercially reasonable efforts to timely enroll Customer's ESI ID(s) with the Utility in accordance with the intended Service Commencement Date. Company's submission of market orders may be delayed due to events beyond its reasonable control including, but not limited to, submission of an incomplete, improperly completed, unclear, inaccurate or improper form of BEA by or on behalf of Customer, as reasonably determined by Company. Customer agrees to take steps to cooperate with Company's efforts to perform enrollment of ESI IDs for supply under this Agreement. Customer understands the Utility determines final enrollment and agrees that Company is not liable for any delay or failure in enrolling Customer's ESI ID(s) if such delay or failure is due to incorrect ESI ID information, invalid ESI ID numbers, and/or any other cause beyond Company's control. Further, notwithstanding any provision in the Agreement to the contrary, it is possible that for various reasons such as the ESI ID not existing, ESI ID not active, ESI ID is not the "first in" and/or a required permit for the ESI ID is not valid with the Utility, some or all the ESI IDs cannot be enrolled. All such un-enrolled ESI IDs shall be automatically deleted from the list of ESI IDs under this Agreement without an amendment to this Agreement. Company has the right to treat one or more failures to enroll any ESI IDs as an early termination of this Agreement. If one or more ESI IDs fail to enroll on a timely basis based on inaccurate information from Customer and/or any other cause beyond Company's control, Customer may, at the option of Company, be required to pay Company the Early Termination Fee due with respect to such ESI IDs. Company is not required to serve any such un-enrolled ESI IDs.

5. TERM OF AGREEMENT. This Agreement shall become effective on the Effective Date, with service commencing for each respective ESI ID(s) on the Service Commencement Date, and shall continue for the Initial Term. After the Initial Term expires, this Agreement shall continue on a month-to-month basis at the Holdover Price unless and until either Party terminates this Agreement by providing reasonable advance notice provided to the other Party. The termination date with respect to each ESI ID is the date following the date of such notice where the ESI ID has been successfully switched by the Utility to another REP. During and after the end of any Holdover Period, Customer is responsible for all amounts due to Company under this Agreement.

6. PRICING. The Energy Price and/or Retail Adder for electric supply provided to Customer by Company during the Initial Term is set forth in the Agreement and subject to any adjustments set forth in this Agreement. Customer pays all Pass-Through Charges. Certain Pass-Through Charges imposed during the Initial Term may be set forth in the BEA or any addendum to this Agreement. Pass-Through Charges are charges to Customer, not credits. The unit price for electricity during the Holdover Period is the Holdover Price, not the Price. The Holdover Price is a variable price. The Holdover Price will change without prior notice to Customer. In some cases, the Holdover Price may vary significantly from the Price charged during the Initial Term of this Agreement. Notwithstanding any provision in this Agreement to the contrary, during the Holdover Period, Customer shall pay Company as Pass-Through Charges all costs and charges for electric energy components including, without limitation, Market-Based Ancillary Services, Non-Market Based Ancillary Services, PUCT and ERCOT fees, Securitization Uplift Charge, hub to load zone basis, transmission and distribution losses, UFE line losses, and renewable energy credits for state renewable portfolio standards.

7. BILLING AND PAYMENT – GOVERNMENT ENTITIES. Customer shall pay the full amount of each bill issued under this Agreement. Each bill will consist of the Monthly Charge, or multiple Monthly Charges if Company defers Monthly Charges as provided below. Customer shall pay Company the amount due under each monthly bill. Customer represents and warrants to Company that it is a "government entity" as defined in the Prompt Payment Act (Tex. Government Code, Chapter 2251), as amended ("PPA"). A payment by Customer shall become overdue as provided in the PPA. Further, billing disputes shall be resolved as provided in the PPA, and interest on overdue payments shall be calculated and remitted in accordance with the PPA. Company has the right to assess such interest on overdue payments and has the right to report delinquent balances to a credit agency.

Company may elect to defer sending monthly bills for all periods where actual usage is not available from the Utility. If the Utility fails to timely obtain or transmit a meter reading, Company reserves the right to issue or cause to be issued a bill to Customer based on its estimated Energy Usage and charges during the Billing Cycle. Company will include or cause to be included in any subsequent bill from Company, adjustments related to previous billings, including estimates, previous billing errors, meter read errors, or other errors or omissions.

