



Contract for Supply of Electricity

Quote Number:	S0307726	Product:	Fixed Price / Load Zone / DMAC
Business Partner:	0020100825		
BUYER:	Clay County 214 N MAIN ST HENRIETTA, TX 76365-2850	SELLER:	TXU Energy Retail Company LLC REP Certification No. 10004 6555 Sierra Drive 1-W-1 Irving, Texas 75039 Attn: Retail Contract Administration
Phone:	(940) 538-5560	Fax:	
		Phone:	(866) 576-6745
		Fax:	(972) 556-6108

I. TERM

Primary Term: The Primary Term for each Premise will begin on the first meter read, and end on the first regularly scheduled meter read, for each Premise occurring on or after the dates listed below in compliance with the Terms and Conditions.	
Primary Term Start Date: April 1, 2020	Primary Term End Date: December 31, 2023

II. CHARGES

CHARGE	AMOUNT (Monthly Charges will be the total of the items listed in this Article II.)
(i) All kWh Charge (the per kWh "Contract Price")	\$0.0460191 per kWh. The All kWh Charge includes charges for the commodity (including the price impact, if any, resulting from the implementation of the Operating Reserve Demand Curve ("ORDC")), Energy (shaped), Ancillary Services, Qualified Scheduling Entity Charges, Renewable Energy Credit Charges, Reliability Must Run ("RMR"), Reliability Unit Commitment ("RUC"), Line Losses (TDSP), Market Clearing Price for Capacity, ERCOT Administration Fee/ISO Fees, and Unaccounted for Energy ("UFE") as defined and specified in the ERCOT Protocols and the applicable TDSP's Tariff in effect as of the date of this Agreement. It will also include the settlement charges for Congestion to the applicable ERCOT Load Zone.
(ii) Standing Charge	The sum of the Monthly Standing Charges for all ESI IDs as listed in Exhibit A.
(iii) Other Charges	Varies by ESI ID throughout the Term. All charges, other than those listed above or below, imposed upon Seller or Buyer by the TDSP or another party that are allowed or required by the PUCT, ERCOT, or any other governmental or regulatory authority, on or with respect to the acquisition, sale, delivery, and purchase of the Power.
(iv) Taxes	Varies by ESI ID throughout the Term. All taxes imposed by any governmental or regulatory authority on the acquisition, sale, delivery, and purchase of the Power. Includes, but is not limited to, Seller's Texas Gross Receipts Tax and Public Utility Commission Assessment on the acquisition, sales, delivery, or purchase of the Power.
(v) Aggregator/Third Party Fee	The pricing under this Agreement reflects a payment to L5E, LLC in connection with its efforts to facilitate Buyer and Seller entering into this Agreement.

III. BILLING


Payment Terms: Net 30 days from the date of the invoice via Check
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IV. SPECIAL PROVISIONS

INITIAL SECURITY: An initial cash deposit in the amount of \$0.00 is required within sixteen (16) days from the issuance date of the invoice for the deposit. Once received, the cash deposit may be replaced by a surety bond, or an irrevocable letter of credit either of which shall be (i) in a form reasonably acceptable to Seller, (ii) from an institution reasonably acceptable to Seller, and (iii) in the same dollar amount as the cash deposit. The security shall remain in effect until at least two (2) months after the Primary Term End Date.

V. TERMS AND CONDITIONS

The attached Terms and Conditions, Exhibit A, Exhibit A-1, and other attachments, as applicable, are incorporated herein by reference.
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Buyer Legal Name: Clay County a Texas corporation	Seller Legal Name: TXU Energy Retail Company LLC, a Texas limited liability company
By (Name of General Partner or Agent if applicable): Its General Partner	
Buyer Signature: 	Seller Signature:
Officer's Printed Name: Mark E. Campbell	Officer's Printed Name:
Title: County Judge	Date: 4/6/20
	Title:
	Date:

I. DEFINITIONS

"Agreement" means the Contract for the Supply of Electricity that is subject to these Terms and Conditions.

"ERCOT" means the Electric Reliability Council of Texas, Inc.

"ESI ID" means an Electric Service Identifier designation for a particular TDSP Point of Delivery.

"POLR" means the provider of last resort as designated by the PUCT.

"Power" means all of Buyer's non-residential electricity requirements for each of the Premise(s).

