



**MASTER AGREEMENT TO PROVIDE SERVICES TO AN  
AGGREGATED GROUP**

**BETWEEN**

**Champaign County, ILLINOIS**

**AND**

**ENERGY HARBOR LLC**

This Master Agreement (“Agreement”), is entered into as of this \_\_3rd\_\_ day of October, 2022 (“Effective Date”) by and between **Energy Harbor LLC** (“Supplier”), a Delaware Limited Liability Company with its principal place of business at 168 East Market Street, Akron, Ohio 44308 and **Champaign County**, an Illinois municipality, with its principal place of business at **1776 E Washington St. Urbana IL 61802 Champaign** County, Illinois (“Community” or “Governmental Aggregator”), an Illinois government aggregator (each a “Party” and collectively, “Parties”).

## RECITALS

A. Supplier is certified by the Illinois Commerce Commission (“ICC”) as an Alternate Retail Electric Supplier (“ARES”) to sell competitive retail electric service to customers in the State of Illinois utilizing the existing transmission and distribution systems. Supplier is certified by the ICC to operate as an ARES in the service areas of Ameren Illinois Company (“Ameren”) and Commonwealth Edison Company (“ComEd”).

B. Supplier (directly or through its affiliates) is an energy services provider with extensive experience in the provision of a broad range of energy related services.

C. Supplier sells electricity and related services and equipment (“Retail Electric Supply”) to corporate authorities of municipalities or boards of county supervisors acting as governmental aggregators of residential and small commercial retail electrical loads located within the municipality or the unincorporated areas of the county, as authorized by 20 ILCS 3855/1-92 (“Act”).

D. Both Parties have the corporate, governmental and/or other legal capacity(s), authority(s) and power(s) to execute and deliver this Agreement and related agreements and to perform its obligations hereunder.

E. The Community has adopted an ordinance (the “Aggregation Ordinance”) under which it may aggregate, in accordance with 20 ILCS 3855/1-92, residential and small commercial retail electrical loads located within the corporate limits of the Community for the purpose of soliciting and entering into service agreements to facilitate for those loads the sale and purchase of Retail Electric Supply (the “Aggregation Program”).

F. The Community duly adopted an ordinance to operate the Electrical Aggregation Program as an opt-out program under the Act and has complied with all the requirements of the Act to operate an opt-out program.

G. By this Agreement, the Community and Supplier desire to enter into a mutually beneficial energy and services provisions relationship whereby Supplier shall provide Retail Electric Supply and related administrative services (“Administrative Services”) necessary to fulfill the obligations of this Agreement.

H. The Community desires to enter into this Agreement with Supplier to provide Retail Electric Supply to applicable residential and small commercial retail customers through the Aggregation Program.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## **ARTICLE 1**

### **GENERAL REQUIREMENTS**

#### **1.1 Governmental Aggregator Obligations and Authority.**

1.1.1 The Governmental Aggregator: (1) shall take all necessary action as required by 20 ILCS 3855/1-92 to develop, adopt and maintain an Aggregation Program for all applicable residential and small commercial retail customers, within its boundaries (the “Aggregation Area”) that the Governmental Aggregator has determined are eligible to participate in the Aggregation Program (“Eligible Customers”); (2) shall request the names and addresses of Eligible Customers from the electric utility that provides residential and small commercial retail electric service in the Aggregation Area (the “Electric Utility”); (3) shall hold and publish notice of any required public meetings regarding the Aggregation Program; and (4) hereby authorizes Supplier to contract for Retail Electric Supply with those Eligible Customers that do not opt-out of the Aggregation Program, rescind their switch to Supplier as part of their enrollment in the Aggregation Program, otherwise terminate their participation in the Aggregation Program, or have their participation terminated by the Governmental Aggregator, or their Retail Electric Supply terminated by Supplier or the Electric Distribution Utility (“EDU”) (“Aggregation Program Customer” or “Participating Customer”).

1.1.2 The Governmental Aggregator shall, on a best efforts basis and in a timely manner, forward to Supplier all notices from the Electric Utility concerning Participating Customers’ accounts served pursuant to this Agreement, including but not limited to verbal or written notices regarding transition costs, changes in the terms and conditions of tariffs, rates or riders, and notices concerning the operation and reliability of the Electric Utility’s system.

1.1.3 Governmental Aggregator has the authority to designate, and has designated Supplier as its ARES for the Eligible Customers for the Term of this Agreement.

1.1.4 During the Term of this Agreement, the Governmental Aggregator hereby grants Supplier the exclusive rights to provide Retail Electric Supply to the Eligible Customers.

1.1.5 Customer Data and Load Forecast Information. Supplier and Governmental Aggregator shall cooperate to obtain the consent of Participating Customers to obtain all available Eligible Customers’ data and historical load and load forecast information, related to the Participating Customer’s load and consumption, from any entity in possession of such data, subject to the limitations on disclosure of customer information described in Section 16-122 of the Public Utilities Act and Section 2HH of the Consumer Fraud and Deceptive Business Practices Act and any other applicable laws or regulations. Additional costs for Participating Customer(s) that are interval metered shall be borne by the Participating Customer(s).

1.1.6 Service Inquiries and Service Notices to Customer. Participating Customers may direct inquiries regarding this Agreement, and Retail Electric Supply provided hereunder, and any electric generation supply or billing questions, to Supplier at the address and phone number provided in Section 11.1, which address and phone number shall be provided in communications with Participating Customers regarding the Aggregation Program. Participating Customers should direct inquiries concerning Electric Utility related emergency, power outage, wire or service maintenance, metering, Electric Utility service billing or other similar Electric Utility related concerns to the Electric Utility.