Company may apply any credit balance on a particular ESI ID to a balance owed on any other Customer ESI ID. Further, Company has the right to set off any amounts owed by Company to Customer under this Agreement against any amounts owed by Customer to Company or its affiliates. If one or more Pass-Through Charges are involved in deferred billing, Company has the right to estimate the Pass-Through Charges on the bills in the interim and Customer shall pay Company such estimated Pass-Through Charges. Company may assess a twenty five dollar (\$25) fee against any transaction not processed due to insufficient funds or credit availability for any method of payment, including checks, bank drafts or credit card.

If Customer's account(s) is under a deferred payment plan with Company and Customer has not paid the amount due by the payment date, such account(s) may be placed on a "switch-hold." If a "switch-hold" is placed on such account(s), Customer will not be able to switch Customer's electric service to another REP until the Customer has paid in full the outstanding balance due.

8. CREDIT AND DEPOSIT REQUIREMENTS. If Company determines, prior to offering service or at any time during the term of this Agreement, that Customer cannot demonstrate satisfactory creditworthiness, Customer has failed to timely pay all amounts due under this Agreement or there otherwise exists an Event of Default with respect to Customer under this Agreement, Company has the right to require Customer to either make advanced payments or provide to Company performance assurance to ensure prompt and timely payments of amounts due to Company under this Agreement. If, after Customer has been required to make advanced payments or provide performance assurance, Company determines that Customer's credit is unsatisfactory, Company has the right to require Customer to provide additional performance assurance. Customer shall post with Company any performance assurance within three (3) days after the date on which Company made a demand for initial or additional performance assurance. The amount and form of initial or additional performance assurance will be determined by Company in a commercially reasonable manner.

9. TERMINATION OF AGREEMENT. If Customer commits or is otherwise subject to an Event of Default in whole or with respect to one or more ESI IDs then, in addition to, and not in lieu of, any other remedy Company may have in law or equity, Company has the right to terminate this Agreement. Company has the right to terminate this Agreement in whole, or in part as to any affected ESI ID(s), as determined solely by the Company. If the Agreement is so terminated by Company, Customer shall pay Company for all amounts owed up to the date of such termination including, without limitation, all electricity supplied, any other products and services provided to Customer through the date of such termination, and any interest due. Further, Customer shall pay Company the sum of any Costs plus the Early Termination Fee. In addition, if an Early Supply Switch occurs without Company receiving at least thirty (30) days' advance notice from Customer, Customer shall pay Company the Insufficient Notice Fee. Company will not be required to enter into any replacement transaction in order to determine Costs or the Early Termination Fee. The Parties agree that the amounts recoverable hereunder are a reasonable estimate of loss and not a penalty.

9. TITLE AND RISK OF LOSS. Title and risk of loss to the electricity sold under this Agreement passes from Company to Customer when the electricity is delivered to the Delivery Point for each ESI ID(s). Customer agrees that Company does not control the physical electricity sold under this Agreement, which electricity flows through the Utility transmission and/or delivery systems, and accordingly, Company shall not be responsible for any failure in the Utility transmission or delivery system.

10. FORCE MAJEURE. Company will be excused from performance of its obligations under this Agreement, in whole or in part, to the extent caused by or related to an event of Force Majeure.

11. CHANGE IN LAW. Notwithstanding any provision in this Agreement to the contrary, if there is one or more Change in Law events and such event, either independently or in conjunction with one or more other events (including, without limitation an auction), results in Company incurring new or increased costs or charges related to providing retail electric supply or any other products or services under this Agreement, Customer shall pay Company such new or increased costs and charges as Pass-Through Charges. In calculating each such charge, if the increase is not reasonably evident from the Change in Law itself, or if the charges subsequently increase based on another event,

Company may calculate the increase based on the charge incurred after the Change in Law event as compared to Company's earlier estimates of the charge.

12. NON-DISCRIMINATION. Company does not discriminate against any Customer based wholly or partly on race, color, creed, national origin, or sex, of an applicant for service or for any arbitrary, capricious, or unfairly discriminatory reason.