"PUCT" means the Public Utility Commission of Texas.

"Premise" means individually, and "Premises" means collectively, each parcel of real property and improvements identified on Exhibit A.

"REP" means a retail electric provider that is certified by the PUCT.

"Seller Point of Delivery" means the point where Seller's suppliers' conductors are connected to the applicable TDSP's conductors.

"TDSP Point of Delivery" means the point where the applicable TDSP's conductors are connected to Buyer's conductors at or near Buyer's Premise(s).

"TDSP" means a transmission and/or distribution provider under the jurisdiction of the PUCT that owns and maintains a transmission or distribution system for the delivery of energy.

"Term" means the time period during which the Agreement is effective as specified in Article I of the Agreement.

"Terms and Conditions" means these Terms and Conditions for Supply of Electricity.

Capitalized terms not defined in these Terms and Conditions shall have the meaning identified in the Agreement.

II. SUBJECT MATTER AND QUANTITY. During the Term Seller shall sell to Buyer and Buyer shall purchase from Seller all of Buyer's Power for the listed Premises. Seller shall cause delivery of the Power to the applicable Seller Point(s) of Delivery and Buyer shall receive the Power at the ESI ID(s) at the TDSP Point(s) of Delivery. Buyer shall use the Power only at the Premise(s). A Premise may have one or more TDSP Points of Delivery.

III. SECURITY AND CREDIT REQUIREMENTS.

Buyer shall provide the amount of security, if any, stated in Article IV ("Special Provisions") of the Agreement before the Primary Term Start Date. Additionally, if at any time prior to the end of the Agreement Seller later determines in good faith that there has been a material adverse change in Buyer's or Buyer's Parent's credit status or financial condition and/or in electricity market conditions and/or Buyer fails to pay all Charges when due, Seller may demand security (or additional security if initial security was previously provided) from Buyer in an amount and form reasonably acceptable to Seller. Buyer shall provide security to Seller within five (5) business days of such request. Seller shall return the security (and accrued interest, if applicable, at the One Year Treasury Constant Maturity index published by the Federal Reserve Board as of the first auction date after January 1 of the applicable year) less any amounts owed by Buyer under the Agreement, when Seller reasonably determines that such security is no longer necessary.

IV. CALCULATION AND PAYMENT OF CHARGES.

4.1 Seller will invoice Buyer for the Charges listed in Article II ("Charges") of the Agreement for Power delivered to the Premise(s) during each monthly billing cycle of the Term. Buyer shall pay Seller the Charges identified on each invoice by the due date listed in Article III ("Billing") of the Agreement. All past due amounts shall accrue interest at a rate equal to three percent (3%) above the "Prime Rate" published in The Wall Street Journal under "Money Rates" or an appropriate substitute should such rate cease to be published, unless a lesser amount is required by law, from the date the payment was originally due until paid (including accrued interest).

4.2 Intentionally Deleted.

4.3 Intentionally Deleted.

4.4 (a) Seller reserves the right to allocate measured consumption to the applicable calendar month for any ESI IDs not installed with an interval data recorder ("IDR"), or for IDRs for which IDR information was not received by Seller in a useable format. (b) If, for whatever reason, the proper meter readings are not communicated to Seller by the TDSP in time for Seller to prepare the invoice for the Charges, Seller shall have the right to reasonably estimate the quantity of the electricity consumed and Buyer shall pay the Charges for the estimated amounts subject to any adjustments which may be necessary following the reading. (c) It is recognized by the Parties hereto that ERCOT has established time periods for disputing and/or correcting certain matters related to the settlement of energy charges. Therefore, notwithstanding any other provisions of the Agreement, in the event of a dispute and/or possible correction, relating to the Agreement, which would involve a settlement with ERCOT that is barred by ERCOT (an "ERCOT Barred Issue"), then, to the extent that adjustment or settlement of such matter via the ERCOT energy settlement process cannot occur as a result of it being an ERCOT Barred Issue, the subject statement, invoice, notice or other matter that is at issue under this Agreement may not be adjusted, but only with respect to such ERCOT Barred Issue (d) If, during the term of this Agreement, Buyer's actual monthly usage for two consecutive calendar months materially differs (i.e., increases or decreases by more than 25%) from the monthly contract quantities provided for in this Agreement for each such month, then, upon notice from one Party to the other Party, the Parties agree to (i) work in good faith with one another to reasonably adjust the remaining contract quantities on a forward basis, and (ii) pass through any credits or costs as reasonably determined by Seller associated with effectuating such adjustment. In such event, Buyer may choose whether such credits or costs are passed through (1) as a single amount, or (2) on a monthly basis over the remaining Term.