1.1.7 Point of Sale. Governmental Aggregator and Participating Customers acknowledge and agree that Supplier shall have no responsibility for damage to any property, or to any equipment or devices connected to the Participating Customers' electrical system.

## **ARTICLE 2**

### **SUPPLIER OBLIGATIONS**

#### **2.1 Supplier Obligations.**

2.1.1 Commencing on the Effective Date and during the Term, subject to the terms of this Agreement, Supplier shall provide Retail Electric Supply (subject to the terms of the appropriate transmission and/or distribution tariffs) sufficient to serve the total electric generation needs of the small commercial retail and residential Aggregation Program Customers. Supplier shall arrange for the delivery of Retail Electric Supply in accordance with the requirements of the Participating Customers' respective Electric Utility and Independent System Operator ("ISO") or Regional Transmission Organization ("RTO") according to the rules, regulations, and tariffs governing Retail Electric Supply from an alternative supplier to the Point of Delivery, recognizing that the Electric Utility provides utility distribution service from the Point of Delivery to the Point of Sale. To the extent that any services or requirements are provided by the Electric Utility, Supplier shall not be responsible for the provision of such services. Notwithstanding the foregoing, Supplier is not responsible for the performance or failure to perform of the provider of such transmission, distribution, or ancillary services, or the consequences of such performance or failure to perform.

2.1.2 Supplier shall be responsible for all acts necessary for Supplier to perform its obligations hereunder, including but not limited to the scheduling of delivery of Retail Electric Supply hereunder.

2.1.3 Supplier shall provide Aggregation Program Customers with the environmental disclosure data and other data it is required to provide, if any, to comply with the applicable law and rules of the ICC or other applicable authority.

2.2 Subcontracting. Supplier may subcontract the performance of its obligations under this Agreement. However, no subcontract shall relieve Supplier of any of its obligations and/or liabilities under this Agreement. Supplier shall be responsible for all payments and obligations as between Supplier and subcontractors, and Governmental Aggregator shall not be responsible for payments to any such subcontractor.

2.3 Comply with Governance Plan. Supplier shall comply with all the terms and conditions of the Act and shall comply with the Plan of Operation and Governance adopted by the Community, a copy of which Plan is marked as Attachment "B" and made a part hereof as if

fully set forth by this reference. Supplier, at its own expense, shall be fully responsible to mail out all required enrollment and opt-out notices to Eligible Customers according to the requirements of the Act and any other applicable law and the form of the letter shall be approved in advance by the Community, which approval shall not be unreasonably withheld or delayed by the Community.

### **ARTICLE 3**

#### **TERM AND TERMINATION**

#### **3.1 Term of Agreement and Termination.**

3.1.1 This Agreement may be terminated prior to the expiration of the Term, in compliance with this Agreement's provisions, if: (1) a Party exercises its right under Article 6 to terminate this Agreement; (2) Supplier fails to maintain its ICC Certification; or (3) any of the situations described in Section 3.3 occur and Parties are unable to mutually negotiate modification(s) to the Agreement so that the adversely-affected Party may be restored to a reasonably similar economic position that the adversely-affected Party would have been in but for the occurrence of the events set forth in Section 3.3. This Agreement shall terminate upon the expiration of this Agreement's Term, but this Agreement may also be renewed by mutual agreement for a term agreed upon by the Parties.

3.1.2 Term of Enrollment. Participating Customers shall remain enrolled in the Aggregation Program until the Participating Customer exercises the right to opt-out, or they otherwise terminate their participation in the Aggregation Program, their participation in the Aggregation Program is terminated by the Governmental Aggregator, their Retail Electric Supply is terminated by Supplier or the Electric Utility, or their electric service is terminated by the Electric Utility or until this Aggregation Program is terminated, whichever occurs first.

3.2 Interaction Between Termination Dates of this Agreement and Contracts with the Participating Customer. Participating Customers initially enrolled in the Aggregation Program shall receive Retail Electric Supply at the rate(s) set forth in this Agreement. If this Agreement is terminated prior to the end of the Term due to a Regulatory Event, then Retail Electric Supply will terminate early and the Participating Customers will be switched to the applicable tariffed services provided by the Electric Utility as required by 220 ILCS 5/16-103 and defined by its rates on file with the ICC pursuant to 220 ILCS 5/Art. IX. ("Tariffed Service") in accord with the standard switching rules and applicable notices. If this Agreement is terminated pursuant to the terms of Article 6, the Retail Electric Supply will terminate early and the Participating Customers may choose another ARES Provider or will be switched to Tariffed Service in accord with the standard switching rules and applicable notices. The Participating Customers are responsible for arranging for their supply of Energy upon expiration or termination of this Agreement. If this Agreement is terminated prior to the end of the Term and a Participating Customer has not selected another supplier, such Participating Customer will be switched to Tariffed Service.

#### **3.3 Regulatory Contingencies.**

3.3.1 Regulatory Events. The following, as well as the events described in Section 3.3.3 herein, will constitute a "Regulatory Event" governing the rights and obligations of the Parties under this Agreement:

(i) Illegality. If, due to the issuance of an order, or adoption of, or change in, any applicable law, rule, or regulation, or in the interpretation of any applicable law, rule, or regulation, by any judicial, regulatory, administrative or government authority with competent jurisdiction, it becomes unlawful for a Party to perform any obligation under this Agreement.

(ii) Material Adverse Government Action. If (A) any regulatory agency or court having competent jurisdiction over this Agreement requires a change to the terms of the Agreement that materially adversely affects a Party(s), or (B) any regulatory or court action adversely and materially impacts a Party's ability to perform or otherwise provide services pursuant to this Agreement.