13. REPRESENTATIONS AND WARRANTIES. Each of the following representations and warranties are deemed to be continuing throughout the term of this Agreement, unless stated otherwise. Each Party represents and warrants to the other that: (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; (ii) it is authorized and qualified to do business in the jurisdictions necessary to perform this Agreement; (iii) the execution, verbal authorization, delivery and performance of this Agreement is duly and validly authorized by all necessary corporate or other actions and do not violate its governing documents, any agreement to which it is a party or any laws applicable to it; (iv) if it is executing this Agreement in its capacity as an agent or representative, it has the authority to bind its principal to the Agreement; and (v) the Agreement, when delivered, will be valid and legally binding upon it and enforceable in accordance with its respective terms (subject to equitable defenses).

Customer further represents and warrants to Company that: (x) it has made its own independent decisions to enter into this Agreement and its decisions are based upon its own judgment and any advice from its own advisors as it has deemed necessary; (xi) it is purchasing the electricity for its own consumption and has not entered into the Agreement for speculative purposes; (xii) it has full power and authority over the provision of electricity to the facilities to which the ESI ID(s) pertain; (xiii) for all purposes that may impact the electricity usage of the ESI IDs, it will operate the facilities to which the ESI ID(s) pertain in the same or substantially the same manner as it has in the twelve (12) months preceding the Effective Date; and (xiv) it will not have generation that is synchronously connected to the Utility, or enter into net metering arrangements with the Utility, with respect to any of the ESI IDs. Customer represents and warrants to Company that, at all times during the term of this Agreement, it is not and will not be a company described in Tex. Bus. & Comm. Code, Title 5, Subtitle C, §113.002 (Prohibition on Agreements with Certain Foreign-Owned Companies in Connection with Critical Infrastructure), as amended. Customer shall notify Company if, at any time during the term of this Agreement, it becomes a company described in such law.

14. DISCLAIMER OF WARRANTY. EXCEPT AS EXPRESSLY STATED IN THE REPRESENTATIONS AND WARRANTIES SECTION OF THIS TOS, COMPANY EXPRESSLY DISCLAIMS AND NEGATES ALL REPRESENTATIONS AND WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

15. LIMITATIONS OF LIABILITY. NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT TO THE CONTRARY, EXCEPT WITH RESPECT TO AMOUNTS DUE FOR COSTS AND THE EARLY TERMINATION FEE, OR IN CONNECTION WITH INDEMNIFICATION OF CLAIMS BY CUSTOMER, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, INCLUDING LOST PROFITS (OTHER THAN COMPANY'S PROFITS EXPECTED UNDER THIS AGREEMENT) OR OTHER BUSINESS INTERRUPTION DAMAGES, WHETHER IN TORT OR CONTRACT, OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT. THE LIMITATIONS IMPOSED ON REMEDIES AND DAMAGE MEASUREMENT WILL BE WITHOUT REGARD TO CAUSE, INCLUDING NEGLIGENCE OF ANY PARTY, WHETHER SOLE, JOINT, CONCURRENT, ACTIVE OR PASSIVE. COMPANY IS NOT LIABLE FOR FAILURE OF UTILITY OPERATIONS, INCLUDING TRANSMISSION OR DISTRIBUTION OUTAGES, PLANNED OR UNPLANNED. COMPANY IS NOT RESPONSIBLE FOR PHYSICALLY TRANSMITTING, DELIVERING OR DISTRIBUTING ELECTRICITY AND DOES NOT CONTROL THE UTILITY'S FACILITIES OR OPERATIONS. IF A UTILITY DENIES SERVICE TO CUSTOMER OR ANY ESI IDS, COMPANY IS UNDER NO OBLIGATION TO SUPPLY THE ESI IDS AND HAS NO LIABILITY FOR SUCH FAILURE TO SERVE.

16. FORWARD CONTRACT. The Parties agree that this Agreement is a "forward contract", Company is a "forward contract merchant", and any payment related to this Agreement will constitute a "settlement payment", all as defined in the United States Bankruptcy Code.

17. ATTORNEY'S FEES. If Company prevails, in whole or in part, in any lawsuit or legal proceeding related to this Agreement or refers Customer's outstanding balance to an attorney or collection agent for collection, or collects Customer's outstanding balance through bankruptcy or other judicial proceedings, Customer shall pay Company's fees and expenses (including reasonable attorney's fees) incurred in connection therewith.

