

**VECTREN ENERGY DELIVERY OF OHIO, INC.**  
**d/b/a CENTERPOINT ENERGY OHIO**  
**Choice Supplier Pooling Agreement**

This Choice Supplier Pooling Agreement (“Agreement”) is entered \_\_\_\_\_, 20\_\_ , by Vectren Energy Delivery of Ohio, Inc., d/b/a CenterPoint Energy Ohio (“CenterPoint” or where applicable “Party”), and \_\_\_\_\_ (“Choice Supplier” or where applicable “Party”) (collectively, “Parties”).

**SECTION 1. PURPOSE AND PROCEDURES**

- 1.1. The Parties agree that each of them may electronically record all telephone conversations with respect to this Agreement between and among their respective employees, without any special or further notice. The Parties shall be responsible for obtaining any necessary consent from their respective agents and employees to such recording. The Parties agree that such recordings may be submitted in evidence in any legal proceeding for the purpose of establishing any matter relating to this Agreement, provided such submission is consistent with the requirements of all relevant rules of evidence and rules of procedure.
- 1.2. The Parties acknowledge that CenterPoint's Choice Program is administered pursuant to CenterPoint's business procedures (CenterPoint Operating and Billing Practices), which CenterPoint may amend from time to time with thirty (30) days advance notice via posting by CenterPoint on its website, and the most recent version of which is available from CenterPoint on its website. CenterPoint will provide sixty (60) days advance Notice for any changes related to Electronic Data Interchange (EDI) file format changes. This provision and the SCO Supplier compliance with the posted Operating and Billing Practices shall not constitute a waiver by the SCO Supplier(s) of any of their rights to object or file a complaint related to these Practices with the Public Utilities Commission.
- 1.3. The Parties acknowledge that CenterPoint and CenterPoint's customers may from time to time disclose confidential, sensitive and/or private customer information to Choice Suppliers. Choice Suppliers agree to hold such information confidential, to handle such information with the same care and attention to confidentiality that Choice Suppliers apply to their own confidential, sensitive and private information. Choice Suppliers further agree to follow all applicable federal, state and local laws and regulations related to protection and safe handling of confidential, sensitive and/or private customer information.

**SECTION 2. DEFINITIONS**

The terms set forth below shall have the meaning ascribed to them below. Other terms are defined elsewhere in the Agreement and shall have the meanings ascribed to them.

- 2.1. “Adequate Assurance of Performance” shall mean sufficient security in the form, amount and for the term reasonably acceptable to CenterPoint, including, but not limited to, a Letter of Credit, or a security interest in an asset (including the issuer of any such security). If Choice Supplier elects to provide such assurance by Letter of Credit, such Letter of Credit shall be in the form or form substantially similar to the forms attached to this Agreement as Exhibit A.
- 2.2. “British thermal unit” or “Btu” shall mean the International BTU, which is also called the Btu (IT).
- 2.3. “Business Day” shall mean any Day except Saturday, Sunday, Federal Reserve Bank holidays and declared CenterPoint holidays.
- 2.4. “Ccf” shall mean one hundred cubic feet when measured at a pressure of fourteen and seventy-three hundredths pounds per square inch at a temperature of 60 degrees Fahrenheit.

- 2.5. "Choice Accounts Receivable" shall mean the indebtedness and the obligations of any Choice Customer to pay for natural Gas provided by Choice Supplier and delivered on CenterPoint's distribution system, whether billed or unbilled, including applicable sales tax.
- 2.6. "Choice Customer" shall mean an eligible CenterPoint end-use customer purchasing retail Gas supply sales service from a Choice Supplier pursuant to the Choice Program.
- 2.7. "Choice Pool" shall mean an aggregation of Choice Customers to be served by a Choice Supplier.
- 2.8. "Choice Pool Customers" shall mean the Choice Customers served in a Choice Pool.
- 2.9. "Choice Pool Customer Revenues" shall mean Gas supply amounts billed to Choice Pool Customers by CenterPoint on behalf of Choice Supplier.
- 2.10. "Choice Program" shall mean the retail customer access program instituted by CenterPoint as a result of its approval by the Commission in Case No. 02-1566-GA-ATA, including applicable Tariff provisions, which may be changed from time to time upon Commission Order, and applicable CenterPoint business procedures which may be changed from time to time at CenterPoint's discretion.
- 2.11. "Choice Supplier" shall mean a marketer, supplier, broker, aggregator or governmental aggregator supplying natural gas through the Choice Program that is Party to this Agreement; "Choice Suppliers" shall mean collectively the marketers, suppliers, brokers aggregators and governmental aggregators supplying natural gas through the Choice Program.
- 2.12. Intentionally left blank.
- 2.13. Intentionally left blank.
- 2.14. "Collections" shall mean with respect to any Choice Accounts Receivable, all cash collections and other cash proceeds of such Choice Accounts Receivable, including, without limitation, all cash proceeds of Related Security with respect to such Choice Accounts Receivable.
- 2.15. "Columbia Appalachia Index" shall mean the First of the Month "Columbia Gas Transmission Corp, Appalachia" as reported by Inside FERC's Gas Market Report in the table "Prices of Spot Gas Delivered to Pipelines".
- 2.16. "Commission" shall mean the Public Utilities Commission of Ohio.
- 2.17. "Consolidated Billing" shall mean the billing election option pursuant to which CenterPoint will bill gas supply commodity charges and associated taxes to Choice Pool Customers on behalf of Choice Supplier.
- 2.18. "Cross Default" shall mean the occurrence and continuation of (i) a default, event of default or other similar condition or event by Choice Supplier under one or more agreements or tariffs in the provision of service in any retail choice program, exit the merchant function program, transportation or wholesale program on a utility LDC system in an aggregate amount of not less than \$500,000 that are declared defaults in such programs (and remain uncured for greater than three (3) Business Days; provided, however, that for the purpose of this Section 2.18 (i), scheduling errors that result in over or under deliveries that do not result in the utility declaring default shall not be deemed a Cross Default under this Agreement), or (ii) a default, event of default or other similar condition or event by Choice Supplier under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money, in an aggregate amount of not less than 2% of Choice Supplier's shareholders equity, excluding in each case any such indebtedness (a) arising for or in respect of an obligation for borrowed money where the creditors' recourse on the obligation is limited to assets for which money was borrowed, or (b) owing by one affiliate to another, where such indebtedness is in an aggregate amount of not less than 2% of Choice Supplier's shareholders equity, which results in such indebtedness becoming, or becoming capable at such time of being declared,

immediately due and payable. Shareholders equity shall be calculated using the following formula: Total Assets - Intangibles - Total Liabilities = Shareholders Equity. A Cross Default is an Event of Default herein.

- 2.19. "DDQ" shall mean the Daily Delivery Quantity to be delivered by Choice Supplier as instructed by CenterPoint.
- 2.20. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transport Provider.
- 2.21. "DSS" shall mean Default Sales Service, which is Sales Service provided to Residential and General Service Customers that do not qualify for SCO Service.
- 2.22. "Default Sales Service (DSS) Supplier" shall mean the Supplier of Default Sales Service.
- 2.23. "Delivery Non-Compliance Fees" shall mean any fees, penalties, costs or charges (in cash or in kind) assessed by CenterPoint pursuant to its Tariff.
- 2.24. "Delivery Point(s)" shall mean the specific point(s) on a Transport Provider's system (a) at which CenterPoint has the right to take delivery of Gas pursuant to the Transport Provider's nomination process and (b) to which CenterPoint directs Choice Supplier to nominate and to deliver Gas.
- 2.25. "Dual Billing" shall mean the billing election option pursuant to which CenterPoint will not perform Consolidated Billing but instead Choice Supplier will separately bill the Choice Pool Customers for gas supply commodity charges and associated taxes.
- 2.26. "Financial Assurance Obligations" shall mean financial support provided to secure the obligations of a Party to this Agreement such as a Letter of Credit, a security interest in an asset, or other good and sufficient security of a continuing nature as reasonably determined satisfactory by CenterPoint in its sole discretion, and any obligation(s) in respect of the foregoing, all of which obligations and security shall be provided at the sole expense of the Party whose credit is being supported in a form, substance and amount that is reasonably acceptable to CenterPoint, and consistent with credit and collateral requirements set forth herein. CenterPoint shall have no Financial Assurance Obligations under this Agreement so long as CenterPoint continues to perform in compliance with the Commission orders which approved and authorized CenterPoint's Choice Program.
- 2.27. "Firm" shall mean that either Party may interrupt its performance without liability only to the extent that such performance is prevented for reasons of Force Majeure; provided, however, that during Force Majeure interruptions, the Party invoking Force Majeure may be responsible for any Delivery Non-Compliance Fees related to its interruption after the nomination is made to the Transport Provider and until the change in deliveries and/or receipts is confirmed by the Transport Provider.
- 2.28. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.29. "Letter of Credit" shall mean one or more irrevocable, non-transferable standby letters of credit issued by a Qualified Institution, in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for same.
- 2.30. "Mcf" shall mean one thousand cubic feet when measured at a pressure of fourteen and seventy-three hundredths pounds per square inch at a temperature of 60 degrees Fahrenheit.
- 2.31. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.
- 2.32. "Month" shall mean the period beginning on the first Day of the calendar month and ending immediately prior to the commencement of the first Day of the next calendar month.