(iii) New Taxes. If any tax or increases in such tax, or an application of such tax to a new or different class of parties, is levied or enacted on Supplier and effective after the Execution Date, except federal and state income taxes, employee taxes or other taxes assessed against the business of Supplier as opposed to the delivery of services under this Agreement.

3.3.2 Notice, Negotiation, and Early Termination. Upon the occurrence of a Regulatory Event, the adversely affected Party shall give notice to the other Party that such event has occurred. The Parties will mutually attempt to negotiate modification(s) to the Agreement so that the adversely affected Party may be restored to a reasonably similar economic position that the adversely affected Party would have been in but for the occurrence of the Regulatory Event. If the Parties are unable, within thirty (30) days of entering into negotiations, to agree upon modification(s) to this Agreement, the adversely affected Party shall have the right, upon thirty (30) days notice, to terminate this Agreement without liability and close out its obligations hereunder.

3.3.3 Regulatory Events Defined. Regulatory changes or rulings, legislative and agency acts, and judicial rulings covered by preceding Section 3.3.1, include but are not limited to: (i) material changes affecting Supplier's ICC Certification applicable to this Agreement/franchise status, fees, costs, or requirements; (ii) other material changes or clarifications of federal, state or local government certification, licensing or franchise requirements for electric power suppliers; (iii) material changes to existing or material new charges, fees, costs, and/or obligations, including without limitation transmission or capacity requirements or charges, that may be imposed upon Supplier by an ISO or a RTO, independent transmission provider, Electric Utility, federal law or government agency; (iv) material changes to existing or material new charges, fees, costs, credits, emission allowance requirements, permitting requirements and/or obligations associated with environmental or energy law and regulations (including, without limitation, alternative energy requirements, carbon and greenhouse gas, or other similar controls); and (v) other material changes to, or requirements of, retail electric customer access or aggregation programs in a manner which will not reasonably allow a Party or the Parties to perform economically hereunder.

3.4 Termination Obligations. Termination of this Agreement shall not relieve either Party of the obligation(s) to pay amounts owed for actual performance of obligations rendered prior to the termination of this Agreement.

3.5 Termination Notices. In the event of termination hereunder, the terminating Party shall exercise its best efforts to communicate to the non-terminating Party the upcoming possibility of termination. In the event that this Agreement is terminated prior to the end of the Term, each individual Participating Customer of the Aggregation Program will be provided written



notification from the terminating Party of the termination of the Agreement at least thirty (30) days prior to termination, and in compliance with other regulatory or legal requirements and Participating Customers will also be notified of their right to return to the Electric Utility or to select an alternate retail electric supplier. All other notification(s) shall be in accordance with ICC requirements.

## **ARTICLE 4**

### **ENERGY SCHEDULING, TRANSMISSION, PRICING AND DELIVERY**

4.1 Scheduling, Transmission and Delivery of Power. During the Delivery Term, Supplier shall schedule Energy as required by the RTO or other transmission provider and the Electric Utility, and shall arrange for transmission and distribution service to the Participating Customers. Supplier will arrange for necessary electric distribution and transmission rights for delivery of such Energy to provide the Retail Electric Supply hereunder and subject to the understanding that Supplier has an obligation to make deliveries to Participating Customer as set forth in Section 2.1 except pursuant to Sections 3.3 or Article 7 of this Agreement. Supplier does not take responsibility for any delivery of services supplied by the Electric Utility or RTO, or for the consequences of the failure to provide such services. Supplier shall not be responsible to Participating Customer in the event the Electric Utility or RTO disconnects, suspends, curtails or reduces service to Participating Customer (notwithstanding whether such disconnection is directed by the ISO) in order to facilitate construction, installation, maintenance, repair, replacement or inspection of any of the Electric Utility's facilities, or to maintain the safety and reliability of the Electric Utility's electrical system, or due to emergencies, forced outages, potential overloading of the Electric Utility's transmission and/or distribution circuits, or Force Majeure or for any other reason permitted by the Electric Utility's tariff or any other acts or omissions of the Electric Utility.

4.2 Pricing. During the Delivery Period, Supplier shall provide Retail Electric Supply to all Participating Customers at the price set forth on the Pricing Attachment. There will be no discount given on such charges as transmission and ancillary services if they are identified in a separate tariff or rider approved by the ICC.

4.3 Failure of Delivery. In the event that Supplier fails to schedule all or part of the Retail Electric Supply as set forth herein and Supplier's failure is not due to a Force Majeure Event, and a Participating Customer is required to obtain and pays for Tariffed Service or other Energy supply arrangement necessary to cure such Energy deficiency, Supplier shall reimburse Participating Customer, on the later of ten (10) days after receipt of invoice or the date payment would otherwise be due to Supplier, an amount determined by multiplying (a) the aggregate deficiency in the Retail Electric Supply by (b) the Replacement Price. IN THE EVENT OF SUPPLIER'S FAILURE TO PERFORM DUE TO A NON-FORCE MAJEURE EVENT, SUPPLIER'S OBLIGATION TO PAY SUCH AMOUNT DURING THE PERIODS OF NON-DELIVERY SHALL BE THE GOVERNMENTAL AGGREGATOR'S AND THE PARTICIPATING CUSTOMERS' SOLE REMEDY FOR SUPPLIER'S FAILURE TO DELIVER ENERGY PURSUANT TO THE TERMS OF THIS AGREEMENT.

## **ARTICLE 5**

### **BILLING AND PAYMENTS**

5.1 Intentionally omitted.

5.2 **Billing.** Billing shall be provided by the Electric Utility under a consolidated billing format pursuant to the Electric Utility's tariff provisions and ICC rules applicable to Participating Customer(s). If a Participating Customer fails to pay amounts due within the specified time period for said payments in accord with the Electric Utility's tariff and ICC regulations, Supplier retains the right to assess late payment fees on, or deem such non-payment a default of Participating Customer for purposes of Section 6.1.1 of this Agreement. Supplier may not convert Participating Customer from consolidated billing to dual billing, or from dual billing to consolidated billing if such a conversion will facilitate more timely billing, collections, and/or payment, without the prior written consent of the Community and such consent shall not be unreasonably withheld or delayed.

