

## EDI Trading Partner Agreement

THIS ELECTRONIC DATA INTERCHANGE ("EDI") TRADING PARTNER AGREEMENT (the "Agreement"), dated as of \_\_\_\_\_, is entered into, by and between The Dayton Power and Light Company ("DP&L"), an Ohio corporation and a utility providing delivery services with offices in Dayton, Ohio, and \_\_\_\_\_, a \_\_\_\_\_ corporation and an Alternate Generation Supplier ("AGS") of competitive retail electric service, with offices at \_\_\_\_\_, (DP&L and AGS individually a "Party", and collectively, "Parties").

### RECITALS

**WHEREAS**, DP&L and the AGS desire to facilitate the exchange of business electronic transactions by electronically transmitting and receiving data in agreed upon formats and to ensure that such electronic transactions are legally valid, binding and enforceable.

### AGREEMENT

**NOW THEREFORE**, in consideration of mutual promises and covenants contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties, intending to be legally bound hereby, hereto agree as follows:

#### 1. Prerequisites

- 1.1 **Electronic transactions.** Each Party may electronically transmit to or receive from the other Party those electronic transactions which the Parties may designate by a separate addendum. Any such addendum is incorporated herein by reference. By separate agreement, the Parties may conduct other electronic transactions. New electronic transactions shall not be implemented without first obtaining DP&L's prior approval.
- 1.2 **Scope of the Agreement.** This Agreement shall govern and applies only to electronic transactions transmitted from either Party to the other Party in connection with DP&L's Electric Choice Program.
- 1.3 **Third-Party Service Providers.**
  - 1.3.1 Electronic transactions will be transmitted electronically to each Party either directly or through any third Party service provider ("Provider") with which either Party may contract on its own behalf. Either Party may modify its election to use, not use or change its Provider upon 30 days prior written notice. Any changes in Provider may require testing of transactions with DP&L before the new Provider is used.

- 1.3.2 Each Party shall be responsible for the costs and performance of any Provider with which it contracts.
- 1.4 **System Operations.** Each Party, at its own expense, shall be responsible for and/or provide and maintain the equipment, software, services and testing necessary to effectively and reliably transmit and receive electronic transactions.
- 1.5 **Security Procedures.** Each Party shall properly use those security procedures which are reasonably sufficient to ensure that all transmissions of an electronic transaction are authorized and to protect its business records and data from improper access.
- 1.6 **Freedom from Computer Viruses.** Each Party shall use reasonable efforts to ensure that electronic transactions are free of, but not limited to, the following: computer viruses or other computer software code or routine designed to disable, damage, impair or electronically repossess or erase programs or data files which can cause damage to a Party's computer systems and/or operations. Either Party will promptly notify the other if such destructive logic is detected in and/or transmitted from any computer system involving electronic transactions.
- 1.7 **Back-up Data.** Each Party agrees to maintain adequate back-up files to recreate transmissions as required. Back-up files shall be subject to this Agreement to the same extent as original data. Electronic transactions shall be retained for such periods as required by relevant state and federal requirements.
- 1.8 **Testing.**
- 1.8.1 Electronic transactions will not be authorized by either Party until subjected to reasonable testing to ensure compliance with testing requirements and until each Party is satisfied with the results of such testing.
- 1.8.2 Following acceptance by each Party for production use, additional testing may be required by a Party in response to a change in the system environments including, but not limited to: installation of a new application system, installation of a new EDI translator, implementation of a new EDI version or selection of a new Provider.

## **2. Transmissions**

- 2.1 **Proper Receipt.** Electronic transactions shall not be deemed to have been properly received, and no electronic transactions shall give rise to any obligation, until received by the receiving Party and verification confirmed by such Party in accordance with Section 2.2 of this Agreement.
- 2.2 **Verification.** Upon receipt of any electronic transaction or any information related to the electronic transaction, the receiving Party shall properly transmit a functional acknowledgement ("FA") in return, which FA shall be in standard format as prescribed by American National Standards Institute X12 standards or other agreed upon standards. A FA shall constitute conclusive evidence that an electronic

transaction has been properly received but does not constitute an agreement or acceptance to such transaction.