4.5 Seller, in its sole discretion, may (as a result of PUCT rules that forbid a REP from switching a customer to the POLR) direct the TDSP to disconnect electric service to the Premise(s) under the Agreement (i) upon expiration or termination of this Agreement for any reason, if Buyer has not executed a replacement agreement with Seller or switched to another electricity provider for the applicable Premise(s), or (ii) at any time thereafter, until Buyer either executes a replacement agreement with Seller or switches to another electricity provider for the applicable Premise(s). In any event, if Seller is ever determined to have been Buyer's electricity supplier for a period after the expiration or termination of the Agreement, then Seller may charge Buyer, as the Contract Price for Power utilized at such Premise(s) during such period, a price per kWh equivalent to Seller's then current "standard list price offer," and the other terms governing such sale shall be identical to those applicable to sales that occurred prior to the termination/expiration of the Agreement.

4.6 (a) If (i) Buyer changes any TDSP Point of Delivery for a Premise to a delivery service voltage level that is different than the voltage level in place for such TDSP Point of Delivery at the time the Agreement became effective, or Buyer changes the existing electric meter at any TDSP Point(s) of Delivery for a Premise to a different size/capacity than the size/capacity in place at the time the Agreement became effective, (ii) Buyer causes the ERCOT Deemed Load Profile Type for any of its Premises to change, or (iii) Seller's cost to serve Buyer under the Agreement is otherwise increased as a result of judicial, governmental, quasi-governmental (e.g., ERCOT) or regulatory action, (including, but not limited to, actions with regard to congestion zones, nodal congestion, carbon cap/trade/remediation, renewable energy sources or standards, etc.), then Seller may adjust the Contract Price under the Agreement in order to reflect the increased cost to Seller of serving Buyer thereunder as a result of any such change(s). Seller shall provide Buyer with written notice of the adjustment to the Contract Price pursuant to this Section 4.6, along with a written explanation of the change that includes the effective date of the adjustment and the circumstances giving rise to the increased cost to Seller. Provided, however, in the event that Seller ever does so adjust the Contract Price under the Agreement pursuant to this Section 4.6, Buyer shall have the right, within thirty (30) calendar days after Seller's notice of such increase in the Contract Price, to terminate the Agreement upon thirty (30) calendar days prior written notice to Seller; provided further, however, in the event that Seller should sustain a loss in liquidating the remaining Power quantities under the Agreement as a result of Buyer exercising such right to terminate the Agreement, Buyer agrees to reimburse Seller the amount equal to the product of (i) the remaining quantities of electricity reflected on Exhibit A-1 after such termination multiplied by (ii) the Contract Price minus the then current market value as reasonably determined by Seller. Such amount shall be due and payable on or before the date of Buyer's termination.

(b) During the Agreement Term, Buyer shall not consume electricity at any Premises from any source (including self-generation) except for Power sold by Seller under the Agreement; however, Buyer may consume electricity from emergency generation during power outages at the Premises and for purposes of testing such emergency generation.

V. ADDITION AND REMOVAL OF PREMISES.

5.1 Buyer shall be entitled to add one or more Premises (and associated electricity quantities as reasonably determined by Seller) to the Agreement by submitting its written request to add the Premise(s) on Seller's then current standard form for such a request and by agreeing to pay Seller an additional lump sum amount equal to, the positive amount, if any, calculated as follows: the sum of (i) the product of (A) the kWh amount of electricity quantities attributable to the additional Premise(s) for the remainder of the Agreement Term as reasonably determined by Seller ("Premise Addition Quantities") multiplied by (B) the then current market based price of a kWh as reasonably determined by Seller minus the Contract Price under this Agreement plus (ii) Seller's reasonable costs incurred to perform the addition (such sum, the "Premise Addition Payment"). In such event, the additional Premise(s) and associated electricity quantities shall be added to this Agreement and thereafter shall be subject to the Charges, monthly usage tolerances, and other terms of this Agreement for the balance of the Agreement Term. Buyer shall pay Seller's invoice for each Premise Addition Payment on or before the end of the time period listed in Article III ("Billing"). In the alternative, Buyer shall have the option to (i) enter into a new separate Agreement with Seller covering the additional Premise(s) at Seller's then-current market based prices, or (ii) contract for such additional Premise(s) with another REP in lieu of adding the Premise(s) to this Agreement, or (iii) covering the Premise(s) under a new Agreement with Seller.