## **ARTICLE 6**

### **DEFAULT AND REMEDIES**

6.1 **Event of Default.**

6.1.1 A "Community Event of Default" shall mean the occurrence of any of the following and the passage of any cure period set forth therein:

- (i) Any representation or warranty made by the Community in Article 9 hereunder is false or misleading in any material respect when made;
- (ii) The non-excused failure to perform any material covenant or obligation set forth in this Agreement (other than that set forth in (i) above) and such failure is not remedied within thirty (30) days after written notice thereof unless the cure requires longer than the thirty (30) days to effect and the Community is diligently working towards such cure; and

6.1.2 A "Supplier Event of Default" shall mean the occurrence of any of the following and the passage of any cure period set forth therein:

- (i) the failure to make, when due, any undisputed payment required pursuant to this Agreement if such failure is not remedied within ten (10) Business Days after written notice;
- (ii) any representation or warranty made by Supplier in Article 9 hereunder is false or misleading in any material respect when made or when deemed made;
- (iii) the non-excused failure to perform any material covenant or obligation set forth in this Agreement (other than that set forth in (i) above and as set forth in Section 4.3) if such failure is not remedied within thirty (30) days after written notice thereof, unless the cure period reasonably requires more than thirty (30) days to effect and Supplier is diligently working towards such cure; and

6.2 **Rights and Remedies.**

6.2.1 **Rights and Remedies for a Community Event of Default.** Subject to other provisions of this Agreement, if the Community is the defaulting Party hereunder, so long as such Community



Event of Default shall have occurred and be continuing, Supplier shall have the right to (i) designate a date (“Early Termination Date”), no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, on which this Agreement shall terminate and to terminate this Agreement on the Early Termination Date, (ii) suspend performance under this Agreement, and/or (iii) have all rights available at law and in equity. In addition to the foregoing remedies, Supplier shall have the right to seek the remedies of specific performance of the Community’s and Participating Customers’ obligations hereunder and/or injunctive relief to continue to provide Retail Electric Supply hereunder.

6.2.2 Rights and Remedies for a Supplier Event of Default. Subject to other provisions of this Agreement, if Supplier is the defaulting Party hereunder, so long as such Supplier Event of Default shall have occurred and be continuing, the Community shall have the right to (i) designate an Early Termination Date, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, and to terminate this Agreement on the Early Termination Date, (ii) suspend performance under this Agreement, and/or (iii) have all rights available at law and in equity. In addition to the foregoing remedies, the Community shall have the right to seek the remedies of specific performance and/or injunctive relief.

Notwithstanding any other provision of this Agreement, the remedies set forth in Section 4.3 shall be the sole and exclusive remedies for any failure of Supplier to deliver Retail Electric Supply. As long as Supplier is supplying Retail Electric Supply to the Participating Customers at the price and upon the terms and conditions of this Agreement, the Community shall not have the right to terminate this Agreement, suspend performance or pursue other remedies, and Supplier shall have no liability to Participating Customers for damages.

6.2.3 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize damages it may incur as a result of the other Party’s failure to perform pursuant to this Agreement.

## **ARTICLE 7**

### **FORCE MAJEURE**

7.1 Excused Failure to Comply. Neither Party shall be considered to be in default in the performance of its obligations under this Agreement, if its failure to perform results directly or indirectly from a Force Majeure Event. If despite its commercially reasonable efforts, either Party is unable, wholly or in part, to meet its obligations under this Agreement due to a Force Majeure Event, the obligations of each Party, other than the obligation to make payments due for performance rendered hereunder, so far as they are affected by such Force Majeure Event, shall be suspended during such period of the Force Majeure Event. The Party claiming excuse due to a Force Majeure Event shall exercise commercially reasonable efforts and due diligence to remove the inability to perform as soon as reasonably possible so that the affected period shall be no longer than that necessarily affected by the Force Majeure Event and shall exercise commercially reasonable efforts and due diligence to mitigate the effects of the Force Majeure Event. Nothing contained in this Section 7.1 shall be construed as requiring a Party to settle any strike or labor dispute in which it may be involved.

7.2 Force Majeure Event. For purposes of this Agreement, a “Force Majeure Event” shall mean any non-economic cause beyond the reasonable control of the Party affected and shall include, but not be limited to, Acts of God, winds, floods, earthquakes, storms, droughts, fires, pestilence, destructive lightning, hurricanes, washouts, landslides, tornadoes and other natural

catastrophes; strikes, lockouts, labor or material shortage, or other industrial disturbances; acts of the public enemies, epidemics, riots, civil disturbances or disobedience, sabotage, wars or blockades; the failure of facilities, governmental actions such as necessity to comply with any court order, law, statute, ordinance or regulation promulgated by a governmental authority, a change in law or court order; provided, however, that any such discretionary acts, failure to act or orders of any kind by Governmental Aggregator may not be asserted as a Force Majeure Event by Governmental Aggregator; or any other reasonably unplanned or non-scheduled occurrence, condition, situation or threat not covered above and not caused by a Party's action or inaction, which renders either Party unable to perform its obligations hereunder, provided such event is beyond the reasonable control of the Party claiming such inability. A change in economic electric power market conditions shall not constitute a Force Majeure Event. Failure or interruptions, including without limitation, government ordered interruptions, on the systems of generation, transmission or distribution relied upon for supplying Energy under this Agreement shall constitute a Force Majeure Event provided that Supplier has arranged for service on these systems at a level of firmness as required to provide the Retail Electric Supply agreed upon herein.

