

# FirstEnergy Solutions Corp.

## Customer Supply Agreement

Customer Supply Agreement (“Agreement”) is between FirstEnergy Solutions Corp., an Ohio corporation with its principal offices located in Akron, Ohio (“Supplier”), and City Of North Royalton, a company with its principal office located in North Royalton, OH (“Customer”) made effective this \_\_\_\_ day of February, 2010 (“Effective Date”). Supplier and Customer are sometimes referred to individually as “Party” or collectively as “Parties.”

This Agreement sets forth the terms under which the Supplier shall provide and Customer shall pay for competitive energy supply (“Electricity Supply”). In addition to the terms and conditions set forth below, additional pricing and other product information is set forth on the attached completed pricing attachment(s), which may be in multiple parts reflecting different service addresses and/or time periods (“Pricing Attachment”), all of which are incorporated herein by reference. Customer hereby authorizes Supplier to become Customer’s Electricity Supplier for the Term of this Agreement.

Now therefore, for good and sufficient consideration the receipt of which is hereby acknowledged, and intending to be legally bound hereby, the Parties hereby agree as follows:

### Term of Agreement:

1. This Agreement shall commence on the Effective Date and shall remain in effect until the meter reading date in the End Month as set forth in the latest executed Pricing Attachment(s) (“Term”), unless terminated earlier by either Party as expressly permitted by this Agreement. Electricity Supply from Supplier to Customer under this Agreement shall commence on the date the local electric distribution utility (“Electric Utility”) switches the Customer to Supplier for Electricity Supply. The earliest date that Customer could be switched is upon its regularly scheduled meter read date that occurs during the month listed on the Pricing Attachment as the "First Commencement Month" (“First Commencement Month”).
2. During the Term, if Customer voluntarily terminates service from its Electric Utility at one or more of its individual service address(es), listed on the Pricing Attachment, with the Electric Utility, Customer shall provide Supplier with at least 60 days advance written notice of such termination. As long as notice has been given, such termination of an individual Service Address will not constitute default. This paragraph does not apply to disconnections by the Electric Utility for nonpayment, fraud, or similar reasons.
3. If Customer wishes to add an individual service address(es) to the Pricing Attachment or a new Pricing Attachment for an existing service address, Supplier and Customer must negotiate a mutually agreeable addendum to this Agreement, which may include changes to price, terms, and conditions, before a service address or new Pricing Attachment may be added.
4. Expiration or termination of this Agreement for any reason shall not relieve either Party of any obligation that arose prior to such expiration or termination, or performance of any obligation under this Agreement that by its terms survives such expiration or termination.
5. The Parties agree that the Electric Utility determines when the Customer will be switched to Supplier for its Electricity Supply, and that such switch will occur in accordance with the Electric Utility’s rules and practices regarding the switching of customers to suppliers, and that Supplier has no liability related to the date upon which the Electric Utility determines to switch the Customer. The First Commencement Month set forth on the Pricing Attachment is only an estimate of the expected month when Customer may be switched by the Electric Utility, on its regularly scheduled meter read date, to Supplier for Electricity Supply. Supplier reserves the right to reprice the Electric Supply if Customer’s switch to Supplier does not occur during the First Commencement Month. If Supplier elects to reprice, Supplier will notify Customer in writing of the new price. Customer must accept or reject such new price within ten (10) days of notice from Supplier. If Customer rejects, the Agreement is terminated

without cost or penalty to either Party. If Customer accepts, or does not respond within the ten (10) day period, the Agreement shall remain in full force and effect utilizing the new price.

**Supplier Electricity Supply Obligations:**

6. Supplier shall provide for the delivery of Electricity Supply to the Delivery Point, as defined below, and shall be responsible for the transmission and other costs or charges, as described below, imposed on or associated with the delivery of the electricity to the Delivery Point. The delivery point is defined as the electric system interconnection of the Customer's Electric Utility where the Electric Utility takes possession of the electricity from Supplier for delivery to the Customer ("Delivery Point"). Supplier agrees to provide those components of Electricity Supply necessary to satisfy the requirements of the Customer's Electric Utility and/or Independent System Operator/regional transmission entity ("ISO") according to the rules, regulations, and tariffs governing Electricity Supply from an alternative supplier in place on the Effective Date ("Full Requirements Service"). These components may include electric energy, ancillary services, capacity, network transmission, losses, scheduling, unaccounted for energy, ISO/ Electric Utility administration fees, and green power requirements. Changes to such existing requirements, and charges related thereto, are addressed in and subject to paragraphs 31 and 32, below.