18. ASSIGNMENT. Company may assign its rights and obligations under this Agreement to a third party. Customer may not assign its rights and obligations under this Agreement to a third party without Company's prior written consent. Company may deny such assignment based on the creditworthiness of the assignee. Any purported assignment in violation of this Section shall be null and void ab initio.

19. GOVERNING LAW AND VENUE. This Agreement shall be governed by and construed, enforced and performed in accordance with the laws of the state of Texas, including any rules promulgated by or orders issued by the PUCT and/or ERCOT, and exclusive venue for any suit, claim, action or other proceedings, whether at law or in equity, relating to this Agreement, shall be in the state or federal courts of competent jurisdiction sitting in Harris County, Texas. Except with respect to provisions governing adequate assurance, the provisions of the Uniform Commercial Code ("UCC") shall apply to this Agreement and electricity shall be a "good" for the purposes of the UCC.

20. CONFIDENTIALITY. Company understands that Customer shall comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code), as interpreted by judicial rulings and opinions of the State Attorney General (as amended, the "Public Information Act"). If Customer receives a valid request under applicable public information laws for information related to this Agreement, it shall provide to Company notice of such request within three (3) business days after such receipt, which notice shall include a description the information sought prior to Customer's release of information so that Company has a reasonable opportunity to determine whether such information is subject to an exception as trade secret, competitive, commercial, or financial information, and/or file a response with the Attorney General of Texas. This Agreement may be subject to public disclosure pursuant to the Public Information Act. Company is required to make any information created or exchanged with Customer pursuant to this Agreement and not otherwise excepted from disclosure under the Public Information Act, available in a format that is accessible by the public and no additional charge to the state of Texas. If this Agreement, or any information created or exchanged with Customer pursuant to this Agreement, is excepted from disclosure under the Public Information Act or any Texas state law, Customer agrees to keep confidential: (i) all terms and provisions of this Agreement marked as "confidential" or "proprietary" or as otherwise identified herein as confidential or proprietary; and (ii) any information and records in Customer's possession marked "confidential" or "proprietary" by Company and provided under the Agreement.

21. JURY/LEGAL WAIVER. TO THE EXTENT PERMITTED BY THE APPLICABLE LAW, EACH PARTY WAIVES ITS RIGHT TO A JURY TRIAL REGARDING ANY LITIGATION, LEGAL ACTION OR PROCEEDING ARISING FROM OR DIRECTLY OR INDIRECTLY RELATING TO THIS AGREEMENT. CUSTOMER HEREBY WAIVES ANY RIGHT IT MAY HAVE TO PARTICIPATE AS A PLAINTIFF IN A CLASS ACTION LAWSUIT AGAINST COMPANY AND AGREES NOT TO DO SO. THE PARTIES WANT THIS AGREEMENT TO CONTROL THEIR OBLIGATIONS. ACCORDINGLY, CUSTOMER WAIVES ITS RIGHTS UNDER THE SUBSTANTIVE PUCT CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SUPPLY WITH THE EXCEPTION OF THE PROVISIONS IN SUBSTANTIVE PUCT RULES 25.495, 25.481, AND 25.485(A)-(B).

22. WAIVER OF CONSUMER RIGHTS. Customer hereby agrees to the following waiver:

I waive my rights under the Deceptive Trade Practices-Consumer Protection Act, Section 17.41 et seq., Business & Commerce Code, a law that gives consumers special rights and protections. After consultation with an attorney of my own selection, I voluntarily consent to this waiver.

By agreeing to the foregoing waiver, Customer is not necessarily agreeing that it is or is not a consumer under such law.

23. CRITICAL CARE. If Customer believes its electric supply is crucial for the protection and maintenance of public safety, or if Customer believes an interruption or suspension of electric service will create a dangerous or life-threatening condition on Customer's premise(s), Customer may be eligible to be designated as a "critical load public safety customer" or "critical care industrial customer," pursuant to PUCT Substantive Rule 25.497. Customer shall provide to Company written notice before, or immediately after, the Effective Date if Customer believes it is eligible for such designation. Company will then provide such notice to the Utility. In order to so receive such designation, Customer must have a determination of eligibility pending or approved by the Utility. Each Party shall cooperate with the Utility to determine Customer's ultimate eligibility for any of these designations; otherwise, Customer has no such designation. Designation as a critical load public safety customer or critical care industrial customer does not relieve Customer of the obligation to pay Company for supply under this Agreement.