7.3 Notification. If either Party is unable to perform any of its obligations under this Agreement due to a Force Majeure Event, then said Party shall notify the other Party in writing as soon as possible, but no later than seventy-two (72) hours after the start of the Force Majeure Event. The written notice shall include a specific description of the cause and expected duration of the Force Majeure Event.

## **ARTICLE 8**

### **LIMITATION OF LIABILITY**

8.1 LIABILITY. IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT TO THE OTHER, TO A PARTICIPATING CUSTOMER OR TO A THIRD PARTY FOR INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES CONNECTED WITH OR RESULTING FROM PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER SUCH CLAIMS ARE BASED UPON A STATUTE, BREACH OF WARRANTY, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE OF ANY DEGREE), STRICT LIABILITY, CONTRACT, OPERATION OF LAW OR OTHERWISE.

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN SECTION 4.3 AND ARTICLE 6 OF THE AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH SECTION 4.3 OR ARTICLE 6 PROVIDES THE EXPRESS REMEDY OR MEASURE OF DAMAGES, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISIONS AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. FOR ALL OTHER PROVISIONS OF THIS AGREEMENT FOR WHICH NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED, THE OBLIGOR'S LIABILITY 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. 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 PART, 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.

8.2 DISCLAIMER. SUPPLIER DOES NOT WARRANT OR GUARANTEE THE UNINTERRUPTED DELIVERY OF RETAIL ELECTRIC SUPPLY TO AGGREGATION PROGRAM CUSTOMERS DURING FORCE MAJEURE EVENTS. SUPPLIER WILL HAVE NO LIABILITY OR RESPONSIBILITY FOR THE OPERATIONS OF THE ELECTRIC UTILITY, INCLUDING BUT NOT LIMITED TO, THE INTERRUPTION, TERMINATION, FAILURE TO DELIVER, OR DETERIORATION OF ELECTRIC UTILITY'S TRANSMISSION OR DISTRIBUTION SERVICE. EXCEPT AS MAY BE SPECIFICALLY PROVIDED HEREIN, NO IMPLIED WARRANTIES OF ANY KIND, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE SHALL BE APPLICABLE TO THIS AGREEMENT.

8.3 Supplier agrees to indemnify, defend and hold harmless Municipality from and against all Claims against Municipality associated with Supplier's failure to deliver pursuant to Section 4.3 of this Agreement.

## **ARTICLE 9**

### **REPRESENTATIONS AND WARRANTIES**

9.1 Representations and Warranties by Supplier.

9.1.1 Supplier hereby represents and warrants to the Community as of the Effective Date as follows:

- (i) Supplier is a company, duly formed, validly existing and in good standing under the laws of the State of Delaware and certified as an Alternative Retail Electric Supply in the State of Illinois.
- (ii) Supplier has all authorizations from any governmental authority necessary for it to legally perform its obligations under this Agreement or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due;
- (iii) The execution and delivery of, and performance under, this Agreement are within Supplier's powers, have been duly authorized by all necessary action and do not violate, conflict with or breach any of the terms or conditions in its governing documents or any contract to which it is a party or any governmental rule applicable to it;
- (iv) This Agreement has been duly executed and delivered by Supplier, and this Agreement (assuming due authorization, execution and delivery of all Parties) constitutes legal, valid and binding obligations of Supplier enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally and

general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law; and

(v) No Bankruptcy is pending against it or to its knowledge threatened against it.

(vi) None of the documents or other written information furnished by or on behalf of Supplier to the Community and the Request for Proposal contains any untrue statement of a material fact or omits to state any material fact or is misleading. Supplier is not in default with any order, writ, injunction or decree of any court or federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which would prevent Supplier from complying with the terms and conditions of this Agreement.

(vii) That there are no actions, proceedings or investigations pending or threatening Supplier before any court or before any governmental department, commission, board, agency or instrumentality, nor does Supplier know or have reasonable ground to know of any basis for any such action, proceeding or investigation against Supplier which would prevent Supplier from complying with the terms and conditions of this Agreement.

## 9.2 Representations and Warranties by the Community

9.2.1 Governmental Aggregator hereby represents and warrants to Supplier as of the Effective Date as follows:

(i) The Community has complied with requirements under the Act for the Community to provide for the aggregation of electrical loads for residential and small commercial retail customers within the corporate limits of the Community as an opt-out program;

(ii) The Community has all authorizations from any governmental authority necessary for it to legally perform its obligations under this Agreement;

(iii) The execution and delivery of, and performance under, this Agreement are within the Community's powers, have been duly authorized by all necessary action and do not violate, conflict with or breach any of the terms or conditions in its governing documents or any contract to which it is a party or any governmental rule applicable to it. Neither the execution nor delivery by the Community of this Agreement nor the consummation by the Community of the transactions contemplated hereby or thereby does or will result a breach or

(iv) violation of the Agreement establishing the Community's Aggregation Group, or its bylaws, or any material provision of the governance document related thereto;

(v) This Agreement has been duly executed and delivered by the Community, and this Agreement (assuming due authorization, execution and delivery of all Parties) constitutes legal, valid and binding obligations of the Community, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization and similar laws affecting creditors' rights and remedies generally, to general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law;

(vi) The Community is entering into this Agreement with a full understanding of all of the risks hereof (economic and otherwise), and it is capable of assuming and willing to assume those risks;

(vii) None of the documents or other written information furnished by or on behalf of the Community or Eligible Customers to Supplier pursuant to this Agreement contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading;

(viii) The Community has the contractual right to enter into this Agreement, to contract with Supplier to supply Retail Electric Supply and Administrative Services to meet the obligations of its Aggregation Program Customers, and shall enforce its contractual agreements and rights.