**Customer Obligations:**

7. Customer agrees to purchase Full Requirements Service for all service addresses listed on the Pricing Attachment at the price listed thereon for the Term in accordance with the terms and conditions of this Agreement.

8. Customer is responsible for all costs and expenses of its electricity usage not covered in paragraph 6, above, including without limitation any applicable competitive transition charges or similar charges.

9. Customer is responsible for providing Supplier with accurate information, including but not limited to, Customer's account/customer number, data about meter reading, type of meter, service or rate classification, and electric usage prior to pricing the Electricity Supply.

10. Customer is responsible for arranging for its supply of electricity upon termination of this Agreement. Upon termination of this Agreement, if Customer has not selected another supplier, Customer will be returned to the Electric Utility's standard offer service.

**Metering:**

11. Metering of Customer's electricity usage shall be performed by the Electric Utility through Electric Utility meters. Billing for Electricity Supply, whether billed by Supplier ("Dual Billing") or the Electric Utility ("Consolidated Billing"), will be based on Electric Utility actual or estimated meter readings (including any Electric Utility adjustments thereto) performed by the Electric Utility in accordance with the Electric Utility retail electric service tariff. Customer hereby consents to Supplier's access to any and all Customer metered data for purposes of fulfilling its obligations under this Agreement, including without limitation, passwords, billing and/or scheduling/forecasting Customer's electrical load and usage.

12. If the Electric Utility requires Customer to install additional metering and/or related equipment at any service address, Customer will be solely responsible for all charges and arrangements required by the Electric Utility.

13. Supplier, at its expense, shall have the right to install and remove special metering at any service address(es) with at least 30 days notice to the Customer. Such metering shall remain the property of Supplier. Supplier will restore the metering site to its pre-existing condition.

**Billing and Payment:**

14. The Parties agree that this Agreement is not enforceable without a completed Pricing Attachment(s).

15. Supplier shall bill or cause Customer to be billed for Electricity Supply in accordance with the terms and conditions of this Agreement. Supplier may correct bills due to errors made in the meter reading information or billing process.

16. Under Consolidated Billing, the Customer shall be billed and agrees to pay for Electricity Supply in accordance with the Electric Utility's tariff, which includes, without limitation, when payment is due and late payment charges.

17. Under Dual Billing, Supplier will separately bill Customer for Electricity Supply after receiving monthly billing determinants from the Electric Utility, subject to any Electric Utility estimates or corrected readings. Invoices are due and payable upon receipt. The final date for payment of the net amount as shown on the invoice is 30 days from the invoice date ("Due Date"). Payments not received by Supplier by the Due Date shall be subject to a late payment charge of 1.5% per month or the maximum amount permitted by law, whichever is less, on the unpaid amount.

18. In the event any portion of any invoice is in dispute, the Customer shall pay the undisputed amount and Parties in good faith shall attempt to resolve the dispute. If the dispute is not resolved, each Party may pursue any and all remedies available to it. Upon determination of the correct invoice amount, the proper adjustment shall be applied to a subsequent invoice or paid/refunded within thirty (30) days of the resolution.

19. Under Dual Billing, Supplier shall have the right to estimate usage for purposes of billing provided that a reconciliation between actual and estimated usage occurs within sixty (60) days of the receipt by Supplier of actual billing determinants.

20. Supplier reserves the right to convert 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.

21. Under Dual Billing, a check received in payment of a Customer's account which is returned to Supplier unpaid by the Customer's bank and which cannot be redeposited by Supplier for payment will result in an additional \$25 charge or the maximum permitted by law, whichever is less, for the returned check. Such charge will be added to the Customer's account balance.

**Creditworthiness:**

22. Upon reasonable request, Customer agrees to provide Supplier with information to allow Supplier to update its credit profile of Customer. In the event of a material adverse change in or deterioration of the financial condition or ability to pay bills of Customer or a credit support provider of Customer, Supplier may require Customer to make credit arrangements satisfactory to Supplier in the form of an escrow account, deposit, letter of credit, pre-payment or other guarantee of payment or performance acceptable in form and substance and from an entity acceptable to Supplier in its reasonably exercised judgement. For purposes of this paragraph, material adverse change may include, but is not limited to, a drop in Customer's S&P credit rating to below BBB-, a change in Customer's Moody's credit rating to below Baa3, or a D&B Composite Credit Appraisal of "fair" or "limited". Adequate assurance of payment may be in the form of an escrow account, deposit, letter of credit, prepayment or other guarantee of payment in the amount of two months expected accounts receivable.