24. LIMITED AGENT. Company's responsibility as Customer's limited agent is limited to the tasks authorized for Company to provide the services under this Agreement and does not result in imposition on Company, and Customer

hereby waives, any other duties of any kind or nature, including fiduciary duties which may otherwise arise by operation of law.

25. SURVIVAL. The following provisions, and any other provision which by its nature should survive, shall survive any termination or expiration of this Agreement: Title and Risk of Loss, Disclaimer of Warranty, Limitation of Liability, Attorney's Fees, Governing Law and Venue, Jury/Legal Waiver, Waiver of Consumer Rights, and Notices. The Confidentiality Section shall survive any termination or expiration of this Agreement for a period of one (1) year.

26. MISCELLANEOUS. This Agreement embodies the entire agreement and understanding of the Parties, and supersedes all prior agreements and understandings between the Parties, whether written or oral, with respect to the subject matter hereof. Customer agrees that any electronic signature document delivered via Customer's domain name based on the email set forth above shall be considered signed or executed by Customer. Customer assumes all risks arising out of the use of electronic signature for all purposes, including the authorization or execution of this Agreement and documents in support of this Agreement by Customer, as well as misuse by third parties. Any electronic signature shall have the same legal validity and enforceability as a manually executed signature to the fullest extent permitted by applicable law. There are no third party beneficiaries to this Agreement and this Agreement is binding on each Party's successors or permitted assigns. This Agreement may not be amended except by a written amendment signed by both Customer and Company. If any provision of this Agreement is held to be void or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect to the extent that the intended essential purposes of this Agreement are not materially altered. Headings are for the convenience of the parties and shall be ignored for purposes of interpreting this Agreement. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall be deemed to be one and the same instrument. No waiver by any Party hereto of any one or more of such Party's rights under this Agreement, or waiver of a default by the other Party in the performance of any of the provisions of this Agreement shall be construed as a waiver of any such right, or any other default whether of a like kind or different nature. The rights and remedies of the Parties in this Agreement are cumulative and either Party may enforce any of its rights and remedies under this Agreement and any other rights and remedies available to it at law or in equity, unless expressly specified otherwise in this Agreement. The Parties shall not be deemed to be in a relationship of partners or joint ventures by virtue of this Agreement, nor shall any Party be an agent (except as expressly agreed to in this Agreement), representative, trustee or fiduciary of the other Party. This Agreement is intended to secure and provide for the services of Company as an independent contractor.

27. NOTICES. Any contractual notice required to be given under this Agreement shall be delivered to the receiving Party in accordance with the appropriate information set forth in the Agreement. A Party may change its address or contact information by providing notice of same in accordance herewith. A Party shall provide any notice in writing by U.S. mail or courier service, provided that Company may communicate or inquire about operational decisions, including contract termination or expiration notices by telephone or electronic means in accordance with the contact information provided by Customer or otherwise known. Company's contact information for notices is set forth at the beginning of this TOS. Customer's receipt of a notice delivered by mail will be deemed at the end of the fifth (5th) business day after the date of mailing, or upon actual receipt, if earlier. Customer's receipt of a notice delivered by courier will be deemed on the business day after it was sent or upon actual receipt, if earlier. Customer's receipt of a notice sent by facsimile, e-mail or other electronic means will be deemed at the close of the business day on which it was transmitted (or, if transmitted after the close of business, then on the next business day) or such earlier time as confirmed by Customer. Company may waive any notice requirements set forth herein.

28. PUCT RULES. The text of all PUCT rules referenced in this Agreement may be found at:

<http://www.puc.state.tx.us/agency/rulesnlaws/subrules/electric/Electric.aspx>.

29. TRANSACTION EXECUTION PROCEDURES. The provisions set forth below apply to any Hedge Adjustments made under this Agreement. Hedge Adjustments are intended to allow the Customer to make changes to the price structure of electricity purchased under this Agreement. Hedge Adjustments are only made pursuant to one or more confirmations under this Agreement and such confirmations require the mutual agreement of the Parties. Neither Party is under any obligation to transact any Hedge Adjustments. Customer authorizes Company to perform, on behalf of Customer, all Hedge Adjustments. Following each Hedge Adjustment, if any, Customer shall continue to pay Company the Company Electricity Charge and any other amounts due under this Agreement.