- 2.33. "Monthly Statement" shall mean the statement issued monthly by CenterPoint to Choice Supplier containing fees, charges, and credits applicable to Choice Supplier.
- 2.34. "Non-Disclosure Agreement" shall mean the mutually acceptable non-disclosure agreement governing the informational exchange between CenterPoint and Choice Supplier executed between the Parties, contained in Exhibit B attached to this Agreement.
- 2.35. "NYMEX" shall mean the New York Mercantile Exchange.
- 2.36. "Over-Delivery Imbalance Volume" shall mean the positive difference between volumes delivered to satisfy a Choice Pool's requirements and the actual volume of Gas consumed by Choice Supplier's Pool Customers when such actual consumption volume is less than the delivered volume of Gas.
- 2.37. "Provider of Last Resort" shall mean CenterPoint's responsibility for coordinating Gas supplies of CenterPoint, SCO Suppliers, Choice Suppliers and large transport customers and pool operators to cover Choice load requirements in the event of an SCO or Choice Supplier default, or other events that require CenterPoint to protect the integrity of the system and to provide service.
- 2.38. "Qualified Institution" shall mean a U.S. office of a major commercial bank (which is not an affiliate of either Party) organized under the laws of the United States (or any state or a political subdivision thereof) or a Schedule I Canadian Bank with a U.S. branch office and, in either case, having assets of at least \$10 Billion and a long term debt rating or deposit rating of at least (i) A3 from Moody's and (ii) A- from S&P. In the event there is only one rating from either Moody's or S&P, the long term debt rating or deposit rating must be at least (i) A3 from Moody's or (ii) A- from S&P.
- 2.39. "Related Security" shall mean with respect to any Choice Accounts Receivable:
- (i) all security interests or liens and property subject thereto from time to time purporting to secure payment of such Choice Accounts Receivable, together with all financing statements authorized by a Choice Supplier describing any collateral security for such Choice Accounts Receivable;
  - (ii) all guaranties, insurance and other agreements or arrangements of whatever character from time to time supporting or security payment of such Choice Accounts Receivable; and
  - (iii) all of Choice Supplier's right, title, and interest, if any, in and to all invoices and that evidence, secure or otherwise relate to such Choice Accounts Receivable.
- 2.40. "Receiving Transport Provider" shall mean the Transport Provider receiving Gas at a Delivery Point, or absent such receiving Transport Provider, the Transport Provider delivering Gas at a Delivery Point.
- 2.41. "Retail Price Adjustment" shall mean the adjustment to the NYMEX monthly settlement price, as determined by the SCO Auction and fixed for the term of the Agreement, expressed in U.S. Dollars per Mcf.
- 2.42. "Standard Choice Offer ("SCO") Service" shall mean the Tariff-based standard market pricing choice service provided by multiple retail natural gas suppliers certified by the Commission.
- 2.43. "SCO Price" shall mean the amount to be charged to SCO Customers in any month expressed in U.S. Dollars per Mcf, after conversion to U.S. Dollars per Ccf, for the purchase of SCO Gas. As set forth more particularly in the Commission orders authorizing the SCO Program each month it shall consist of the sum of the NYMEX settlement price for that month (converted to U.S. Dollars per Mcf using CenterPoint's annual standard Btu factor) plus the Retail Price Adjustment as well as any other components as may be approved by the Commission.

- 2.44. "SCO Program" shall mean the Standard Choice Offer phase of the CenterPoint Merchant Exit Transition program instituted by CenterPoint as a result of the approval by the Commission in Docket Number 07-1285-GA-EXM and Tariff Sheets approved therein or subsequently revised as a result of Commission Order.
- 2.45. "SCO Suppliers" shall mean the entities providing Gas supply for CenterPoint's SCO Program.
- 2.46. Intentionally left blank.
- 2.47. "Supply Price" shall mean the price chargeable to a Choice Pool Customer by Choice Supplier pursuant to the contractual agreement between those two Parties.
- 2.48. "Tariff" shall mean CenterPoint's Tariff for Gas Service which may be changed from time- to-time upon Commission order.
- 2.49. "TCO" shall mean Columbia Gas Transmission.
- 2.50. "Transport Provider" shall mean any interstate pipeline utilized to deliver Gas to the CenterPoint system.

### **SECTION 3. PERFORMANCE OBLIGATIONS**

- 3.1. Choice Supplier agrees to deliver, and CenterPoint agrees to receive and distribute to Choose Supplier's Choice Pool Customers, the DDQ in accordance with the terms of this Agreement. Deliveries will be on a Firm basis. Choice Supplier shall deliver supplies at the volumes and locations determined by CenterPoint in accordance with the Choice Program. CenterPoint will use commercially reasonable efforts to notify Choice Supplier of any known pending material changes in required DDQ delivery volumes attributable to default or other similar factors.
- 3.2. To ensure system reliability, Choice Supplier grants to CenterPoint the right to nominate from storage with notice to Choice Supplier, Gas volumes held in VE CenterPoint DO- released storage on behalf of Choice Supplier on any Day that Choice Supplier's confirmed pipeline delivery nominations would fail to meet its Firm Delivery Obligations to satisfy the Choice Supplier's pool's demand. Choice Supplier hereby authorizes CenterPoint to provide directions to the storage system operator regarding the nomination of such Gas upon notice by CenterPoint to such operator that CenterPoint is exercising the rights granted to it hereunder with respect to such Gas. In the event such Gas is used, CenterPoint remains obligated to reflect the gas nominated by CenterPoint from the Choice Supplier's storage account on behalf of Supplier or withdrawn as a result of system demand via TCO No-Notice withdrawal, in the normal Monthly Statement process as delivered supplies. If CenterPoint nominates Choice Supplier's storage capacity on its behalf due to a failure of the Choice Supplier to meet a Firm obligation to deliver Gas to CenterPoint pursuant to Section
- 3.3. 3.1, CenterPoint will abide by all applicable Transport Provider tariff provisions for injecting and/or withdrawing Gas supply. CenterPoint will be responsible for all penalties incurred for non-compliance with the Transport Provider's tariff while operating storage capacity on behalf of Choice Supplier.
- 3.4. In the event of a default by another Choice Supplier or an SCO Supplier, Non-Defaulting Choice Supplier agrees that CenterPoint shall have the right to coordinate Provider of Last Resort needs using, if necessary, Non-Defaulting Choice Supplier's individual CenterPoint -released TCO storage inventory quantities. In such instance, CenterPoint will coordinate the replacement of the withdrawn storage inventory quantities at no cost to the Non- Defaulting Choice Supplier.
- 3.5. CenterPoint shall solicit, if CenterPoint deems necessary in the event of a termination of Agreement due to default by Choice Supplier, volunteers from non-defaulting Choice Suppliers to serve the defaulted load at the defaulting Choice Supplier's Supply Price. In the event multiple non-defaulting

Choice Suppliers agree to serve the defaulted load, such defaulted load shall be awarded in equal proportions to those non-defaulting Choice Suppliers. In the event that Choice Suppliers are unwilling to voluntarily serve the entire defaulted load, CenterPoint shall assign the defaulted load to DSS or SCO Suppliers to be served at the then current DSS or SCO Price, as adjusted from time to time. CenterPoint shall use Choice Supplier's Financial Assurance Obligations to pay the non-defaulting Choice Suppliers or DSS or SCO Suppliers that serve the defaulted load in proportion to the DSS or SCO volumes assigned to each such supplier. Such payment shall be made within five (5) Business Days of the date on which the funds become available to CenterPoint with no additional documentation required on the part of the DSS or SCO Suppliers serving the defaulting Choice Supplier's load. In addition, the defaulting Choice Supplier shall be liable for any costs or expenses incurred by CenterPoint and non-defaulting Choice Suppliers or DSS or SCO Suppliers as a result of Choice Supplier's default, including without limitation any interstate pipeline capacity, fuel, demand and commodity charges, imbalance and cash-out charges, and pipeline penalties. CenterPoint reserves the right to use Choice Supplier's assets associated with the Choice Program and Financial Assurance Obligations to offset or recoup any costs owed to and/or incurred by CenterPoint as a result of Choice Supplier's failure to deliver Gas.

- 3.6. Choice Supplier is subject to and agrees to perform in accordance with the Pooling Service (Residential and General) Rate Schedule (Rate 385) and Pooling Service Terms and Conditions (Residential and General) as set forth in the Tariff.

#### **SECTION 4. TRANSPORTATION AND NOMINATIONS**

- 4.1. Choice Supplier shall have the sole responsibility for transporting Gas to meet its DDQ to the Delivery Point(s) as directed by CenterPoint. CenterPoint shall have the sole responsibility for distributing the Gas from the Delivery Point(s).
- 4.2. Nomination requirements shall be as set forth in the Tariff.

#### **SECTION 5. QUALITY AND MEASUREMENT**

All Gas delivered to CenterPoint by Choice Supplier shall meet the pressure, quality and heat content requirements of the Receiving Transport Provider. The unit of quantity measurement for purposes of this Agreement shall be one MMBtu dry. Measurement of Gas quantities hereunder shall be in accordance with the established procedures of the Receiving Transport Provider.