## **ARTICLE 10**

### **CONFIDENTIAL INFORMATION**

10.1 Confidential Information. Any Confidential Information, as defined in Section 10.2 herein, made available pursuant to this Agreement and conspicuously marked or stamped as “Confidential” shall be held in confidence by each of the Parties to protect the legitimate business needs and/or privacy interests of the Parties. With respect to multi-page documents that contain Confidential Information, the Parties may make such a designation by marking or stamping only the first page thereof. The Parties shall identify any matter deemed to be Confidential Information at the time the information is provided. Any information not designated, as Confidential Information shall not be covered by the protection contemplated herein, provided, however, that the inadvertent provision of information without a confidential designation shall not itself be deemed a waiver of the Party’s claim of confidentiality as to such information, and the Party may thereafter designate the same as confidential, if the information is deemed confidential as set forth herein.

10.2 Confidential Information Defined. “Confidential Information” means any and all data and information of whatever kind or nature (whether written, electronic or oral) which is disclosed by one Party (the “Disclosing Party”) to the other Party (the “Recipient”) regarding itself, its business, the business of its affiliates, and/or the Aggregation Program. Confidential Information does not include information that: (a) is in the public domain at the time of disclosure; (b) passes into the public domain after disclosure, except by a wrongful act of the Recipient; (c) is disclosed to the Recipient by another not under an obligation of confidentiality; or (d) is already in the Recipient’s possession prior to disclosure by the Disclosing Party.

10.3 Obligation of Confidentiality. Each Party agrees, for itself and its authorized representatives, to keep confidential all Confidential Information provided hereunder and to use the Confidential Information solely for purposes in connection with this Agreement, except to the extent that the Recipient determines that release of Confidential Information is required by law or regulation. The Recipient shall make commercially reasonable efforts to notify the Disclosing Party if it intends to release any Confidential Information to afford the Disclosing Party an opportunity to seek a protective order prior to disclosure. The obligations for Confidentiality set forth in this Agreement, including but not limited to the non-disclosure obligations and the duty to return Confidential Information upon written request, shall survive the termination of this Agreement for a period of one (1) year thereafter. Nothing in this Paragraph shall limit, hinder, or restrict the Community from complying with the State Records Act, 5 ILCS 160/1 et seq., and the Freedom of Information Act, 5 ILCS 140/1 et seq. nor shall the Community be found to have violated this provision, or any other provisions of this



Agreement, for having fulfilled a valid Public Records Request or Freedom of Information Request.

10.4 Supplier will not utilize customer information it received as a result of providing electric generation services to the Community. To the extent that Supplier independently offers Participating Customers additional services and/or products, Supplier agrees it shall not reference Supplier's position as the Community's Aggregation program supplier.

## **ARTICLE 11** **MISCELLANEOUS**

11.1 Notices. Any notices, requests or demands regarding the services provided under this Agreement and the Attachments shall be deemed to be properly given or made (i) if by hand delivery, on the day and at the time on which delivered to the intended recipient at its address set forth in this Agreement; (ii) if sent by U.S. Postal Service mail certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address shown below; or (iii) if by Federal Express or other reputable express mail service, on the next Business Day after delivery to such express service, addressed to the intended recipient at its address set forth in this Agreement. The address of a Party to which notices or other communications shall be mailed may be changed from time to time by giving written notice to the other Party.

Note:

### **Energy Harbor LLC**

For Notices or Inquires Regarding  
this Agreement:

Director, Government Aggregation  
Energy Harbor LLC  
168 East Market Street  
Akron, OH 44308

**Champaign County**

For Notices or Inquires Regarding  
this Agreement:

**County Executive**

**Champaign County**

**1776 E washing ton St. Urbana IL 618**

**1776 E washing ton St. Urbana IL 618**

**Phone: 217-384-3776**

**Fax: 217-384-3896**

11.2 Entire Agreement. This Agreement, including all Attachments hereto, contains all of the terms and conditions of this Agreement reached by the Parties, and supersedes all prior oral or written agreements with respect to this Agreement. This Agreement may not be modified, amended, altered or supplemented, except by written agreement signed by all Parties hereto. No waiver of any term, provision, or conditions of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or shall constitute a waiver of any other provision hereof, whether or not similar, nor shall such waiver constitute a continuing waiver, and no waiver shall be binding unless executed in writing by the Party making the waiver.



11.3 Waivers. Any request for a waiver of the requirements and provisions of this Agreement shall be in writing and must be approved in writing by the nonwaiving Party. The failure of either Party to insist upon strict performance of such requirements or provisions or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment of such requirements, provisions or rights.

11.4 Applicable Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois. Jurisdiction and the venue for any cause of action between the Parties relating to the terms of this Agreement shall be solely and exclusively filed in the circuit court of Champaign County, Illinois.

11.5 Controlling Provisions. In the event of any inconsistency between the terms herein and the terms of the Attachments hereto, the provisions of the Agreement shall control.

11.6 Severability. Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions or affecting the validity or enforceability of such provision in any other jurisdiction. The non-enforcement of any provision by either Party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or the remainder of this Agreement.

11.7 Non-Assignability. This Agreement shall not be transferred or assigned by either Party without the express written authorization of the non-assigning Party, which authorization shall not be unreasonably withheld; provided, however, that such authorization may be withheld upon a reasonable determination that the proposed assignee does not have at least the same financial and technical abilities. Notwithstanding the foregoing, Supplier may, without the consent of the Community or the Participating Customers, (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangement; (b) transfer or assign this Agreement to an affiliate of Supplier; or (c) transfer or assign this Agreement to any person or entity succeeding to all or a substantial portion of the assets of Supplier. Upon an assignment pursuant to (b) or (c), the Community and the Participating Customers agree that Supplier shall have no further obligations regarding future performance hereunder. Either Party's assignee shall agree in writing to be bound by the terms and conditions of this Agreement, including the Attachments. Subject to the foregoing, this Agreement and its Attachments shall be binding upon and inure to the benefit of any permitted successors and assigns, to the extent permitted by law.