- 2.3 **Responses.** If a response to an electronic transaction is required, any such electronic transaction which has been properly received shall not give rise to any obligation unless and until the Party initially transmitting such electronic transaction has properly received in return a response transaction.
- 2.4 **Garbled Transmissions.** If any properly transmitted electronic transaction is received in an unintelligible or garbled form, the receiving Party shall promptly notify the originating Party (if identifiable from the received electronic transaction) in a reasonable manner. In the absence of such a notice, the originating Party's records of the contents of such electronic transaction shall control, unless the identity of the originating Party cannot be determined from the received electronic transaction.
- 2.5 **Errors.** If any errors or mistakes occur at any time in the process of implementing EDI transactions that result in charges or credits in improper amounts, the Party which has benefited shall compensate the other Party. If errors or mistakes occur at any time in the process of implementing EDI transactions which result in quantities of products and or levels of service delivered which are less than or in excess of those actually desired, then the applicable EDI transaction shall be rescinded or modified, as the case may be, to reflect the correct quantity of product or level of service.

### 3. Transaction Terms

- 3.1 **Terms and Conditions.** Any electronic transaction made pursuant to this Agreement, and any related communication shall, in addition to this Agreement, also be subject to the terms and conditions included in DP&L's applicable rates, riders and tariffs that may be approved by the Public Utilities Commission of Ohio ("PUCO") from time to time. The Parties acknowledge that the terms and conditions set forth in DP&L's rates, riders and tariffs may be or may become inconsistent, or in conflict with this Agreement, but agree that any conflict or dispute that arises between the Parties in connection with any such electronic transaction will be resolved as if such electronic transaction had been effected through application of the rates, riders and tariffs. Any inconsistency between this Agreement and any rates, riders and tariffs or any PUCO Orders shall be resolved by giving precedence to applicable rates, riders and tariffs, applicable PUCO Orders and then to this Agreement.
- 3.2 **Confidentiality.** Electronic transactions and other communications related to electronic transactions under the Agreement shall maintain the same confidential or non-confidential status (whichever is applicable) as they would have in the form of paper records.
- 3.3 **Validity; Enforceability.**
  - 3.3.1 The Parties have executed this agreement and may agree to add additional transactions regarding the electronic transmission and receipt of electronic transaction information. Such additional agreements will specify the

applicable terms of such transactions, regarding DP&L's Electric Choice program.

- 3.3.2 The Parties agree that correspondence and documents electronically transmitted pursuant to this Agreement shall be construed to be in conformance with all requirements set forth in DP&L's rates, riders and tariffs.
- 3.3.3 Any electronic transaction and any information related to the electronic transaction, properly transmitted pursuant to this Agreement, shall be considered to be a "writing" or "in writing", and to constitute an "original" when printed from electronic files or records established and maintained in the normal course of business.
- 3.3.4 The conduct of the Parties pursuant to this Agreement, including the use of electronic transactions properly transmitted pursuant to this Agreement, shall, for all legal purposes, evidence a course of performance accepted by the Parties in furtherance of this Agreement.
- 3.3.5 The Parties agree not to contest the validity or enforceability of electronic transactions under the provisions of any applicable law relating to whether agreements are in writing and signed by the Party to be bound thereby. Electronic transactions, if introduced as evidence on paper in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall contest the admissibility of copies of electronic transactions on the basis that such copies were not originated or maintained in documentary form.

#### **4. Miscellaneous**

- 4.1 **Headings.** Headings or titles of the provisions hereof are for convenience only and shall have no effect on the provisions of this Agreement.
- 4.2 **Termination.** This Agreement shall remain in effect until terminated by either Party with not less than thirty (30) days prior written notice, which notice shall specify the effective date of termination; provided, however, that any termination shall not affect the respective obligations or rights of the Parties arising under any electronic transaction or otherwise under this Agreement prior to the effective date of termination. Any attempted termination in conflict with any of DP&L's rates, riders or tariffs or any Order of the PUCO shall be deemed ineffective for purposes herein.
- 4.3 **Severability.** Any provision of this Agreement which is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