#### **SECTION 6. TAXES**

Choice Supplier shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas. Under Consolidated Billing CenterPoint agrees to bill any applicable Ohio sales taxes as part of the Choice Program and to remit those amounts to Choice Supplier. Choice Supplier is responsible for remitting the appropriate amount of Ohio sales taxes to the State, and for timely making such filings and remittances as are necessary. CenterPoint takes no responsibility for such filings. If Choice Supplier's Choice Pool Customer is entitled to an exemption from any such Taxes or charges, Choice Supplier is also responsible for collecting and maintaining Ohio sales tax exemption certificates from those Choice Customers who are not required to pay the sales tax and communicating same to CenterPoint via EDI files, so that CenterPoint can charge the appropriate tax to Choice Supplier's Choice Pool Customers.

#### **SECTION 7. MONTHLY STATEMENT, PAYMENT, AND AUDIT**

- 7.1. On or before the 25th Day of each Month, CenterPoint shall issue to Choice Supplier a Monthly Statement. CenterPoint shall provide Choice Supplier with information supporting such Monthly Statement. CenterPoint shall be responsible for all meter reading costs and under Consolidated Billing, and billing costs.

- 7.2. CenterPoint will reconcile Choice Supplier's deliveries and sales requirements monthly and cash-out any cumulative difference annually according to the methodology established in the Choice Program.
- 7.3. The Parties shall have the right, each at its own expense, upon reasonable notice and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records, and telephone recordings of the other Party only to the extent reasonably necessary to verify the accuracy of any invoice, Monthly Statement, charge, payment, or computation made under the Agreement. This right to examine, audit, and to obtain copies shall not be available with respect to proprietary information not directly relevant to transactions under this Agreement. All invoices, Monthly Statements and billings shall be conclusively presumed final and accurate and all associated claims for under- or overpayments shall be deemed waived unless such invoices, Monthly Statements or billings are objected to in writing, with adequate explanation and/or documentation, within two years after the Month of Gas delivery. All retroactive adjustments under this section shall be paid in full by the Party owing payment within thirty (30) Days of a final resolution of a claimed adjustment or as otherwise provided in the Tariff.
- 7.4. The Parties shall net all amounts due and owing, and/or past due, arising under the Agreement, including without limitation all amounts owed to CenterPoint as part of Choice Supplier's Monthly Statement, such that the Party owing the greater amount shall make a single payment of the net amount to the other Party in accordance with this section. CenterPoint shall pay Choice Supplier the net amount due to Choice Supplier on the Monthly Statement within three (3) Business Days following CenterPoint's issuance of the Monthly Statement. Choice Supplier shall pay CenterPoint the net amount due to CenterPoint on the Monthly Statement within five (5) Business Days of receipt of the Monthly Statement.
- 7.5. CenterPoint shall be entitled to collect and retain from Choice Customers any and all late payment fees specified in the Tariff.
- 7.6. CenterPoint reserves the right to adjust Choice Supplier's account with regard to purchases giving rise to Choice Accounts Receivable for up to twelve (12) months after the original billing date for any individual Choice Customer's bill at issue, for accounting or billing errors, Choice Customer billing disputes, or any other necessary or appropriate adjustments.

**SECTION 8. CHOICE SUPPLIER CREDITWORTHINESS REQUIREMENTS, GRANT OF SECURITY INTERESTS, AND FINANCIAL ASSURANCE OBLIGATIONS**

- 8.1. As a condition to participation in the Program, Choice Supplier shall meet the creditworthiness requirements established by CenterPoint in accordance with the terms of the Tariff. Upon request by CenterPoint, Choice Supplier shall provide CenterPoint with such financial information as reasonably necessary for CenterPoint to make that assessment, in CenterPoint's absolute and sole discretion. At Choice Supplier's election, the provision of such information shall be governed by the Non-Disclosure Agreement.
  - 8.2. Choice Supplier electing Consolidated Billing must grant CenterPoint a first priority security interest in and lien on any Choice Pool Customer Revenues otherwise payable to Choice Supplier for Gas delivered to Choice Supplier's Choice Pool Customers as a part of the Choice Program.
  - 8.3. Choice Supplier electing Dual Billing must fully collateralize by means of a Letter of Credit, two consecutive highest months estimated Choice Accounts Receivables and any other potential exposure deemed necessary by CenterPoint.
  - 8.4. Choice Supplier authorizes CenterPoint to file in the jurisdiction of the State of Ohio, and/or in any other jurisdiction necessary, a UCC 1 Financing Statement detailing and perfecting any collateral granted to CenterPoint herein, and further represents and warrants that its exact legal name, state of formation and principal place of business is
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## **SECTION 9. TITLE, WARRANTY, AND INDEMNITY**

- 9.1 Choice Supplier shall have responsibility for and assume any liability with respect to the Gas prior to its delivery to CenterPoint at the specified Delivery Point(s). Subject to the exceptions set forth herein below, CenterPoint shall have responsibility for and any liability with respect to the distribution of said Gas after its delivery to CenterPoint at the Delivery Point(s).
- 9.2 Choice Supplier warrants that it will, at the time and place of delivery, have good right and title to all volumes of Gas delivered on its behalf, free and clear of all liens, encumbrances, and claims whatsoever. Except as provided in this Section 9.2 and in Section 14.1.8 all other warranties, express or implied, including any warranty of merchantability or fitness for any purpose are disclaimed.
- 9.3 Choice Supplier agrees to indemnify CenterPoint and save it harmless from all losses, liabilities or claims including reasonable attorneys' fees and costs of court ("Claims"), from any and all persons, arising from or out of claims of title, personal injury or property damage from said Gas or other charges thereon which attach before Gas is received by CenterPoint. CenterPoint agrees to indemnify Choice Supplier and save it harmless from all Claims, from any and all persons, arising from or out of claims regarding payment, personal injury or property damage from said Gas or other charges thereon which attach after Gas is received by CenterPoint.
- 9.4 Notwithstanding the other provisions of this Section 9, as between Choice Supplier and CenterPoint, Choice Supplier will be liable for all Claims to the extent that such arise from the failure of Gas delivered by Choice Supplier to meet the quality requirements of Section 5.

## **SECTION 10. NOTICES**

- 10.1. All invoices, Monthly Statements, payments and other communications made pursuant to the Agreement ("Notices") shall be made to the addresses specified in writing by the respective Parties in Exhibit C attached, as updated from time to time.
- 10.2. All Notices required hereunder may be sent by facsimile or mutually acceptable electronic means, a nationally recognized overnight courier service, first class mail or hand delivered.
- 10.3. Notice shall be effective upon receipt, provided that if the Day on which the Notice is received is not a Business Day or if the Notice is received after 5:00 p.m. (EST) on a Business Day, such Notice will be deemed to be effective on the next Business Day. In the absence of proof of the actual receipt date, the following presumptions will apply. Notices sent by facsimile shall be deemed to have been received upon the sending Party's receipt of its facsimile machine's confirmation of successful transmission. If the Day on which such facsimile is received is not a Business Day or is after five p.m. on a Business Day, then such facsimile shall be deemed to have been received on the next following Business Day. Notice by overnight mail or courier shall be deemed to have been received on the next Business Day after it was sent or such earlier time as is confirmed by the receiving Party. Notice via first class mail shall be considered delivered five Business Days after mailing.

## **SECTION 11. FINANCIAL RESPONSIBILITY**

- 11.1. If CenterPoint has reasonable grounds for insecurity regarding the performance of any obligation under this Agreement (whether or not then due) by Choice Supplier (including, without limitation, the occurrence of a material change in the creditworthiness of Choice Supplier), CenterPoint may demand Adequate Assurance of Performance.
- 11.2. In the event (each an "Event of Default") either Party (the "Defaulting Party") or its guarantor shall:
  - (i) make an assignment or any general arrangement for the benefit of creditors;
  - (ii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or case under



any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iii) otherwise become bankrupt or insolvent (however evidenced); (iv) be unable to pay its debts as they fall due;

(v) have a receiver, provisional liquidator, conservator, custodian, trustee or other similar official appointed with respect to it or substantially all of its assets; (vi) fail to perform any obligation to the other Party with respect to any Financial Assurance Obligations relating to the Agreement; (vii) fail to give Adequate Assurance of Performance under Section 11.1 within three (3) Business Days of a written request by the other Party; (viii) failure, if Choice Supplier is the Defaulting Party, of a Firm obligation to deliver Gas to CenterPoint, unless excused by Force Majeure, and fails to cure same within five (5) Business Days of notice by CenterPoint, or within such other time as provided for by the Tariff, whichever is less; (ix) commit, if Choice Supplier, an Additional Event of Default, as defined below; or (x) not have paid any amount due the other Party hereunder on or before the second (2<sup>nd</sup>) Business Day following written notice that such payment is due; then the other Party (the "Non-Defaulting Party") shall have the right, at its sole election, to immediately withhold and/or suspend deliveries or payments upon notice and/or to terminate and liquidate the transactions under the Agreement, in the manner provided in Section 11.2.3, in addition to any and all other remedies available hereunder.