23. If a deposit or escrow account has been provided, then Supplier shall have the right to apply the deposit amount to an arrearage amount due and owing by the Customer for Electricity Supply under this Agreement and all other purposes permitted by law or agreement of the Parties.

**Default & Remedies:**

24. A Party shall be in "Default" upon:

24a Such Party failing to perform any material term or condition of this Agreement, provided that such failure is not cured within fifteen (15) business days of written notice by the other Party or the minimum period required by law, if longer.

24b Failure of Customer to pay undisputed amounts due for Electricity Supply provided that such failure is not cured within ten (10) business days of written notice by Supplier or the minimum period required by law, if longer. The remedy for such nonpayment will require Customer to pay all undisputed amounts due and Supplier may require Customer to provide Supplier with an escrow account, deposit, letter of credit, pre-payment or other guarantee of future payment.

24c Failure of Supplier to provide Electricity Supply to the Customer in accordance with the rules of the applicable public utility regulatory commission, as such failure is determined by that agency.

24d Either party or its guarantors voluntarily or involuntarily filing for bankruptcy, becoming bankrupt or being forced into bankruptcy.

24e Such Party's Guarantor fails to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) business days after written notice.

24f Such Party's Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of any guaranty.

25. In the event of default by one Party, the other Party may in its sole discretion terminate this Agreement upon written notice to the defaulting Party as soon as such termination is permitted consistent with state and Electric Utility rules, orders, and tariffs.

26. In the event of default by the Customer, Customer shall pay Supplier any outstanding accounts payable plus all costs and penalties associated with but not limited to the change in value of any electricity supply positions reserved on behalf of the Customer using standard industry practices for the months remaining in the originally agreed upon term for that service address.

27. In the event of a default by the Supplier that requires Customer to purchase replacement electricity from another supplier or the Electric Utility, Customer's sole and exclusive remedy shall be direct damages in the amount of the positive difference, if any, between the purchase price (\$/kWh) paid by Customer for replacement electricity (assuming that Customer has used commercially reasonable efforts to replace the electricity) and the price (\$/kWh) as set forth on the Pricing Attachment multiplied by the amount of Customer's electricity usage (kWh) for the months of the prior year that correspond to the months remaining in the Term for that service address, or if such prior usage information is unavailable, a mutually agreeable estimate of Customer's expected usage for the remainder of the Term.

## **DISPUTE RESOLUTION**

28. If a dispute between Customer and Supplier arises during the course of this Agreement, the Parties will attempt to resolve the dispute in writing and verbally, in good faith.

## **FORCE MAJEURE**

29. No Party shall be considered to be in default in the performance of any of the obligations hereunder if failure of performance shall be due to uncontrollable forces. The term "uncontrollable forces" shall mean any cause beyond reasonable control of the Party affected, despite exercising due diligence. "Uncontrollable forces" shall include, but not be limited to the failure of facilities, actions or the failure to act of regulatory agencies, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance, labor dispute, sabotage, restraint by Court order or public authority, or inability to obtain necessary approvals, licenses or permits. Nothing herein shall be construed so as to require a Party to settle any strike or labor dispute in which it may be involved. Economic hardship of either Party shall not constitute a Force Majeure under this Agreement.

30. If a Party is prevented or delayed in the performance of any such obligation by a Force Majeure event, such Party shall promptly provide notice to the other Party of the circumstances preventing or delaying performance and the expected duration thereof. Such notice shall be confirmed in writing as soon as reasonably possible. The Party so affected by the Force Majeure Event shall endeavor, to the extent reasonable, to remove the obstacles that prevent performance and shall resume performance of its obligations as soon as reasonably practicable.

## **EFFECT OF REGULATORY ACTION**

31. If any regional transmission organization or similar entity, Electric Utility, governmental entity or agency, NERC and other industry reliability organization, or court requires a change to the terms of the Agreement, or imposes upon Supplier new or additional charges or requirements, or a change in the method or procedure for determining charges or requirements, relating to the Electricity Supply under this Agreement (any of the foregoing, a "Pass-Through Event"), Customer agrees that Supplier may pass through to Customer the additional cost to Supplier of such Pass-Through-Event, under the procedure specified in Paragraph 32 below. For purposes of this Paragraph 31, changes include, without limitation, transmission or capacity requirements new or modified charges or shopping credits, and other changes to retail electric customer access programs.