5.2 Buyer shall be entitled to remove one or more, but not all, Premises (and associated electricity quantities as reasonably determined by Seller) from the Agreement only if Buyer either (a) sells or leases the Premises or (b) closes the Premises for the remainder of the Term. Buyer shall provide Seller with thirty (30) calendar days prior written notice (specifying each applicable Premise and the date of removal) if it intends to remove one or more Premise(s) from the Agreement. Unless Buyer sells or leases a removed Premise, as of the date of removal, to a purchaser or lessee who (x) first executes a new contract with Seller upon the same terms as Buyer's contract and (y) is creditworthy as determined by Seller in Seller's reasonable discretion, Buyer shall pay to Seller in respect of each such removed Premise the positive amount, if any, as follows: the product of (i) the kWh amount of electricity quantities attributable to such Premise for the remainder of the Agreement Term as reasonably determined by Seller (the "Premise Liquidated Quantities") multiplied by (ii) the Contract Price under this Agreement minus ninety-five percent (95.0%) of the then-current market value of a kWh as reasonably determined by Seller (such product, the "Premise Liquidation Payment"). Buyer shall pay Seller's invoice for each Premise Liquidation Payment on or before the end of the time period listed in Article III ("Billing").

VI. REMEDIES UPON TERMINATION.

6.1 A material breach of the Agreement includes: (a) the failure of either Party to make any payment due to the other Party pursuant to the terms of the Agreement and such failure is not cured within ten (10) calendar days following written notice of such failure describing the breach in reasonable detail; (b) the failure of a Party to comply with any other material term of the Agreement when such failure is not cured within thirty (30) calendar days following written notice of such failure describing the breach in reasonable detail; (c) a Party becomes or declares that it is bankrupt, or becomes or declares that it is the subject of any proceedings, or takes any action whatsoever, relating to its bankruptcy or liquidation, or is not generally paying its debts as they become due; (d) Buyer enters into another electricity supply agreement for any Premise(s) with another REP that covers any period during the Agreement Term; (e) Buyer sells, leases, closes or otherwise conveys or assigns any of the Premises, except as allowed under Article IV ("Special Provisions") of the Agreement, Article V ("Addition and Removal of Premises") or Section 12.2 ("Assignment") hereof; (f) Buyer's total monthly usage ever decreases to a de minimis amount or fails to exceed a de minimis amount for reasons other than Force Majeure or Seller's breach; (g) any representation of a Party hereunder is not true and correct in all material respects as of the date this Agreement is entered into; or (h) the failure of Buyer to timely pay security to Seller as may be required hereunder. In the event of a material breach of the Agreement by either Party, the non-breaching Party may, in its sole discretion, and without prejudice to any other rights under the Agreement, at law or in equity, immediately terminate the Agreement.

6.2 (a) If Seller terminates the Agreement due to a material breach by Buyer, (i) Seller may (as a result of PUCT rules that forbid a REP from switching a customer to the POLR) direct the TDSP to disconnect electric service to the Premise(s) covered hereunder, except as may be prohibited by law, and (ii) within thirty (30) calendar days following such termination, Buyer shall pay Seller, in addition to all reasonable direct costs and expenses incurred by Seller as a result of such material breach and termination, and all amounts Buyer owes Seller with respect to time periods prior to the termination, the positive amount, if any, calculated as follows as of the date of termination: the sum of (A) the product of (i) the remaining quantities of electricity for the remainder of the Agreement Term as reflected on Exhibit A-1 ("the Remaining Quantities") multiplied by (ii) the Contract Price under the Agreement minus the then-current market value of a kWh as reasonably determined by Seller plus (B) the value of any term extension option rights, if any, that Seller may have under the Agreement.