11.2.1. The following shall be Additional Events of Default: (a) Choice Supplier's failure to comply with CenterPoint's system, program or supplier operational flow order requirements as determined by CenterPoint and communicated to Choice Supplier; (b) Choice Supplier's failure to maintain required storage inventory levels pursuant to the Choice Program over the Contract term; (c) Choice Supplier's failure to provide documentation requested by CenterPoint to validate on-system and/or contracted firm capacity to meet Comparable Firm Capacity Requirements as set forth in the Tariff; (d) Choice Supplier's failure to maintain CenterPoint's Choice Pooling Supplier Participation requirements; (e) Choice Supplier's failure to comply with monthly capacity release adjustments designated by CenterPoint and to execute within times requested by CenterPoint any documents necessary to effect same; (f) the failure of Choice Supplier to meet any material obligation under the Tariff or this Agreement; and (g) a Cross Default.

11.2.2. In the event of a Default, an alleged Default, or a reasonably anticipated Default, written or faxed notice of such Default shall be served on the other Party, describing the Default and declaring it to be the intention of the Party giving the notice to terminate this Contract unless the Default is cured to the satisfaction of the Non-Defaulting Party. In the event a Party receives notice of Default, the Party alleged to be in default shall have the applicable number of Days set out in the Consequences of Choice Supplier's Failure to Perform or Comply section of the Tariff after the service of the aforesaid notice in which to remedy or remove the cause or causes stated in the notice for terminating or canceling this Agreement, and if, within said period of time, the Defaulting Party does so remedy or remove said causes to the satisfaction of the other Party, then such notice shall be deemed to have been withdrawn and this Agreement shall continue in full force and effect. If the Defaulting Party does not so remedy or remove the cause or causes within said period of time, then, at the option of the Party giving notice, this Agreement may terminate immediately as of the expiration of said period. However, in the event CenterPoint is the Non-Defaulting Party, CenterPoint must file a written request with the Commission for authorization to terminate or suspend Choice Supplier's further Program participation relative to Choice Supplier's Non- Mercantile Pool(s), and receive such authorization prior to suspending or terminating such Choice Supplier's future provision of service to such Non- Mercantile Pool(s). Any termination or cancellation of this Agreement, pursuant to this Section 11 shall be without waiver of any remedy, whether at law or in equity, to which the Party not in Default otherwise may be entitled for breach of this Agreement. If CenterPoint terminates this Agreement as a result of an Event of Default by Choice Supplier, any and all storage and transportation capacity

released by CenterPoint to Choice Supplier as part of the Program shall be recalled without the need for further action by Choice Supplier, and CenterPoint is hereby authorized, to the extent necessary, in that event to act on behalf of Choice Supplier to effect those outcomes.

- 11.2.3. If an Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right, by notice to the Defaulting Party, to designate a Day as an early termination date (the "Early Termination Date") for the liquidation and termination pursuant to Section 11.2.4 of all transactions under the Agreement.
- 11.2.4. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner the amount owed (whether or not then due) by each Party with respect to all Gas delivered and received between the Parties on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts for which payment has not yet been made by the Party that owes such payment under this Agreement. In addition, the Non-Defaulting Party shall be entitled to collect from the Defaulting Party, all costs incurred (including but not limited to Transport Provider's capacity charges, fuel and demand charges, imbalance and cash out charges, Transport Provider penalties and reservation charges, and Choice Program charges) due to the termination and liquidation under this Section.
- 11.2.5. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the Parties under Section 11.2.4, so that all such amounts are netted or aggregated to a single liquidated amount payable by one Party to the other (the "Net Settlement Amount"). At its sole option and without prior notice to the Defaulting Party, the Non-Defaulting Party may setoff (i) any Net Settlement Amount owed to the Non-Defaulting Party against any margin or other collateral held by it in connection with any Financial Assurance Obligations relating to the Agreement; or (ii) any Net Settlement Amount payable to the Defaulting Party against any amount(s) payable by the Defaulting Party to the Non-Defaulting Party under any other agreement or arrangement between the Parties.
- 11.2.6. If any obligation that is to be included in any netting, aggregation or setoff pursuant to Section 11.2.5 is unascertained, the Non-Defaulting Party may in good faith estimate that obligation and net, aggregate or setoff, as applicable, in respect of the estimate, subject to the Non-Defaulting Party accounting to the Defaulting Party when the obligation is ascertained. Any amount not then due which is included in any netting, aggregation or setoff pursuant to Section 11.2.5 shall be discounted to net present value in a commercially reasonable manner determined by the Non-Defaulting Party.
- 11.3. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the Net Settlement Amount, and whether the Net Settlement Amount 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, provided that failure to give such notice shall not affect the validity or enforceability of the liquidation or give rise to any claim by the Defaulting Party against the Non-Defaulting Party. The Net Settlement Amount shall be paid by the close of business on the second (2<sup>nd</sup>) Business Day following such notice, which date shall not be earlier than the Early Termination Date. Interest on any unpaid portion of the Net Settlement Amount shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.
- 11.4. To meet the gas supply requirements of CenterPoint's Ohio retail customers and thus help ensure adequate and reliable gas utility consumer services, and to avoid irreparable harm to CenterPoint or its retail customers, CenterPoint may recall permanently or temporarily all or some of these released

capacity/service rights, if CenterPoint receives notice of material change(s) in creditworthiness of replacement shippers (Supplier and Supplier's Designee), including without limitation:

- (i) their nonpayment of Transporter's invoice relating to these released capacity/service rights;
  - (ii) their past due, deficiency, or default status pursuant to Transporter's tariff; suspension of service; receipt of contract termination notice due to default or credit-related issues; receipt of notice that they are no longer creditworthy and have not provided credit alternative(s);
  - (iii) an event of default having been declared under a Choice Supplier Pooling Agreement or a Standard Choice Offer Supplier Agreement with CenterPoint; or
  - (iv) their noncompliance with CenterPoint's Tariff; or their imminent or actual filing under bankruptcy laws.
- 11.5. In the event that, during the term of this Agreement, (i) Choice Supplier files a petition for relief under Federal bankruptcy laws, or (ii) Choice Supplier's creditors file an involuntary bankruptcy petition against Choice Supplier, or (iii) a receiver, provisional liquidator, conservator, custodian, trustee or other similar official is appointed with respect to Choice Supplier or substantially all of Choice Supplier's assets, and this Agreement has not been terminated for non-delivery of Gas supplies, then Choice Supplier shall cause a notice to be filed with the bankruptcy or other appropriate court having jurisdiction, within five (5) Days of the petition having been filed or the appointment having been made, as applicable, indicating its intention either to assume or reject this Contract and shall promptly thereafter take all actions necessary to effectuate such assumption or rejection; provided, however, that nothing herein shall prohibit CenterPoint from objecting to such notice of assumption or rejection. To the fullest extent permitted by applicable law, Choice Supplier's failure to file such notice of intention within said five (5) Days shall constitute notice that Choice Supplier intends to reject this Agreement. Choice Supplier acknowledges that its failure to take action to declare its intent may cause irreparable harm to CenterPoint and/or Choice Customers

## **SECTION 12. CAPACITY RELEASE AND RECALL PROVISIONS**

- 12.1. CenterPoint will release 100% of its interstate pipeline transportation and storage capacity on a monthly basis to its SCO or DSS Suppliers and Choice Suppliers. Choice Supplier's acceptance of the release of this interstate capacity is a mandatory requirement in order for Choice Supplier to participate in the Choice Program. Capacity releases of CenterPoint interstate pipeline firm transportation and storage capacity to Choice Suppliers, or to any other entity, must comply with relevant provisions of the pipeline's FERC tariff, and of the FERC's regulations.
- 12.2. CenterPoint will include the language listed below in monthly capacity releases in order to provide CenterPoint with prompt access to the interstate transportation and storage capacity released.
- 12.3. Recalling CenterPoint interstate capacity releases due to material change(s) in creditworthiness:
- 12.3.1. This capacity release to a Supplier or Supplier's Designee in an Ohio-regulated retail access program, as defined in 18 C.F.R. § 284.8, shall be subject to FERC Order Nos. 712, 712-A, & 712-B, Docket No. RM08-1-000 (re: interstate pipeline capacity release rules); and FERC Docket No. RP08-377-000 (granting CenterPoint capacity release rules waivers); and the orders in PUCO Case No. 02-1566-GA-ATA (retail choice program) and PUCO Case No. 07-1285-GA-EXM (merchant exit and retail choice program updates) including associated CenterPoint tariff sheets and operating procedures.

- 12.4 SCO Supplier agrees to submit monthly Agency Agreements to TCO providing access to Supplier's storage inventory and nomination information in the manner required by CenterPoint.