(i) **Requests.** Customer may request a quote from Company for pricing associated with a potential Hedge Adjustment during the Initial Term. If the request is for the purchase of new or additional block quantities of electricity

("Additional Blocks"), the minimum block quantity available to purchase is 1 MW unless Company, in its sole discretion, agrees to a lesser amount. Customer may also request a quote for gas index prices pursuant to an addendum to this Agreement. To make any of these requests, Customer shall email Company at the three (3) Company email addresses set forth below advising Company of the requested transaction. Company is under no obligation to agree to accept any order. Each indicative price quote is solely indicative of market conditions at the time provided and is subject to market movement at all times until a final price is later agreed to by the Parties under the procedures below. Each indicative price quote is solely indicative of market conditions at the time provided and is subject to market movement at all times until a final price is later agreed to by the Parties under the procedures below.

(ii) Recorded Telephone Transactions. The following provisions shall apply with respect to transactions conducted over a telephone line:

(a) Recordings. Hedge Adjustments under this Agreement may be conducted by the Parties on Company's recorded telephone line at 713-401-5712 before 1:00 p.m., Houston, Texas time, on any day in which a quote has been issued by Company, NYMEX is trading Henry Hub Natural Gas Futures Contracts and Company's main business office is open. Each such transaction must be made through the participation of at least one authorized representative of each Party on the telephone line, and Customer's representative must be one of the persons authorized below. Subject to this section and market movement, upon receipt of an order from Customer and Company's agreement to such order, Company shall work to execute the requested transaction.

(b) Confirmations of Recordings. After Company's execution of the transaction on behalf of Customer, Company shall send Customer a written confirmation via email indicating the executed transaction terms. Any dispute by Customer to the terms set forth in the written confirmation must be raised by Customer before the end of the business day following delivery of the confirmation. Customer shall initiate such dispute only by contacting the Company recorded line (telephone number is in the previous paragraph) before the expiration of such business day. If Customer fails to dispute the confirmation by the end of the business day following delivery of the confirmation, then the unsigned confirmation is, absent manifest error, the Parties' binding agreement with respect to the transaction.

(c) Supporting Evidence. Each Party hereby consents to the creation of an electronic recording (including digital or tape) by Company or its representative of all telephone conversations regarding transactions under this Agreement and such recordings shall be conclusive evidence of the transactions. Each Party agrees not to contest any such election or determination in connection therewith based on the statute of frauds or any law requiring agreements to be in writing.

(iii) Written Transactions. In lieu of using Recorded Telephone Transactions as set forth in the previous subsection, Hedge Adjustments may be transacted by the Parties in writing on any day NYMEX is trading Henry Hub Natural Gas Futures Contracts and Company's main business office is open. To execute a written Hedge Adjustment transaction, Customer shall email Company at the two (2) Company email addresses below advising Company of the requested transaction and attaching a signed hedge request. Company is under no obligation to agree to accept any order. Upon receipt of such signed hedge request, Company will work to execute the requested transaction at or near the requested terms. After Company's execution of the transaction on behalf of Customer, Company shall send Customer a written confirmation via email indicating the executed transaction terms. Any dispute by Customer to the terms set forth in the written confirmation must be raised by Customer before the end of the business day following delivery of the confirmation. Customer shall initiate such dispute only by email to the three (3) Company email addresses above before the expiration of such business day. If Customer fails to dispute the confirmation by the end of the business day following delivery of the confirmation, then the unsigned confirmation is, absent manifest error, the Parties' binding agreement with respect to the transaction.

(iv) Representatives. All written communications with respect to orders and Hedge Adjustment transactions, including emails requesting price quotes and sending Hedge Adjustment confirmations, shall be sent to Company using all three of the following contact points:

Company Representatives

Sales Representative:
JuRee Presco
Gexa Energy
20455 SH 249, Suite 200
Houston, TX 77070
Email: juree.presco@gexaenergy.com
Cell: 609-651-6357

Contract Administration:
Contracts.ercot@gexaenergy.com

All written communications for orders and Hedge Adjustment transactions, including emails requesting price quotes and sending Hedge Adjustment confirmations, shall be made between Company and the following authorized representative of Customer:

Customer Representative

Customer Name: MICHAEL COMEAUX
Title: BUSINESS USER
Email: michael.comeaux@annaisd.org

Customer authorizes either of such representatives to enter into binding transactions pursuant to this Agreement. Customer shall provide to Company advance written notice indicating new or amended authorized representative information if Customer desires change such information. Otherwise, Company shall be entitled to rely on such representatives as authorized agents of Customer for all transactions conducted under this Agreement.