(b) If Buyer terminates the Agreement due to a material breach by Seller, (i) Buyer shall have the right to select any other REP as its electricity provider, and (ii) within thirty (30) calendar days following such termination, Seller shall pay or credit Buyer, in addition to all reasonable direct costs and expenses incurred by Buyer as a result of such material breach and termination, the positive amount, if any, calculated as follows: the product of (A) the Remaining Quantities multiplied by (B) the sum of (i) the lesser of (1) the then current market value of a kWh as reasonably determined by Seller, (2) the price offered by the POLR, or (3) any REP's standard list price offer (or equivalent or similar pricing), minus (ii) the Contract Price.

VII. FORCE MAJEURE. If either Party is unable to perform its obligations, in whole or in part, due to an event of Force Majeure as defined herein, then the obligations of the claiming Party (other than the obligations to pay any amounts arising prior to the Force Majeure event) shall be suspended, for the duration of such Force Majeure event, to the extent made necessary by such Force Majeure event. The term "Force Majeure" shall mean any act or event that is beyond the claiming Party's control (and which could not be reasonably anticipated and prevented through the use of reasonable measures), including, without limitation, the failure of the TDSP to receive, transport or deliver, or otherwise perform, unless due to the failure of the Party claiming Force Majeure to perform such Party's obligations hereunder, and an event of Force Majeure that affects Seller's suppliers. The Party suffering the event of Force Majeure shall give written notice of such event of Force Majeure in reasonably full particulars to the other Party, as soon as reasonably possible, and shall take all reasonable measures to reduce as much as practicable the duration of such Force Majeure event. Force Majeure shall not include (a) the opportunity for Seller to sell the electricity to be sold under the Agreement to another party at a higher price than that set forth in the Agreement, (b) the opportunity for Buyer to purchase electricity for its Premise(s) from another party at a lower price than that set forth in the Agreement, or (c) the inability of either Party to pay its obligations under the Agreement or any other of its obligations or debts as they become due.

VIII. WARRANTIES AND LIMITATIONS OF LIABILITIES.

8.1 SELLER HEREBY WARRANTS TO BUYER THAT AT THE TIME OF DELIVERY OF ELECTRICITY HEREUNDER IT WILL HAVE GOOD TITLE AND/OR THE RIGHT TO SELL SUCH ELECTRICITY, AND THAT SUCH ELECTRICITY WILL BE FREE AND CLEAR OF ALL LIENS AND ADVERSE CLAIMS. TITLE WILL PASS TO BUYER AT THE TDSP POINT OF DELIVERY. EXCEPT AS PROVIDED FOR IN THE FIRST SENTENCE OF THIS SECTION 8.1, SELLER EXPRESSLY DISCLAIMS AND MAKES NO WARRANTIES, WHETHER WRITTEN OR VERBAL, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS, IMPLIED, OR STATUTORY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND BUYER WAIVES ALL SUCH WARRANTIES.

8.2 UNLESS OTHERWISE EXPRESSLY PROVIDED HEREIN, ANY LIABILITY OF A PARTY TO THE OTHER PARTY UNDER THE AGREEMENT WILL BE LIMITED TO DIRECT ACTUAL DAMAGES AS THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, INCLUDING LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, WHETHER IN TORT OR CONTRACT OR OTHERWISE IN CONNECTION WITH THE AGREEMENT. THE LIMITATIONS IMPOSED IN THIS PARAGRAPH ON REMEDIES AND DAMAGE MEASUREMENT WILL BE WITHOUT REGARD TO CAUSE OF THE DAMAGES, INCLUDING NEGLIGENCE OF ANY PARTY, WHETHER SOLE, JOINT, CONCURRENT, ACTIVE OR PASSIVE; PROVIDED NO SUCH LIMITATION SHALL APPLY TO DAMAGES

RESULTING FROM THE WILLFUL AND INTENTIONAL MISCONDUCT OF ANY PARTY, OR TO DAMAGES COVERED BY ANY INDEMNIFICATION UNDER ARTICLE XI BELOW.

IX. NOTICES. All notices required or permitted under the Agreement shall be in writing and shall be deemed to be delivered (a) when (i) deposited in the United States mail (first class as to all notices other than disconnection, termination and/or material breach notices, and registered or certified as to all disconnection, termination and/or material breach notices), postage prepaid; or (ii) deposited with an overnight delivery service, prepaid, to Buyer's address or Seller's address as shown at the beginning of the Agreement, or to such address as either Party may from time to time designate as its address for notices hereunder, or (b) in the case of hand delivery, when delivered to a representative of either Party by or on behalf of the other Party.