### **SECTION 13. FORCE MAJEURE**

- 13.1. Except with regard to a Party's obligation to make payment(s) due under this Agreement, neither Party shall be liable to the other for failure to perform a Firm obligation to the extent such failure was caused by Force Majeure. The term "Force Majeure" as employed herein means any cause not reasonably within the control of the Party claiming suspension, as further defined in Section 13.2.
- 13.2. Force Majeure shall include, but not be limited to, the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii) interruption and/or curtailment of Firm transportation and/or storage by Transport Providers; (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars; and (v) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a governmental authority having jurisdiction, including Commission ordered elimination of the Choice Program. Choice Supplier and CenterPoint shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance.
- 13.3. Neither Party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the curtailment of interruptible or secondary Firm transportation unless primary, in-path, Firm transportation to the same Delivery Point is also curtailed; (ii) the Party claiming excuse failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or (iii) economic hardship, to include, without limitation, Choice Supplier's ability to sell Gas at a higher or more advantageous price than the Supply Price; or (iv) the loss or failure of Choice Supplier's gas supply or depletion of reserves, except, in either case, as provided in Section 13.2.
- 13.4. Notwithstanding anything to the contrary herein, the Parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the Party experiencing such disturbance.
- 13.5. The Party whose performance is prevented by Force Majeure must provide notice to the other Party. Initial notice may be given orally; however, written notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written notice of Force Majeure to the other Party, the affected Party will be relieved of its obligation, from the onset of the Force Majeure event, to make or accept delivery of Gas, as applicable, to the extent and for the duration of Force Majeure, and neither Party shall be deemed to have failed in such obligations to the other during such occurrence or event.

### **SECTION 14. CUSTOMER BILLING, TRUE SALE OF CHOICE ACCOUNTS RECEIVABLE, AND GRANT OF SECURITY INTEREST**

Choice Supplier has two (2) billing options in rendering a bill to a participating Customer, as outlined in Company's Pooling Service Tariff and as detailed below. Such election shall be applicable to all of Choice Supplier's Pools and Customers.

#### **14.1. CONSOLIDATED BILLING ELECTION**

- 14.1.1 CenterPoint shall include its charges and Choice Supplier's charges on CenterPoint - issued bills to Choose Customers. Choice Customer bills will be issued in a manner consistent with standard CenterPoint billing practices. CenterPoint will remit to Choose Supplier the Choice Accounts Receivable. Remittance of such funds will be according to the following schedule: (a) for Choice Customers that are billed for a portion of the flow Month usage during the flow Month, remittance will be made in the Month immediately following the last Day of the flow Month; and (b) for Choice Customers that are billed in the Month immediately following the flow Month for consumption pertaining to both the flow Month and the subsequent flow Month, remittance will be made in the second Month following the flow Month. CenterPoint will render statements to Choice Supplier each Month by the twenty-fifth (25th) Day of the Month, for the prior Month's activity and will pay Choice Supplier for such activity less any charges owed by Choice Supplier to CenterPoint, no later than three (3) Business Days following the rendering of the applicable statement. In the event of any net amount due to CenterPoint under the applicable statement, Choice Supplier shall pay this net amount to CenterPoint within five (5) Business Days of its receipt of such statement.
- 14.1.2. Subject to the other terms and conditions set forth in this Article 14.1, CenterPoint agrees to purchase from Choice Supplier, and Choice Supplier agrees to sell to CenterPoint, Choice Accounts Receivable without discount during the term of this Agreement, and CenterPoint agrees to make such purchases on a daily basis during such term. Although the purchase price for Choice Accounts Receivable, in general, shall be owed by CenterPoint on the date such receivable came into existence, the actual payment by CenterPoint for such Choice Accounts Receivable shall be effected on a monthly basis consistent with the remittance schedule described in the immediately preceding paragraph.
- 14.1.3. CenterPoint and Choice Supplier intend that each purchase of a Choice Accounts Receivable by CenterPoint hereunder shall be regarded as a "true sale" of such Choice Accounts Receivable by Choice Supplier to CenterPoint. If, however, contrary to the mutual intent of the Parties, some or all such purchase and sale transactions are not properly characterized as "true sales" under applicable law, then, and to that extent, effective as of the date of this Agreement, Choice Supplier shall be deemed to have granted (and Choice Supplier does hereby grant) to CenterPoint a security interest in all of its right, title and interest in and to all of such Choice Accounts Receivable not deemed to be the subject of "true sales," whether now owned and existing or hereafter acquired or arising, all Related Security and Collections with respect thereto and, to the extent not otherwise included in the foregoing, all proceeds of any and all of the foregoing, as security for the prompt and faithful performance by Choice Supplier of each and all of its obligations under this Agreement.
- 14.1.4. Notwithstanding anything contained in this Agreement to the contrary, CenterPoint shall have no obligation to purchase Choice Accounts Receivable hereunder (a) if the sale or the grant of a security interest in the Choice Accounts Receivable by Choice Supplier cannot be effectuated or transferred, as applicable, free and clear of any and all liens, security interests, claims, or other encumbrances; (b) if any person or entity shall successfully challenge CenterPoint's right to purchase Choice Accounts Receivables or retain amounts collected from Choice Customers as a result of the sale of Choice Accounts Receivable hereunder, either before Commission or in Federal or State Court; (c) if Choice Supplier is no longer certified to supply natural Gas in Ohio or eligible to supply service on CenterPoint's system; or (d) an Event of Default by Choice Supplier under Article 11 of this Agreement has occurred. In the event that CenterPoint shall purchase Choice Accounts Receivable, notwithstanding its lack of any obligation or duty to do so and irrespective of its knowledge, or lack thereof, of the existence of events or occurrences relieving it of such obligation or duty, CenterPoint, in any such instance, may upon written notice to Choice Supplier require Choice Supplier immediately to repurchase, in whole or in part, uncollected Choice Accounts Receivable previously purchased and paid for by CenterPoint hereunder, for the same amount paid by CenterPoint therefore.

14.1.5. CenterPoint agrees to purchase Choice Supplier's Choice Accounts Receivable without discount during the term of this Agreement so long as CenterPoint has continuing authority pursuant to Commission entry to recover its uncollectible customer receivables. In the event such continuing authority is altered pursuant to Commission entry, CenterPoint will purchase Choice Accounts Receivable as of the effective date of Commission alteration of said continuing authority at a discount reflecting the unrecovered portion of its customer accounts receivable, which excludes Percentage of Income Payment Plan (PIPP) uncollectible customer receivables.

14.1.6. CenterPoint will calculate applicable Ohio state and local sales taxes and place those charges on Choice Customer bills. Choice Supplier, and not CenterPoint, shall be fully responsible for all Ohio sales tax deficiencies and audits regarding Choice Supplier's sale of natural Gas to Choose Customers under the Choice Program. CenterPoint acknowledges that it is providing a billing service to Choose Supplier in those situations where CenterPoint collects the sales tax and remits the same to Choice Supplier. Choice Supplier is responsible for remitting such sales tax to the State of Ohio. Choice Supplier is also responsible for collecting and maintaining Ohio sales tax exemption certificates from those Choice Customers who are not required to pay the sales tax and communicating same to CenterPoint via EDI files. CenterPoint is, however, fully responsible for all Ohio tax deficiencies and audits regarding CenterPoint's charges related to the distribution of natural Gas to Choice Customers. To the fullest extent permitted by applicable law, Choice Supplier shall defend, indemnify, and hold CenterPoint harmless from any and all costs, claims, damages, fines, taxes and any penalties and interest thereon, relating in any way to (i) CenterPoint's reliance on information or directives provided by Choice Supplier to CenterPoint, or (ii) CenterPoint's collection or remittance or failure to collect or remit sales taxes on Choice Supplier's behalf, or (iii) the failure of Choice Supplier to satisfy its tax obligations related to the sale of natural Gas under the Choice Program. This indemnification obligation shall survive the termination or expiration of this Agreement.

CenterPoint shall be entitled to collect and retain from Choice Customers any and all late payment fees specified in the Tariff. CenterPoint reserves the right to adjust Choice Supplier's Monthly Statements with regard to purchases giving rise to Choice Accounts Receivable for up to twelve (12) months after the original billing date for any individual Choice Customer's bill at issue, for accounting or billing errors, Choice Customer billing disputes, or any other necessary or appropriate adjustments.

14.1.8. In furtherance of the "true sales" or the grants of the security interests contemplated by this Article 8, Choice Supplier hereby certifies and represents to CenterPoint that:

- (1) Choice Supplier's correct legal name is as set forth in the introductory paragraph of this Agreement;
- (2) Choice Supplier is organized, validly existing and in good standing under the laws of the State of \_\_\_\_\_;
- (3) the Choice Accounts Receivables intended to be sold by Choice Supplier hereunder will be free and clear of any and all liens, security interests, claims, or other encumbrances; and
- (4) under applicable law, CenterPoint shall be, and hereby is, entitled to file one or more financing statements in those filing offices deemed necessary or appropriate by CenterPoint, naming Choice Supplier as debtor or seller and CenterPoint as secured Party or buyer and describing the Choice Accounts Receivable, the Collections, and the Related Security as collateral

## **14.2. DUAL BILLING ELECTION - NO PURCHASE OF CHOICE ACCOUNTS RECEIVABLE, AND GRANT OF SECURITY INTEREST**

14.2.1 Choice Supplier may elect a dual billing option, whereby Choice Supplier issues its own bills separately from the CenterPoint bills, and whereby Choice Supplier's charges are not included

in CenterPoint -issued bills to Choice Customers. Choice Supplier Customer bills will be issued in a manner consistent with standard CenterPoint billing practices and in a manner consistent with requirements set out in all applicable Tariffs, regulations and statutes. CenterPoint will render statements to Choice Supplier each Month by the twenty-fifth (25th) Day of the Month, for the prior Month's activity. Choice Supplier shall pay the net amount due to CenterPoint within five (5) Business Days of its receipt of such statement.