(v) Execution Limitations. Notwithstanding any provision in this Agreement to the contrary, the Parties agree that staff availability, delay, market conditions and other factors may make it difficult or impossible to execute transactions at or below desired prices or quantities. Further, there is no guarantee that Company will be able to execute a transaction on behalf of Customer at any price or in any quantity. Company is not liable for any failure to execute an order or transaction on behalf of Customer at the requested prices and/or quantities.

(vi) Hedge Limitations. Customer acknowledges and agrees any electricity transactions in connection with this Agreement will not be conducted for the purpose of speculative or proprietary trading. Such transactions will be intended, and designed solely for, the purpose of allowing Customer to manage its retail electricity pricing and quantity risk for the ESI ID(s). Further, to the extent, if any, that it is determined that this Agreement or any of the transactions under this Agreement, are considered "trade options" by the Commodity Futures Trading Commission, Company and Customer each represent that it is either a "eligible contract participant" (as defined in Section 1(a) of the Commodity Exchange Act, as amended) or a producer, processor, commercial user of or a merchant handling the commodity or the products or by-products thereof, and each is offering or entering into a commodity option transaction solely for the purposes related to its business as such. Company and Customer confirm to each other that any transaction under this Agreement deemed to be a commodity option transaction is intended to be physically settled so that, if exercised, the option would result in the sale of an exempt commodity for immediate or deferred delivery.

(vii) Customer Decisions. Customer represents and warrants that it will make its own independent decisions authorizing Company to enter into transactions for on behalf of Customer under this Agreement. CUSTOMER ASSUMES ANY AND ALL RISKS ARISING FROM ANY INDEX AND VARIABLE PRICING. Customer is acting for its own account in determining if any transaction is appropriate for Customer. Customer is making such determinations based upon its own judgment and advice (including any advice Customer may obtain from advisors), all as Customer deems appropriate. Customer agrees and acknowledges that it is not relying, and will not rely upon, communications, information, and/or explanations of any type from Company as investment/savings advice or an endorsement that a specific transaction will have an expected or actual result. No communication of any kind from Company shall be, or constitute any, assurance or guarantee of an expected or actual result. Customer understands and accepts all risks inherent in all transactions conducted under this Agreement. Company is not acting as a fiduciary to Customer with respect to this Agreement.

Customer understands, agrees and acknowledges the foregoing representations, warranties and agreements are a material inducement for Company to enter into this Agreement.

(viii) Suspension of Right to Request Hedge Adjustment. Notwithstanding any provision set forth in this Agreement and for the sake of clarity, Company has no obligation to quote or execute any new transactions under this Agreement if Customer is subject to an Event of Default.

30. NON-APPROPRIATIONS. Customer represents, warrants and agrees that (i) it has appropriated sufficient funds to pay all amounts due to Company for all ESI IDs during Customer's current fiscal period; (ii) Customer reasonably believes that legally available funds in an amount sufficient to make all such payments for the full multi-year term can be obtained; and (iii) Customer intends to make a good faith effort to obtain and maintain funds from which all such payments to become due during the full multi-year term of the Agreement, including making provision for such payments to the extent necessary in each budget or appropriation request submitted and adopted in accordance with applicable law. Notwithstanding the foregoing, if sufficient funds are not available to Customer to make all payments and pay other amounts due with respect to one or more ESI IDs, and to become due, from Customer, then Customer may, subject to the terms hereof, terminate the Agreement with respect to the affected ESI IDs as of the last day of the fiscal period for which appropriations were received (an "Event of Non-appropriation"). Customer agrees, however, to pay for all electricity supplied by Company prior to the day of termination of this Agreement due to Customer's non-appropriation.