32. Supplier shall provide Customer with at least thirty (30) days advance written notice of a Pass-Through-Event and the amount of any additional charge related thereto. The amount of such charge will be included in Customer's monthly billing based on the first meter read after such thirty (30) day notice period.

### **CONFIDENTIALITY**

33. Except as provided for herein, neither Party shall disclose the terms or conditions of this Agreement to any third party (other than the Party's employees, affiliates, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding. However, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure.

### **ASSIGNMENT**

34. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder): (i) transfer or assign this Agreement to an affiliate of such Party, or (ii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets. In each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and shall provide written notice of the assignment to the other Party prior to or simultaneous with such assignment.

### **ENTIRE AGREEMENT & AMENDMENTS**

35. This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, communications, and representations regarding the subject matter hereof. No agent, representative, employee, or officer of either Party has authority to make, or has made, any statement, agreement, or representation, oral, or written, in connection with this Agreement, which in any way can be deemed to modify, add to or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of this Agreement. Any changes, corrections, modifications or additions to this Agreement shall be in writing in the form of an addendum signed by both Parties.

### **MISCELLANEOUS**

36. Should any term of this Agreement be rendered unlawful by a court of competent jurisdiction or any legislative act, the Parties shall give effect to the balance of the Agreement to the extent commercially possible.

37. Each Party shall comply with all applicable federal, state, and local laws applicable to the fulfillment of its obligations under this Agreement and Supplier shall procure at its expense all licenses and all permits necessary for the fulfillment of its obligations under this Agreement.

38. In addition to the energy charges identified in the Pricing Attachment, Customer agrees to compensate the Supplier for all Independent System Operator ("ISO")/ Regional Transmission Organization ("RTO") issued charges the Supplier incurs as a result of the Customer's participation in any ISO/RTO sponsored load curtailment program.

39. Customer agrees to opt-out of any applicable governmental aggregation program, and authorizes, but does not obligate, Supplier to exercise the Customer's opt-out right

40. This Agreement and the rights and duties of the parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of Ohio, without regard to principles of conflicts of law.

41. The Parties acknowledge and agree that the transaction contemplated under this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United Bankruptcy Code.

## **SUPPLIER REPRESENTATIONS AND WARRANTIES**

42. Supplier is a corporation duly organized and validly existing under the laws of the State of Ohio and duly registered and authorized to do business and in good standing in the states in which it is certified/licensed to provide Electricity Supply in accordance with the applicable rules and regulations of that state.

43. Supplier has all requisite power and authority to execute this Agreement and to carry on business to be conducted by it under this Agreement and to enter into and perform its obligations hereunder and satisfaction of all applicable FERC requirements, which shall be maintained throughout the life of this Agreement.

44. Supplier warrants title and the right to all Electricity Supply sold hereunder. Title to Electricity Supply provided to Customer by Supplier under this Agreement shall pass at the Delivery Point. THE WARRANTIES SET FORTH IN HEREIN ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE.

## **CUSTOMER REPRESENTATIONS AND WARRANTIES**

45. Customer is a duly organized business governmental entity, or non profit organization under the laws of one of the States of the United States of America and authorized to do business and in good standing in the State in which the Electricity Supply is delivered.

46. Customer has all requisite power and authority to execute this Agreement and to carry on business to be conducted by it under this Agreement and to enter into and perform its obligations hereunder.

47. There are no actions at law, suits in equity, proceedings or claims pending or, to Customer's knowledge, threatened against it that might materially hinder Customer's performance of its obligations hereunder.

## **LIABILITY AND INDEMNIFICATION**

48. Supplier agrees to indemnify and hold harmless Customer from and against all Claims arising from or out of any event, circumstance, act, or incident first occurring or existing prior to the Electricity Supply reaching the Delivery Point, except to the extent of the negligence or willful misconduct of the Customer. Customer agrees to indemnify and hold harmless Supplier from and against all Claims arising from or out of any event, circumstance, act, or incident first occurring or existing after the Electricity Supply has been delivered to the Delivery Point, except to the extent of the negligence or willful misconduct of the Supplier. For purposes of this paragraph, "Claims" means all third party claims or actions, losses or liabilities threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of this Agreement, and the resulting losses, damages, expenses, attorneys' fees and litigation costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

49. Neither Party shall be liable to the other for incidental, consequential, punitive, exemplary or indirect damages, lost profits or other business interruption damages, in tort, contract or otherwise.

50. Supplier assumes no responsibility and has no liability for the operation, maintenance, or performance, or lack thereof, of any transmission or distribution systems used to supply Customer, or interruptions in or deterioration or termination of Customer's electric service, both before and after the Delivery Point. Customer should contact its Electric Utility in the event of an emergency or outage.