- 14.2.1.1 CenterPoint will provide Choice Supplier its Choice Customers' usage and meter reading dates via an electronic file.
  - 14.2.1.2 Subject to the other terms and conditions set forth in this Article 14.2, CenterPoint does not purchase from Choice Supplier any Choice Accounts Receivable. CenterPoint and Choice Supplier acknowledge that under Choice Supplier's election of dual billing, there is no "true sale" of Choice Accounts Receivable.
  - 14.2.1.3 Choice Supplier agrees that its collections practices shall comply with all applicable Tariffs, regulations and statutes.
  - 14.2.1.4 Choice Supplier, and not CenterPoint, shall be fully responsible for all Ohio sales tax deficiencies and audits regarding Choice Supplier's sale of Gas to Choice Customers under the Choice Program. Choice Supplier is responsible for remitting such sales tax to the State of Ohio. Choice Supplier is also responsible for collecting and maintaining Ohio sales tax exemption certificates from those Choice Customers who are not required to pay the sales tax and communicating same to CenterPoint via EDI files. CenterPoint is, however, fully responsible for all Ohio tax deficiencies and audits regarding CenterPoint's charges related to the distribution of natural Gas to Choice Customers. To the fullest extent permitted by applicable law, Choice Supplier shall defend, indemnify, and hold CenterPoint harmless from any and all costs, claims, damages, fines, taxes and any penalties and interest thereon, relating in any way to (i) CenterPoint's reliance on information or directives provided by Choice Supplier to CenterPoint, or (ii) CenterPoint's collection or remittance or failure to collect or remit sales taxes on Choice Supplier's behalf, or (iii) the failure of Choice Supplier to satisfy its tax obligations related to the sale of natural Gas under the Choice Program. This indemnification obligation shall survive the termination or expiration of this Agreement.
- 14.2.1.4 Choice Supplier, and not CenterPoint, shall be fully responsible for all Ohio sales tax deficiencies and audits regarding Choice Supplier's sale of Gas to Choice Customers under the Choice Program. Choice Supplier is responsible for remitting such sales tax to the State of Ohio. Choice Supplier is also responsible for collecting and maintaining Ohio sales tax exemption certificates from those Choice Customers who are not required to pay the sales tax and communicating same to CenterPoint via EDI files. CenterPoint is, however, fully responsible for all Ohio tax deficiencies and audits regarding CenterPoint's charges related to the distribution of natural Gas to Choice Customers. To the fullest extent permitted by applicable law, Choice Supplier shall defend, indemnify, and hold CenterPoint harmless from any and all costs, claims, damages, fines, taxes and any penalties and interest thereon, relating in any way to (i) CenterPoint's reliance on information or directives provided by Choice Supplier to CenterPoint, or (ii) CenterPoint's collection or remittance or failure to collect or remit sales taxes on Choice Supplier's behalf, or (iii) the failure of Choice Supplier to satisfy its tax obligations related to the sale of natural Gas under the Choice Program. This indemnification obligation shall survive the termination or expiration of this Agreement.

## **SECTION 15. OFFSETS BY CenterPoint**

- 15.1 In the event of a default, CenterPoint may offset or recoup any and all amounts owed to it by Defaulting Choice Supplier including those amounts owed to non-defaulting DSS, SCO and Choice Suppliers for serving Defaulting Choice Supplier's Choice Customer Pool demands, or for which it

it may be held responsible as a result of Defaulting Choice Supplier's participation in the Choice Program (collectively, the "Offset Amounts"), against and from any and all amounts payable by CenterPoint to Defaulting Choice Supplier under the Agreement, including without limitation any amounts payable by CenterPoint with respect to the Choice Accounts Receivable. The Offset Amounts shall include without limitation: (1) all amounts being charged to Defaulting Choice Supplier as a result of its participation in this Choice Program, (2) all amounts owed directly to CenterPoint by Defaulting Choice Supplier, (3) all amounts for which CenterPoint is or may be held responsible if not paid by Defaulting Choice Supplier, including without limitation any and all capacity charges billed by interstate pipeline companies, and (4) all other amounts which CenterPoint is entitled to recoup. CenterPoint shall toll its offsetting or recoupment of such amounts out of Defaulting Choice Supplier's Choice Accounts Receivable in the event that, and only to the extent that, Defaulting Choice Supplier raises a bona fide dispute as to whether it owes money to CenterPoint, pending a good faith review of the dispute. To toll that process, Defaulting Choice Supplier shall provide a detailed written description of the dispute, including disputed amounts, to CenterPoint. CenterPoint may withhold payment to Defaulting Choice Supplier of any Choice Accounts Receivable related to said dispute until it has been resolved.

- 15.2. All charges or penalties related to operational balancing and other services provided by CenterPoint are specified in the Tariff.

## **SECTION 16. TERM**

- 16.1. The term of this Agreement shall commence on the first day of the month after execution hereof and, subject to Choice Supplier's continued compliance with this Agreement and the requirements outlined herein for participation in this the Program, shall continue in effect thereafter for a primary term of twelve (12) months. Thereafter, this Agreement shall continue from year-to-year, unless terminated by either Party, upon at least ninety (90) days advance written notice prior to an agreement expiration date, or unless terminated pursuant to the provisions of this Agreement.
- 16.2. In the event that during the term of this Agreement the Commission issues any Order or makes any determination which alters the Choice Program including but not limited to any limitation or expansion or new requirement, and which Commission Order or determination materially adversely affects one or both of the Parties, either Party may terminate this Agreement with thirty (30) days' advance written notice to the other Party. A material adverse affect would include any affect that impacts the financial bargain of the Party or the Party's ability to physically meet their responsibilities under this Agreement.
- 16.3. However, in no case other than in the case of material alteration of Choice Program by the Commission shall any service pursuant to this Agreement be terminated during a winter month (November through March), unless such winter period termination date is mutually agreed upon by both CenterPoint and Choice Supplier and/or except pursuant to the other provisions of this Agreement. The rights of either Party pursuant to Section 3.2, Section 7.3, Section 8, Section 11, Section 14 and Section 15, the obligations to make payment hereunder, and the obligation of either Party to indemnify the other pursuant hereto shall survive the termination of this Agreement.

## **SECTION 17. LIMITATIONS**

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, EITHER SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES PROVIDED HEREIN OR ALLOWABLE DAMAGES PURSUANT TO THE APPLICABLE TARIFF, WHICHEVER IS GREATER, SHALL BE THE SOLE AND EXCLUSIVE REMEDY. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR OTHERWISE NOT PROVIDED FOR IN THE APPLICABLE TARIFF, A PARTY'S LIABILITY HEREUNDER SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT



ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

**SECTION 18. NOTICES AND CORRESPONDENCE**

- 18.1 Legal and Contract-related Notices to CenterPoint shall be addressed as follows and sent via fax, U.S. mail or certified mail:

CenterPoint Energy Ohio One Vectren  
Square Evansville, IN 47708  
Attention: General Counsel Fax:  
812-491-4169

With a copy to:

CenterPoint Energy Ohio  
c/o CenterPoint Energy Resources Corp 1111  
Louisiana Street  
Houston, TX 77002  
Attention: Jerry Noland  
Fax: 713-207-0854  
Email: [CERCCContracts@centerpointenergy.com](mailto:CERCCContracts@centerpointenergy.com)

- 18.2 Daily operational Notices and correspondence to CenterPoint shall be addressed as to:

CenterPoint Energy Ohio  
c/o CenterPoint Energy Resources Corp 1111  
Louisiana Street  
Houston, TX 77002  
Attention: Kim Joseph  
Fax: 713-207-0854  
Email: [GTOperations@centerpointenergy.com](mailto:GTOperations@centerpointenergy.com)

- 18.3 Legal and Contract-related notices and correspondence to Choice Supplier shall be addressed as follows and sent via fax, U.S. mail or certified mail:

Attention/Title: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City, State, ZIP: \_\_\_\_\_

Fax Notices to Supplier shall be directed to: ( \_\_\_\_\_ )

E-mail Address: \_\_\_\_\_

## **SECTION 19. CUSTOMER INFORMATION AND DATA REQUESTS**

- 19.1. Choice Supplier agrees to use any customer information provided to Choice Supplier by CenterPoint pursuant to Choice Supplier's participation in the Choice Program solely for the purpose of Choice Supplier's performance of its obligations pursuant to this Agreement and for the purpose of soliciting Choice Supplier's competitive products offered by Choice Supplier in the CenterPoint market pursuant to the CenterPoint Choice Program. Further, Choice Supplier agrees not to disclose or permit to be disclosed the customer-specific information to any person other than those employees or agents of Choice Supplier who are responsible for soliciting customers and to limit use of such disclosed information by such employees or agents to those purposes stated herein. In the event Choice Supplier ceases to act as a Choice Supplier, said Choice Supplier shall, at the direction of CenterPoint, either return customer specific information to CenterPoint or destroy such customer specific information and provide certification of its destruction
- 19.1. The Company does not guarantee the accuracy of the customer information provided in response to Choice Supplier's request for a list of customers eligible to participate in the Choice Program, and shall not be liable for any errors in such information.
- 19.2. Company, at its discretion, may decline to provide Choice Supplier with any customer information or data of any kind that is not already provided by Company. Requests by Choice Supplier for additional information or data may be granted by Company at an agreed-upon fee to reimburse Company for any costs incurred in providing the information or data. Any type of data provided to any Choice Supplier may also be provided, upon request, to other Choice or SCO Suppliers.