Customer further agrees to deliver notice of each Event of Non-appropriation to Company at least 90 days prior to the end of the Customer's current fiscal period, or if an Event of Non-appropriation has not occurred by that date, promptly upon the occurrence of any such Event of Non-appropriation (a "Non-Appropriations Notice"). Customer's obligation to make payment and pay other amounts due under the Agreement shall constitute a current expense and shall not, in any way, be construed to be a debt in contravention of any applicable constitutional or statutory limitations or requirements concerning Customer's creation of indebtedness, nor shall anything contained herein constitute a pledge of the Customer's general tax revenues, funds or monies.

Customer agrees that, if any funds are appropriated or allocated for electricity costs for the ESI IDs covered by this Agreement for periods during the Initial Term or any Holdover Period, such funds shall be applied first to the payments to be made to Company for electricity and related services provided under this Agreement and that any such funds shall not be used to pay for electricity from any other REP during the Initial Term or any Holdover Period for the ESI IDs covered by this Agreement.

Additionally, upon the delivery of any such Non-Appropriations Notice, Company shall have a right to calculate any Early Termination Fee resulting from the inability to sell to Customer the remaining expected volume of electricity under this Agreement. Then, subject to the laws of the State and Texas Constitution, if Customer subsequently appropriates funds for electricity for one or more of the ESI IDs covered by this Agreement, regardless of the delivery date, all such appropriated funds shall be paid to Company without Company providing Customer any notice or demand for any such Early Termination Fee, until Company is paid in full.

Company shall have the right, at its sole expense and during Customer's normal business hours, to examine the records of Customer to the extent reasonably necessary to verify the accuracy of any Non-Appropriations Notice or the appropriation of funds subsequent to any such Non-Appropriations Notice. Company will notify Customer with written notice thirty (30) days in advance of the Company's proposed date to visit Customer's location to examine such records. If any such examination reveals any inaccuracy on any Non-Appropriations Notice or the representation by Customer that no funds have been allocated subsequent to any such Non-Appropriations Notice, the necessary adjustments for any delinquent payments shall be made within thirty (30) days of resolution of the inaccuracy and any payments due shall be made to Company. The foregoing right to examine will survive any expiration or sooner termination of the Agreement for a period of twenty-four (24) months from the date of such expiration or sooner termination. Out of abundance of caution and for absolute clarity this Section does not authorize Customer to terminate this Agreement to obtain electric supply, electricity components REC Product and/or any services at a lower rate, price and/or fee than Company charges under this Agreement. Customer is entering this Agreement subject to the Texas Local Government Code, Title 8, Sub-Title C, Chapter 271, Subchapter A, Public Property Finance Act.

31. ADDITIONAL REPRESENTATIONS OF GEXA ENERGY. Company hereby represents and warrants to Customer that, as of the Effective Date of this Agreement, neither Company, nor any wholly-owned subsidiary, majority-owned subsidiary, parent company or affiliate of Company: (i) engages in business with Iran, Sudan, or any foreign terrorist organization pursuant to Subchapter F of Chapter 2252 of the Texas Government Code; or (ii) is a company

listed by the Texas Comptroller pursuant to Section 2252.153 of the Texas Government Code. The term "foreign terrorist organization" has the meaning assigned to such term pursuant to Section 2252.151 of the Texas Government Code.

32. ISRAEL. If this Agreement has a value of \$100,000 or more that is to be paid wholly or partly from public funds of Texas Tech, and if Company is a company, other than a sole proprietorship, with ten (10) or more full-time employees, then pursuant to Texas Government Code Chapter 2271, Company does not boycott Israel and will not boycott Israel during the term of this Agreement. In this paragraph, the terms "company" and "boycott Israel" shall have the meanings described in Texas Government Code §808.001.

33. ENERGY COMPANIES. If this Agreement has a value of \$100,000 or more to be paid wholly or partly from public funds of Texas Tech, and if Company is a company, other than a sole proprietorship, with ten (10) or more full-time employees, then pursuant to Texas Government Code §2274.002, Company does not boycott energy companies and will not boycott energy companies during the term of this Agreement. In this paragraph, the terms "company" and "boycott energy companies" shall have the meanings described in Texas Government Code §809.001.

34. FIREARM ENTITIES. Pursuant to Texas Government Code Chapter 2274, if this contract is valued at \$100,000 or more and if Company has at least ten (10) full-time employees, then Company does not discriminate against firearm entities or firearm trade associations and will not discriminate against firearm entities or firearm trade associations during the term of this Agreement. This provision does not apply to sole proprietorships.