- 4.4 **Entire Agreement.** This Agreement constitutes the complete agreement of the Parties relating to the matters specified in this Agreement and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. This Agreement may not be amended, supplemented, changed or modified in any manner, orally or otherwise, except by an instrument in writing of concurrent or subsequent date, signed by a duly authorized representative of each Party. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either Party. No obligation to enter into any electronic transaction is to be implied from the execution or delivery of this Agreement. This Agreement is for the benefit of, and shall be binding upon, the Parties and their respective successors and assigns.
- 4.5 **Assignment.** This Agreement, or any rights or obligations hereunder, shall not be assigned by either Party without the express written approval of the other Party. Any assignment, which does not comply with the provisions of this section 4.5, shall be null and void. Notwithstanding the terms of this section 4.5, DP&L may delegate or assign, without the consent of the other Party, its rights, duties and obligations to any affiliate or subsidiary.
- 4.6 **Non-Waiver.** The waiver by either Party of any breach of any term, covenant or condition contained in this Agreement shall not be deemed to be a waiver of any other breach or default of the same or any other term, covenant, condition or obligation.
- 4.7 **Governing Law and Tariffs.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio and DP&L's rates, riders and tariffs filed with the PUCO. This Agreement shall at all times be subject to any changes or modifications by the PUCO as said PUCO may, from time to time, direct in the exercise of its jurisdiction.
- 4.8 **Force Majeure.** No Party shall be liable for any failure to perform its obligations in connection with any electronic transaction where such failure results from any act of God or other cause beyond such Party's reasonable control which prevents such Party from transmitting or receiving any Documents.
- 4.9 **Exclusion of Damages.** Neither Party shall be liable to the other Party for any indirect, special, incidental, exemplary or consequential damages in connection with the agreement, any electronic transactions or any document including, but not limited to, arising from or as a result of any delay, omission, or error in the electronic transmission or receipt of any documents pursuant to this agreement, even if such Party has been advised of the possibility of such damages.
- 4.10 **Resolution of Disputes.** Disputes between DP&L and the AGS that involve the performance, breach, or alleged breach of any obligation under this Agreement may be resolved through alternative dispute resolution as provided in DP&L's Alternative Dispute Resolution Procedure, as contained in DP&L's current rates, riders and tariffs. Nothing herein shall (a) limit or restrict the jurisdiction of the PUCO or of the

Federal Energy Regulatory Commission, or (b) require or permit arbitration if any such dispute or controversy is subject to such jurisdiction.

- 4.11 **Notices.** Unless otherwise provided herein, all notices, demands or other communications hereunder shall be in writing and shall be deemed to have been received when personally delivered, when sent by (i) courier delivery; (ii) Federal Express or similar overnight courier delivery; (iii) U.S. certified mail, return receipt requested to the address and persons specified in this Agreement. Notices or communications shall be deemed given on the date of (a) courier or overnight courier delivery; or (b) in the case of transmittal by U.S. certified mail, return receipt requested, the date the return receipt is signed or delivery is rejected. The following are the primary contacts for all communications related to this Agreement:

**DP&L:**

Company Name: The Dayton Power and Light Company  
Attn: Control Area Services  
Address: 1900 Dryden Road  
Dayton, Ohio 45439  
Phone: (937) 331-4431  
Fax: (937) 331-4216

**AGS:**

Company Name: \_\_\_\_\_  
Attn: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

**Status of Parties.**

- 4.11.1 Each Party shall perform its obligations under this Agreement as an independent contractor.
- 4.11.2 Unless specifically stated in this Agreement to be otherwise, the duties, obligations, and liabilities of the Parties are intended to be severable and not joint or collective. Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to create or impose a trust or partnership duty, obligation or liability on or with regard to either Party. Without limiting the foregoing, the Parties recognize and agree that the use of the term "Trading Partner" in this Agreement or in connection with this Agreement is merely to conform to industry usage and such use does not and shall not be construed or used to create or imply any partnership agreement or arrangement between the Parties or to create or impose any partnership duty, obligation or liability on or with regard to either

Party. Each Party shall be liable individually and severally for its own obligations under this Agreement.

4.12 **Publicity.** The Parties agree that, except for the purpose of explaining compliance with requests, orders, or procedures of governmental authorities, no advertising or publicity matter having or containing any reference to any other Party to this Agreement shall be made unless the same have been approved by all Parties.

IN WITNESS WHEREOF, the Parties have executed the agreement as of the day and year first above written.

The Dayton Power and Light Company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Alternate Generation Supplier Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_