X. APPLICABLE LAW AND REGULATIONS.

10.1 The applicable Tariff(s) for Retail Delivery Service (the "Tariff") of the appropriate TDSP(s) serving Buyer's Premise(s) is incorporated herein to the same extent as if fully set forth herein.

10.2 The Agreement is subject to, and both Parties agree to obey and comply with, all applicable laws, regulations, rules and orders. However, notwithstanding the foregoing, both Parties agree that, to the fullest extent allowed by law, (i) it is their intention to agree to terms and conditions different from those set forth in the "Customer Protection Rules for Retail Electric Service" as amended, or as may be amended in the future (the "Customer Rules") currently beginning with Section 25.471 of the PUCT's Substantive Rules Applicable to Electric Service Providers; (ii) in the event that there is any conflict between the terms contained in the Agreement and the Customer Rules, the Agreement shall control; and (iii) the Parties expressly acknowledge that certain terms and conditions addressed in the Customer Rules may not be provided for or referred to in the Agreement, and, in such event, it is the intent of the Parties that such terms and conditions are not applicable to the Parties.

10.3 In the event a judicial, governmental, regulatory, or quasi-governmental decision or order, new law or regulation, or a change in law or regulation (i) renders illegal or unenforceable the pricing (or components thereof) under the Agreement, or (ii) materially and directly adversely affects a Party's ability to perform its material obligations under the Agreement to the extent that the performance of such obligations would be illegal or unenforceable, then (except as to those events covered by Section 4.6 (a) hereof) the Party that is adversely affected shall have the right to notify the other Party, within forty-five (45) calendar days after becoming aware of such detrimental change. Upon any such notification, the Parties shall use commercially reasonable efforts to negotiate a modification of the Agreement so as to mitigate the impact of the event. If, after thirty (30) calendar days beyond the date of notice, the Parties have been unable to negotiate a mutually satisfactory modification to the terms of the Agreement, the adversely affected Party shall have the right to terminate the Agreement upon ten (10) calendar days prior written notice to the other Party, given within sixty (60) calendar days after the date of the original notice hereunder. In the event of such a termination, the Parties agree to settle as follows: (a) if Seller is the terminating Party, then if the then current market value per kWh (as reasonably determined by Seller) of the Remaining Quantities (as defined in Section 6.2(a) above) is greater than the Contract Price, Seller shall pay to Buyer the product of (i) the Remaining Quantities multiplied by (ii) such market value minus the Contract Price; (b) if Buyer is the terminating Party, then in the event the Contract Price is more than the then current market value per kWh (as reasonably determined by Seller) of the Remaining Quantities, then Buyer shall pay to Seller the product of (i) the Remaining Quantities multiplied by (ii) the Contract Price minus such market value; provided, however, if the detrimental change results in both Parties being an adversely affected Party entitled to terminate the Agreement pursuant to this Section 10.3, then in the event of a termination under this Section 10.3, there shall be no settlement payment from one Party to the other with regard to the remaining unused Power quantities.

XI. INDEMNIFICATION.

11.1 As between the Parties, Buyer assumes full responsibility for electric energy on Buyer's side (downstream) of the TDSP Point of Delivery, and agrees to and shall indemnify, defend, and hold harmless Seller, its parent company and all of its affiliates (except any which may be the TDSP serving Buyer's Premise(s)), and all of their respective officers, directors, shareholders, associates, employees, servants, and agents (hereinafter collectively referred to as "Seller Group"), from and against all claims, losses, expenses, damages, demands, judgments, causes of action, and suits of any kind (hereinafter collectively referred to as "Claims"), including Claims for personal injury, death, or damages to property, occurring on Buyer's side of the TDSP Point of Delivery, arising out of or related to the electric power and energy and/or Buyer's performance under the Agreement.

11.2 As between the Parties, Seller assumes full responsibility for electric energy on Seller's side (upstream) of the Seller Point of Delivery, and agrees to and shall indemnify, defend, and hold harmless Buyer, its parent company and all of its affiliates, and all of their respective officers, directors, shareholders, associates, employees, servants, and agents (hereinafter collectively referred to as "Buyer Group"), from and against all Claims, including Claims for personal injury, death, or damages to property occurring on Seller's side of the Seller Point of Delivery, arising out of or related to the electric power and energy and/or Seller's performance under the Agreement.