11.8 Intentionally omitted.

11.9 Recitals. The Parties agree and acknowledge that the prefatory statements and recitals in this Agreement are intended to be and shall be a part of the provisions of this Agreement.

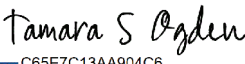
11.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one instrument.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement to be effective on the date first written above.

**Energy Harbor LLC**

DocuSigned by:  
Signed:   
Printed Typed Name: Sam Morgan  
Title: Director of Government Aggregations  
Date: 10/4/2022

**Champaign County**

DocuSigned by:  
Signed:   
Printed Typed Name: Tamara S Ogden  
Title: Director of Finance  
Date: 10/3/2022

**Illinois**

# **ATTACHMENT A:**

## **Pricing and Other Conditions to Retail Generation Service Offer**

**Attachment A to Master Agreement****Between**

Champaign County

, Champaign

County, Illinois and

**Energy Harbor LLC****Term:**

Beginning with February 2023 meter read dates through December 2024 meter read dates

**Pricing:****Period 1: February 2023 meter read dates through July 2023 meter read dates**

Base Price: 9.85¢/kWh

Capacity Adder: 2.35 ¢/kWh, based upon the known auction clearing price as set by the Midwest Independent System Operator (“MISO”) Planning Resource Auction (“PRA”) for the Planning Year June 1, 2022 to May 31, 2023

**Total Price:** 12.2¢/kWh**Period 2: July 2023 meter read dates to July 2024 meter read dates**

Base Price: 9.85¢/kWh

Capacity Adder: TBD, based upon the auction clearing price for the Planning Year June 1, 2023 to May 31, 2024 to be published in or around April 2023. The capacity cost, without markup, will be applied to Participating Customers’ expected Period 2 consumption

**\*Total Price:** Base Price + Capacity Adder**Period 3: July 2024 meter read dates to December 2024 meter read dates**

Base Price: 9.85 ¢/kWh

Capacity Adder: TBD, based upon the auction clearing price for the Planning Year June 1, 2024 to May 31, 2025 to be published in or around April 2024. The capacity cost, without markup, will be applied to Participating Customers’ expected Period 3 consumption

**\*Total Price:** Base Price + Capacity Adder

\* By way of an opt-out mailing, Supplier shall notify Community and Participating Customers of the Capacity Adder and resulting Total Price no later than twenty-one (21) days prior to the start of the new pricing period.

NOTE: Upon request by Community, Supplier shall provide the calculations used to determine the Capacity Adder.

**EDU:**

Ameren

**Eligible Rate Codes:**

Residential, Small Commercial

**Termination Fee:**

None

**Civic Fee:**

Supplier shall pay a monthly Civic Fee to Community in the amount of \$0.001 per kWh delivered/consumed by Participating Customers in the Aggregation Program. Payment of the Civic Fee shall be by ACH to the account specified by the Community. Community is solely responsible for ensuring that an accurate W-9 is on file with Supplier.

The Fee shall be paid by the last business day of the month based on revenue collected by Supplier with respect to each Participating Customer during the prior calendar month. For example, full payments received in January will be paid by the end of February. If Supplier determines that it paid a past Fee in error (or the payment was based on information subsequently determined invalid), it may deduct from or add to future payments due under this Agreement. Should an event of Force Majeure suspend either Supplier's or Participating Customer's obligations to deliver or take delivery, the obligation to pay the Civic Fee shall be similarly suspended for the affected deliveries.

In the event that Supplier does not receive payment(s) from a Participating Customer(s), Supplier shall not be obligated to pay Community, and Community is not due, any Civic Fee from Supplier for such Participating Customer for which it does not receive any payment.

**Administrative Fee:**

Supplier shall pay to the Community's Consultant, Good Energy, L.P., \$0.00075 per kWh delivered/consumed and paid for by Participating Customers under the Aggregation Program on a monthly basis. In addition to Participating Customers' consumption, this fee shall also apply to kWh delivered/consumed and paid for by any new Participating Customer accounts that join the Aggregation Program. Payments shall be sent to Good Energy L.P. 232 Madison Avenue, Third Floor, New York, NY 10016, Attention: Accounts Receivable, or such other address that Good Energy L.P. will periodically furnish. All checks shall be made payable to Good Energy L.P. Monthly reports shall be submitted electronically by email at AR@GoodEnergy.com.

**Administrative Services:**

- Design, print and mail the opt-out letter to all eligible participants including a sheet of Frequently Asked Questions to provide assistance.
- Administer the opt-out process including database preparation, handling of opt-out form information, and final enrollment list compilation.
- Provide a call center to handle information calls.
- Conduct supplemental opt-out mailings on a MONTHLY basis for newly eligible accounts provided by Community's Consultant that were not included in earlier opt-out rounds for enrollment in the Aggregation Program.
- Provide a website for Participating Customers showing pricing, terms, and enrollment instructions.





## First Amendment

### To Master Agreement To Provide Services To An Aggregated Group

Between

**Champaign County, Illinois**

and

**Energy Harbor LLC**

This First Amendment ("Amendment") is entered into this 18 day of October, 2022 ("Effective Date"), by and between **Champaign County, Illinois** ("Community"), an Illinois municipality and government aggregator with its principal place of business at 1776 E Washington St., Urbana, Illinois 61802 and **Energy Harbor LLC** ("Energy Harbor"), a Delaware Limited Liability Company with its principal place of business at 168 East Market Street, Akron, Ohio 44308 (together, the "Parties").