## **SECTION 20. MISCELLANEOUS**

- 20.1. Capacity releases of CenterPoint interstate pipeline firm transportation and storage capacity to Choice Supplier, or to any other entity, must comply with relevant provisions of the pipeline's FERC Tariff and FERC's regulations.
- 20.2. This Agreement shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, and heirs of the respective Parties hereto, and the covenants, conditions, rights and obligations of this Agreement shall run for the full term of this Agreement. No assignment of this Agreement, in whole or in part, will be made without the prior written consent of the non-assigning Party (and shall not relieve the assigning Party from liability hereunder), which consent will not be unreasonably withheld, conditioned, or delayed. In no event will CenterPoint consent to any such assignment unless the assignee satisfies the creditworthiness requirements set forth in this Agreement. Subject to any financial security CenterPoint may have in the revenues or proceeds flowing to Choice Supplier pursuant to this Agreement, Choice Supplier may pledge the revenues or proceeds hereof in connection with any financing or other financial arrangements Choice Supplier may have without the prior approval of CenterPoint.
- 20.3. If any provision in this Agreement is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement.
- 20.4. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach.
- 20.5. This Contract sets forth all understandings between the Parties respecting each transaction subject hereto, and any prior contracts, understandings and representations, whether oral or written, relating to such transactions are merged into and superseded by this Contract and any effective transaction(s). This Contract may be amended only by a writing executed by both Parties.
- 20.6. The interpretation and performance of this Agreement shall be governed by the laws of the State of Ohio excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue shall be only in the court of common pleas of Franklin County, Ohio, for any and all disputes regarding this Contract. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING RELATING TO THIS AGREEMENT.

- 20.7 This Agreement and all provisions herein will be subject to all applicable and valid statutes, rules, orders and regulations of any governmental authority having jurisdiction over the Parties, their facilities or Gas supply, this Agreement or transaction or any provisions thereof.
- 20.8 There is no third Party beneficiary to this Agreement.
- 20.9 Each Party to this Agreement represents and warrants that it has full and complete authority to enter into and perform this Agreement. Each person who executes this Agreement on behalf of either Party represents and warrants that it has full and complete authority to do so and that such Party will be bound thereby.
- 20.10 The headings and subheadings contained in this Agreement are used solely for convenience and do not constitute a part of this Agreement between the Parties and shall not be used to construe or interpret the provisions of this Agreement.
- 20.11 Any original executed Agreement or other related document and in any case whether electronic or physical may be photocopied, in the case of physical documents, and stored on computer tapes and disks (the "Imaged Agreement"). The Imaged Agreement, if introduced as evidence on paper, will be enforceable as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form; provided that nothing herein shall be construed as a waiver of any objection to the admissibility of such evidence.
- 20.12 This Agreement is entered into in reliance on the Parties' agreement that the documents forming this Agreement form a single integrated agreement between the Parties, and the Parties would not otherwise enter into this Agreement.

The parties hereto have executed this Choice Supplier Pooling Agreement in duplicate.

**VECTREN ENERGY DELIVERY OF OHIO, INC.  
d/b/a CENTERPOINT ENERGY OHIO**

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

\_\_\_\_\_  
Printed Name and Title

**CHOICE SUPPLIER:** \_\_\_\_\_

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

\_\_\_\_\_  
Printed Name and Title

FORM LETTER OF CREDIT

(Exhibit A)

**NOTE: All drafts must be approved by CenterPoint PRIOR TO final execution.**

IRREVOCABLE STANDBY LETTER OF CREDIT NO.

Beneficiary: Vectren Energy Delivery of Ohio, Inc.  
d/b/a CenterPoint Energy Ohio  
One Vectren Square  
Evansville, IN 47708

Issue Effective Date: \_\_\_\_\_

Expiration \_\_\_\_\_

Date: \_\_\_\_\_

Amount \_\_\_\_\_

Vectren Energy Delivery of Ohio, Inc.  
d/b/a CenterPoint Energy Ohio  
One Vectren Square  
Evansville, IN 47708

We hereby issue our Irrevocable Letter of Credit No. \_\_\_\_\_ In your favor on behalf of \_\_\_\_\_ for an amount not to exceed \_\_\_\_\_ Dollars (\$ \_\_\_\_\_ ) available by your drafts at sight and payable at sight drawn on our institution, \_\_\_\_\_.

Drafts must contain or be accompanied by the following:

Drafts must be marked "Drawn under \_\_\_\_\_, Letter of Credit No. \_\_\_\_\_, dated \_\_\_\_\_"

Drafts must be accompanied by a signed statement by an authorized signatory of Vectren Energy Delivery of Ohio, Inc., d/b/a CenterPoint Energy Ohio (signed as such) reading as follows: "I, (authorized signatory) the undersigned duly authorized signatory for Vectren Energy Delivery of Ohio, Inc., d/b/a CenterPoint Energy Ohio, hereby certify that, \_\_\_\_\_ or its successor(s) or assign(s), is in default under one or more Contracts and/or applicable Tariff(s) between Vectren Energy Delivery of Ohio, Inc., d/b/a CenterPoint Energy Ohio and \_\_\_\_\_. Vectren Energy Delivery of Ohio, Inc., d/b/a CenterPoint Energy Ohio has notified \_\_\_\_\_, or its successor or assign, by certified mail or overnight courier of such default and such default has not been cured. The amount of this draw represents the amount that is immediately due and payable to Vectren Energy Delivery of Ohio, Inc., d/b/a CenterPoint Energy Ohio as a result of the continuing default." Copy of notice of default sent to \_\_\_\_\_

Special Conditions are as follows:

1. Vectren Energy Delivery of Ohio, Inc., d/b/a CenterPoint Energy Ohio shall not be required, in order to draw on this Letter of Credit, to furnish the original Letter; however, it is understood, as a condition of any payment thereunder, that the face amount of the Letter shall automatically be reduced by any payment made by the bank and that Vectren Energy Delivery of Ohio, Inc., d/b/a CenterPoint Energy Ohio will promptly surrender the original Letter of Credit when and if the bank shall tender to Vectren Energy Delivery of Ohio, Inc., d/b/a CenterPoint Energy Ohio the full amount of the funds represented by this letter; such surrender is to occur as soon as reasonably practical after full payment is made. The original Letter of Credit shall also be surrendered promptly following its expiration.
2. Letter of Credit shall be automatically extended, without amendment for one year from the present or any future expiration date, unless no less than ninety (90) days before any expiration date, \_\_\_\_\_ (Bank) notifies \_\_\_\_\_ and the Treasurer of Vectren Energy Delivery of Ohio, Inc., d/b/a CenterPoint Energy Ohio by certified mail or overnight courier of our election not to consider this Letter of Credit renewed for any such additional period. We agree that the ninety (90) day period shall begin on the date when both \_\_\_\_\_ and Treasurer of Vectren Energy Delivery of Ohio, Inc., d/b/a CenterPoint Energy Ohio have received the notice, as evidenced by the return receipts.
3. The duly authorized signatory for Vectren Energy Delivery of Ohio, Inc., d/b/a CenterPoint Energy Ohio may draw on this Letter of Credit in the event that \_\_\_\_\_ fails to provide Vectren Energy Delivery of Ohio, Inc., d/b/a CenterPoint Energy Ohio with an extension of this Letter of Credit or with an acceptable replacement Letter of Credit or other financial assurance not less than thirty (30) days prior to the expiration date of this Letter of Credit.
4. Partial and Multiple drawing are permitted.
5. All commissions, expenses and charges incurred with this Letter of Credit are for the account of the account Party.

We hereby engage with you that documents drawn under and in compliance with the terms of this Credit will be duly honored upon presentation as specified

\_\_\_\_\_  
Bank Signatory Authority

\_\_\_\_\_  
Bank Signatory Authority

(Exhibit B)

**NON-DISCLOSURE AGREEMENT**

This Non-Disclosure Agreement (“Agreement”) is made and entered as of this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_, by and between Vectren Energy Delivery of Ohio, Inc., d/b/a CenterPoint Energy Ohio (“CenterPoint”) and \_\_\_\_\_ (“Potential Supplier”), a \_\_\_\_\_, organized and existing under the laws of the State of \_\_\_\_\_ (hereinafter collectively referred to as the "Parties" and individually as "Party:).