XII. MISCELLANEOUS.

12.1 **UCC. THE PARTIES AGREE THAT THE PROVISIONS OF ARTICLE 2 OF THE UNIFORM COMMERCIAL CODE (AS CONTAINED IN THE TEXAS BUSINESS AND COMMERCE CODE) SHALL APPLY TO THE AGREEMENT AND ALL TRANSACTIONS THEREUNDER, IRRESPECTIVE OF WHETHER SUCH TRANSACTIONS ARE DEEMED TO BE A SALE OF GOODS OR THE PROVIDING OF A SERVICE; HOWEVER, IN THE EVENT OF A CONFLICT, THE TERMS AND PROVISIONS OF THE AGREEMENT SHALL CONTROL OVER THOSE CONTAINED IN THE UCC. NOTWITHSTANDING THE FOREGOING, THE PARTIES ACKNOWLEDGE AND AGREE THAT ALL IMPLIED RIGHTS RELATING TO FINANCIAL ASSURANCES ARISING FROM SECTION 2-609 OF THE UNIFORM COMMERCIAL CODE (AS CONTAINED IN THE TEXAS BUSINESS AND COMMERCE CODE) OR APPLICABLE CASE LAW APPLYING SIMILAR DOCTRINES, ARE HEREBY WAIVED.**

12.2 **Assignment.** Neither Party may assign the Agreement in whole or in part without first obtaining the other Party's prior written consent, which consent shall not be unreasonably withheld; provided that (i) Seller may assign the Agreement to any REP without obtaining Buyer's prior consent and (ii) Seller will not withhold its consent if Buyer makes assignment to a party who in Seller's reasonable opinion is creditworthy. Any assignment of the Agreement by Buyer must be in conjunction with a conveyance of legal title to all of the Premises to a single entity. The Agreement shall inure to and be binding upon the Parties hereto, and their respective successors and assigns; provided that, if a Party makes a valid assignment of the Agreement, the other Party hereby agrees that the assigning party is released from its future obligations under the Agreement.

12.3 **Entirety of Agreement.** The Parties each acknowledge that they are relying on their own judgment and it is the intention that the Agreement (i) shall contain all terms, conditions, and protections in any way related to, or arising out of, the sale and purchase of the electricity, and (ii) supersedes, and the Parties hereby expressly disclaim any reliance upon, all prior discussions and agreements between the Parties hereto, whether written or oral, as to the subject Premise(s). Both Parties have agreed to the wording of the Agreement and any ambiguities therein shall not be interpreted to the detriment of either Party merely by the fact that such Party is the author of the Agreement. The Agreement may not be modified or amended except in writing, duly executed by the Parties hereto.

12.4 **Waiver of Rights.** A waiver by either Party of any breach of the Agreement, or the failure of either Party to enforce any of the terms and provisions of the Agreement, will not in any way affect, limit or waive that Party's right to subsequently enforce and compel strict compliance with the same or other terms or provisions of the Agreement.

12.5 **Third Party Beneficiary/Rights.** Nothing in the Agreement shall create, or be construed as creating, any express or implied benefits or rights in any person or entity other than the Parties.

12.6 **Survival.** No termination or cancellation of the Agreement will relieve either Party of any obligations under the Agreement that by their nature survive such termination or cancellation, including, but not limited to, all warranties, obligations to pay for Power consumed, obligations for any breaches of contract, and obligations of indemnity.

12.7 **Confidentiality.** Seller and Buyer agree to keep all terms and provisions of the Agreement confidential and not to disclose the terms of the same to any third parties without the prior written consent of the other Party; provided, however, each Party shall have the right to make such disclosures, if any, to governmental agencies and to its own agents, attorneys, auditors, accountants and shareholders as may be reasonably necessary. If disclosure is sought through process of a court, or a state or federal regulatory agency, the Party from whom the disclosure is sought shall resist disclosure through all reasonable means and shall immediately notify the other Party to allow it the opportunity to participate in such proceedings.