## **NOTICES**

51. All notices required hereunder, with the exception of any notice required on the Pricing Attachment, shall be in writing and shall be delivered electronically via facsimile, website, or email, or personally, by certified mail, return receipt requested, or by overnight carrier as listed on the attached Contact Information Form, which is attached hereto and incorporated herein. Emergency contact information shall also be included on such Form.

**INFORMATION DISCLOSURE**

52. Customer agrees and hereby expressly consents to the disclosure of its proprietary customer information from the Electric Utility to Supplier, such information to include, without limitation, Customer account number, electrical load and usage history, meter reading data, rate classification, address, and telephone number. This Customer consent to release of information shall remain in effect for the duration of this Agreement.

**IN WITNESS WHEREOF**, the Parties hereto intending to be legally bound hereby have caused this Agreement to be executed pursuant to due and legal action authorizing the same to be done commencing on the Effective Date as set forth above.

**FIRSTENERGY SOLUTIONS CORP.**

**City Of North Royalton**

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

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

\_\_\_\_\_  
(Please print name)

\_\_\_\_\_  
(Please print name)

Title: \_\_\_\_\_  
(Sales Department)

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

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

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

**FIRSTENERGY SOLUTIONS CORP.  
Contract Administrator**

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

\_\_\_\_\_  
(Please print name)

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

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

# FirstEnergy Solutions

## Proposed Pricing For... City of North Royalton

Price Offer(s) Date: 4/2/2010

Price Offer(s) Expire Within 5 Business Days

Account Description	EDC Account Number	EDC	Rate Code	Int. Met.	Indicative Pricing	Est. Peak KWh	Est. Term KWh	Sample Meter Read Date	Start Month Meter Reads:	Term (Months)	Product Type	Price	Estimated Price to Compare	Estimated Term Savings (b)
11675 W ROYALTON RD	08005878451030000510	CEI	GS	N	N	413	2,668,862	12/23/09	Apr-10	14	FIXED PRICE	4.42	6.87	\$65,387.12
11355 W SPRAGUE RD	08005878451140000552	CEI	GS	N	N	152	771,893	12/23/09	Apr-10	14	FIXED PRICE	4.67	6.86	\$16,904.46
													<b>Total Est savings</b>	<b>\$82,291.58</b>
11675 W ROYALTON RD	08005878451030000510	CEI	GS	N	N	413	4,968,718	12/23/09	Apr-10	26	FIXED PRICE	4.84	6.89	\$101,858.72
11355 W SPRAGUE RD	08005878451140000552	CEI	GS	N	N	152	1,435,713	12/23/09	Apr-10	26	FIXED PRICE	5.25	6.88	\$23,402.12
													<b>Total Est savings</b>	<b>\$125,260.84</b>
11675 W ROYALTON RD	08005878451030000510	CEI	GS	N	N	413	6,897,070	12/23/09	Apr-10	36	FIXED PRICE	4.98	6.91	\$133,113.45
11355 W SPRAGUE RD	08005878451140000552	CEI	GS	N	N	152	1,991,298	12/23/09	Apr-10	36	FIXED PRICE	5.37	6.9	\$30,466.86
													<b>Total Est savings</b>	<b>\$163,580.31</b>

(a) All accounts are assumed monthly metered (non-interval metered) according to the EDC definition, unless a 'Y' is in the 'Int. Met.' column.

(b) Estimated Term Savings is based on historical usage and may not be reflective of future usage and savings.

(c) Estimated Start Date. The respective EDC controls the start date; therefore FES cannot guarantee the exact start date.

(d) All price offers are subject to change without further notice and are dependent upon availability. This price includes electric generation service and associated electric transmission service where applicable.

Creditworthiness: Upon request, you will provide FirstEnergy Solutions with reasonable information reasonably requested by FirstEnergy Solutions to complete a credit review. Service shall be contingent upon satisfactory review of customer credit by FirstEnergy Solutions, which shall have sole discretion of Customer's creditworthiness.

**USE OR DISCLOSURE OF DATA CONTAINED ON THIS PAGE IS SUBJECT TO THE RESTRICTION ON THE TITLE PAGE OF THIS PROPOSAL.**

You may add the Pricelless option to your proposed price which will provide you an opportunity to lower your price should the market price drop during an option window. See specific terms and conditions of the Pricelless product for details. The cost adder for Pricelless varies based on the option selected.