**WITNESSETH:**

WHEREAS, Potential Supplier has expressed a desire to supply natural gas to CenterPoint or CenterPoint customers:

WHEREAS, Potential Supplier represents that it possesses the requisite skill and experience to supply natural gas to CenterPoint and/or CenterPoint customers;

WHEREAS, in order for Potential Supplier to qualify to supply such natural gas, the Parties will exchange proprietary, confidential and trade secret information regarding their respective businesses, including, but not limited to, information related to their finances, practices, procedures, customers and other confidential matters; and

WHEREAS, the Parties desire to reach an understanding with respect to the disclosure of such information and with respect to the confidentiality of the disclosures in general;

NOW, THEREFORE, in consideration of the premises and Agreement herein made, the Parties agree as follows:

1. For the purpose of this Agreement, unless the context indicates otherwise, the term “Confidential Information” means all information of the disclosing Party revealed, directly or indirectly, to the receiving Party, regardless of the form in which it appears, or under which it is communicated, all copies or recordings thereof (whether or not made in accordance with this Agreement) and the content of such information, including but not limited to, all descriptions, economic data, computer programs (not including source code) and models and the results thereof.
2. The Parties agree that the Confidential Information it receives from the other Party is proprietary, the property of the disclosing Party, and shall be kept strictly confidential. The Confidential Information shall not be sold, traded, published, or otherwise disclosed by the receiving Party to anyone in any manner whatsoever, except as may be expressly provided for herein. The receiving Party agrees that it shall not use the Confidential Information for any purpose, without the consent of the disclosing Party, other than for purposes related to the performance of duties and obligations to supply natural gas as may be more fully described in related Pooling or Supply Agreements between Potential

Supplier and CenterPoint. The Parties acknowledge that their Representatives will form and retain mental impressions based upon the Confidential Information disclosed to each Party and agree that it is not the intent of the Parties that the non-use restrictions contained in this Agreement will prevent these Representatives from performing their other work assignments for their respective employers. The receiving Party acknowledges that disclosure of the Confidential Information will be limited to the receiving Parties' Representatives and those Representatives will be informed by the receiving Party of the confidential nature of the Confidential Information and their obligation to keep it confidential in accordance with this Agreement. The receiving Party shall be responsible for any violations of the provisions of this Agreement caused by any of the receiving Party's Representatives. In this Agreement, "Representatives" means a Party's parent companies, Affiliates, and its and their respective directors, officers, employees (permanent or contract), agents or representatives, including, without limitation, its and their respective attorneys, accountants, consultants and financial advisors. "Affiliates" of any Party shall mean any company or legal entity which (a) controls, either directly or indirectly, such Party; or (b) which is controlled, directly or indirectly, by such Party; or (c) is directly or indirectly controlled by a company or entity which directly or indirectly controls such Party. "Control" means the right to exercise 50% or more of the voting rights in the appointment of the directors (or other managers having duties similar to those of directors) of such company.

3. Confidential Information shall remain the property of the disclosing Party. Potential Suppliers agree to return any and all Confidential Information provided by CenterPoint, including all copies in its possession, within fifteen (15) days of request by CenterPoint. CenterPoint agrees to return Confidential Information provided to it, including all copies, by Potential Supplier if Potential Supplier does not become a supplier of natural gas to CenterPoint or CenterPoint's customers within the contemplation of this Agreement within fifteen (15) days request by Potential Supplier. CenterPoint may retain Confidential Information provided to it by Potential Supplier for the period of time Potential Supplier becomes an actual Supplier of natural gas pursuant to terms and conditions of a supporting Pooling or Supply Agreement between the Parties. In the event that a receiving Party has destroyed any copies, such receiving Party shall certify in writing to the other Party the occurrence of that action. Notwithstanding the foregoing, (i) the receiving Party shall not be obligated to return or destroy any documents created by it that may reflect or refer to Confidential Information; (ii) the receiving Party may create and retain an abstract describing the type of Confidential Information that it receives sufficient to document the nature and scope of the Parties' discussions under this Agreement; (iii) the receiving Party shall not be obligated to return or destroy any Confidential Information that the receiving Party is retaining pursuant to a document retention hold established in connection with any civil or criminal investigations or litigation, in which event the Confidential Information shall be retained by the receiving Party until such time as the document retention hold is no longer in effect, at which time the Confidential Information shall be returned to the disclosing Party or destroyed as aforesaid; and (iv) to the extent that receiving Party's computer back-up procedures create copies of the Confidential Information, the receiving Party may retain such copies in its archival or back-up computer storage for the period the receiving Party normally archives backed-up computer records. Any such documents or abstract so created will be retained subject to this Agreement until they are destroyed or erased.
4. The obligation of the Parties to maintain the Confidential Information covered by this Agreement will be for a period of two (2) years from the date this Agreement is executed unless superseded at an earlier date by the Confidentiality provisions of a definitive agreement or for a period expiring one (1) year following cessation of the supply services contemplated by the Parties, whichever is later and shall be construed and governed by the laws of the State of Ohio without regard to choice of law or conflict of law provisions that would allow or require the application of law of another jurisdiction.

5. The Parties agree that Confidential Information does not include information which:
- a) was already known to the receiving Party prior to the inception of these discussions or disclosures pursuant to this Agreement and to which there is no existing obligation of confidentiality;
  - b) is or becomes publicly available other than through the act or omission of the receiving Party or its Representatives;
  - c) rightfully becomes available to the receiving Party on a non-confidential basis from a third party source other than the disclosing Party or its Representatives, provided that such third party source is not bound by an accompanying confidentiality obligation to maintain the confidentiality of the information with the disclosing Party or its Representatives or is otherwise prohibited from transmitting such Confidential Information to the receiving Party or the receiving Party's Representatives by a contractual, legal, or fiduciary obligation; or
  - d) is independently developed by the receiving Party or any of its Affiliates without the use of or reliance upon the Confidential Information.
6. The Receiving Party or anyone to whom the receiving Party transmits such Confidential Information pursuant to the terms of this Agreement will not be deemed to have violated this Agreement if it is required to produce information hereunder if such production is in accordance with a request for information that cannot be legally avoided (*i.e.*, a subpoena, oral questions, interrogatories, request for information or documents, civil or criminal investigative demand or similar process) or if such disclosure is necessary in order to obtain or maintain regulatory or governmental approvals, applications, or exemptions. In the event of the receipt of such a request, the Party required to produce the information will promptly provide notice of the request to the disclosing Party, to the extent that such notice is legally permissible and reasonably practicable, prior to disclosing such information, so that the disclosing Party may seek appropriate protective order and/or waive compliance with this Article. If, in the absence of a protective order or the receipt of waiver hereunder, a receiving Party is nonetheless legally compelled to disclose such information or needs to disclose such information in order to maintain regulatory or governmental approvals, it will exercise reasonable and diligent efforts to maintain the confidentiality of any information required to be produced. Moreover, the Party receiving the request shall accommodate all reasonable efforts to preserve the confidentiality of the information that are made by the Party that provided the information.
7. The Parties acknowledge that the Confidential Information is valuable and unique and agree that there is no adequate remedy at law for any unauthorized use or disclosure of the Confidential Information in violation of the terms of this Agreement and that any such unauthorized use or disclosure will constitute irreparable harm and will entitle the non-disclosing Party to seek injunctive and other equitable relief. Such remedy shall be cumulative and in addition to all other remedies available.



- 8 Any notice or other communications required or permitted to be given pursuant to this Agreement shall be confirmed in writing and shall be deemed properly given when hand delivered, sent by overnight mail service, mailed certified mail, return receipt requested, or transmitted by facsimile with date and sending Party identified to the following addresses:

CenterPoint Energy Ohio  
One Vectren Square, Evansville, IN 47708  
Attn: Office of the General Counsel  
Phone: 812-491-5119  
Fax: 812-491-4169

A copy of this notice shall also be sent to:

CenterPoint Energy Ohio  
c/o CenterPoint Energy Resources Corp.  
1111 Louisiana Street, Houston TX 77002  
Attn: Jerry Noland  
Phone: 713-207-4322  
Fax: 713-207-0854  
Email: [CERCCContracts@centerpointenergy.com](mailto:CERCCContracts@centerpointenergy.com)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Title: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

9. Notwithstanding anything to the contrary in this Agreement, neither Party shall be liable for any indirect, incidental, punitive, exemplary, special or consequential damages.
10. No amendments, changes or modifications to this Agreement shall be valid unless the same are in writing and signed by a duly authorized representative of each of the Parties hereto.
11. This Agreement may not be assigned by either Party hereto without the prior written consent of the other Party. Any assignment without such written consent

shall be null and void and of no force or effect. This Agreement shall be binding upon the successors and permitted assigns of the Parties.

12. The Parties hereto understand and agree that until a Pooling Supply Agreement is executed between the Parties no contract or agreement providing for a commodity transaction between the Parties shall be deemed to exist between the Parties, and neither Party will be under any legal obligation of any kind whatsoever with respect to such commodity transaction by virtue of this or any written or oral expression thereof, except, in the case of this Agreement, for the matters specifically agreed to herein.
13. Each Party understands and agrees that no failure or delay by the other Party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or future exercise of any right, power or privilege hereunder.
14. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Any executed counterpart transmitted by facsimile or similar transmission by any Party shall be deemed an original and shall be binding upon such Party.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be duly executed the day and year first above written.

**VECTREN ENERGY DELIVERY OF OHIO, INC.**  
**d/b/a CENTERPOINT ENERGY OHIO**

BY: \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Printed Name and Title

**CHOICE SUPPLIER:** \_\_\_\_\_

BY: \_\_\_\_\_  
Signature  
\_\_\_\_\_  
Printed Name and Title