### RECITALS

**WHEREAS**, Energy Harbor and Community are parties to a certain Master Agreement to Provide Services to an Aggregated Group dated October 3, 2022 (the "Agreement"); and

**WHEREAS**, the Parties have mutually agreed to modify the Pricing in the Agreement such that 8% the Retail Electric Supply is derived from a renewable source.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the Parties hereto agree as follows:

1. Replace Attachment A in the Agreement in its entirety with **First Amendment Attachment A to Master Agreement Between Champaign County and Energy Harbor LLC October, 2022** attached.
2. All other provisions of the Agreement shall remain unchanged.

IN WITNESS WHEREOF, the undersigned have caused this Amendment to be duly executed as of the Effective Date.

**Energy Harbor LLC:**

Signed: Sam Morgan  
 Printed: Sam Morgan  
 Title: Director of Government Aggregations  
 Date: 10/28/2022

**Champaign County, Illinois:**

Signed: Tamara S. Ogden  
 Printed: Tamara S. Ogden  
 Title: Director of Finance  
 Date: 10/18/22

# **First Amendment Attachment A to Master Agreement**

Between

**Champaign County, Illinois**

and

**Energy Harbor LLC**

**October 2022**

## **Pricing and Other Conditions to Retail Generation Service Offer**

### **Term:**

Beginning February 2023 meter read dates through December 2024 meter read dates

**Pricing (8% Renewable – Source: National Wind)** – Includes National Wind Renewable Energy Certificates (“RECs”) equal to 8% of Participating Customers’ Electric Supply for the Term indicated above.

#### **Period 1: February 2023 meter read dates through July 2023 meter read dates**

Base Price: 9.874 ¢/kWh

Capacity Adder: 2.35 ¢/kWh, based upon the known auction clearing price as set by the Midwest Independent System Operator (“MISO”) Planning Resource Auction (“PRA”) for the Planning Year June 1, 2022 to May 31, 2023

**Total Price:** 12.22 ¢/kWh

#### **Period 2: July 2023 meter read dates to July 2024 meter read dates**

Base Price: 9.874 ¢/kWh

Capacity Adder: TBD, based upon the auction clearing price for the Planning Year June 1, 2023 to May 31, 2024 to be published in or around April 2023. The capacity cost, without markup, will be applied to Participating Customers’ expected Period 2 consumption

**\*Total Price:** Base Price + Capacity Adder

#### **Period 3: July 2024 meter read dates to December 2024 meter read dates**

Base Price: 9.874 ¢/kWh

Capacity Adder: TBD, based upon the auction clearing price for the Planning Year June 1, 2024 to May 31, 2025 to be published in or around April 2024. The capacity cost, without markup, will be applied to Participating Customers’ expected Period 3 consumption

**\*Total Price:** Base Price + Capacity Adder

\* By way of an opt-out mailing, Supplier shall notify Community and Participating Customers of the Capacity Adder and resulting Total Price no later than twenty-one (21) days prior to the start of the new pricing period.

NOTE: Upon request by Community, Supplier shall provide the calculations used to determine the Capacity Adder.

**EDU:**

Ameren

**Eligible Rate Codes:**

Residential, Small Commercial

**Termination Fee:**

None

**Civic Fee:**

Supplier shall pay a monthly Civic Fee to Community in the amount of \$0.001 per kWh delivered/consumed by Participating Customers in the Aggregation Program. Payment of the Civic Fee shall be by ACH to the account specified by the Community. Community is solely responsible for ensuring that an accurate W-9 is on file with Supplier.

The Fee shall be paid by the last business day of the month based on revenue collected by Supplier with respect to each Participating Customer during the prior calendar month. For example, full payments received in January will be paid by the end of February. If Supplier determines that it paid a past Fee in error (or the payment was based on information subsequently determined invalid), it may deduct from or add to future payments due under this Agreement. Should an event

of Force Majeure suspend either Supplier's or Participating Customer's obligations to deliver or take delivery, the obligation to pay the Civic Fee shall be similarly suspended for the affected deliveries.

In the event that Supplier does not receive payment(s) from a Participating Customer(s), Supplier shall not be obligated to pay Community, and Community is not due, any Civic Fee from Supplier for such Participating Customer for which it does not receive any payment.

#### **Administrative Fee:**

Supplier shall pay to the Community's Consultant, Good Energy, L.P., \$0.00075 per kWh delivered/consumed and paid for by Participating Customers under the Aggregation Program on a monthly basis. In addition to Participating Customers' consumption, this fee shall also apply to kWh delivered/consumed and paid for by any new Participating Customer accounts that join the Aggregation Program. Payments shall be sent to Good Energy L.P. 232 Madison Avenue, Third Floor, New York, NY 10016, Attention: Accounts Receivable, or such other address that Good Energy L.P. will periodically furnish. All checks shall be made payable to Good Energy L.P. Monthly reports shall be submitted electronically by email at AR@GoodEnergy.com.

#### **Administrative Services:**

- Design, print and mail the opt-out letter to all eligible participants including a sheet of Frequently Asked Questions to provide assistance.
- Administer the opt-out process including database preparation, handling of opt-out form information, and final enrollment list compilation.
- Provide a call center to handle information calls.
- Conduct supplemental opt-out mailings on a MONTHLY basis for newly eligible accounts provided by Community's Consultant that were not included in earlier opt-out rounds for enrollment in the Aggregation Program.
- Provide a website for Participating Customers showing pricing, terms, and enrollment instructions.