12.8 **Forward Contract.** The Agreement constitutes a "forward contract" as defined in Section 101(25) of the U.S. Bankruptcy Code ("Bankruptcy Code"). The Parties agree that (i) Seller is a "forward contract merchant" as defined in Section 101(26) of the Bankruptcy Code, (ii) the termination rights of the Parties will constitute contractual rights to liquidate transactions, (iii) any payment related hereto will constitute a "settlement payment" as defined in Section 101 (51A) of the Bankruptcy Code, and (iv) Sections 362, 546, 553, 556, 560, 561 and 562 of the Bankruptcy Code shall apply to the Parties.

12.9 **Representations and Warranties.** Buyer hereby represents and warrants to Seller as follows: (a) Buyer is legally authorized to change the REP for all of the Premises, (b) Buyer's execution and delivery of this Agreement does not, and the performance by Buyer of its obligations hereunder will not, violate any contract or agreement to which Buyer is a party or pursuant to which its assets are bound, and (c) this Agreement is a valid and binding obligation of Buyer, enforceable against it in accordance with its terms. Upon execution of the Agreement, Buyer authorizes Seller to become Buyer's REP for the Agreement Term as to the Premise(s) covered by this Agreement and to act as Buyer's agent for the sole purpose of effecting any such change in REP, if necessary. If any of Buyer's representations or warranties hereinabove are untrue when made or fail to be true at all times during the Agreement Term, Buyer shall indemnify, defend and hold Seller harmless from and against any third party claims (and related costs and expenses) arising out of or relating thereto.

12.10 **Further Assurances.** Buyer and Seller agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party, which are not provided for in the provisions of the Agreement and which do not involve the assumption of obligations other than those provided for in the Agreement, in order to give full effect to the Agreement and to carry out the intent of the Agreement.

12.11 **Headings.** The headings included throughout the Agreement are inserted solely for convenience and reference purposes only and shall not be construed or considered in interpreting any terms or provisions of the Agreement.

12.12 **Severability.** If any provision in the Agreement is determined to be invalid, void, or unenforceable by any governmental authority having jurisdiction, then such determination will not invalidate, void, or make unenforceable any other provision or covenant in the Agreement.

12.13 **Applicable Law.** ALL AGREEMENTS SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAWS PRINCIPLES WHICH OTHERWISE MIGHT BE APPLICABLE. THE PARTIES RECOGNIZE THAT THE AGREEMENTS ARE PERFORMABLE IN PART IN DALLAS COUNTY.

12.14 **Dispute Resolution.** PURSUANT TO THE FEDERAL ARBITRATION ACT, THE PARTIES HEREBY AGREE THAT ANY CONTROVERSY, CLAIM OR ALLEGED BREACH, INCLUDING BUT NOT LIMITED TO TORTS AND STATUTORY CLAIMS, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE NEGOTIATION OF THIS AGREEMENT SHALL BE RESOLVED BY BINDING ARBITRATION CONDUCTED UNDER THE AMERICAN ARBITRATION ASSOCIATION ("AAA") COMMERCIAL ARBITRATION RULES. DEMAND FOR ARBITRATION MUST BE MADE NO LATER THAN THE TIME THAT SUCH ACTION WOULD BE PERMITTED UNDER THE APPLICABLE TEXAS STATUTE OF LIMITATION. ANY DISPUTES REGARDING THE TIMELINESS OF THE DEMAND FOR ARBITRATION SHALL BE DECIDED BY THE ARBITRATOR(S). JUDGMENT UPON THE AWARD RENDERED BY THE ARBITRATOR(S) MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF IN ORDER TO OBTAIN COMPLIANCE THEREWITH. ANY CASE IN WHICH ANY CLAIM, OR COMBINATION OF CLAIMS, EXCEEDS \$500,000 WILL BE DECIDED BY THE MAJORITY OF A PANEL OF THREE (3) NEUTRAL ARBITRATORS. IN RENDERING THE AWARD, THE ARBITRATOR(S) WILL DETERMINE THE RIGHTS AND OBLIGATIONS OF THE PARTIES ACCORDING TO THE LAWS OF THE STATE OF TEXAS (WITHOUT REGARD TO ANY CONFLICT OF LAW PRINCIPLES). ANY DISCOVERY IN ADVANCE OF THE ARBITRATION HEARINGS SHALL BE CONDUCTED CONSISTENT WITH THE DISCOVERY PERMITTED UNDER THE FEDERAL RULES OF CIVIL PROCEDURE; PROVIDED, HOWEVER, EACH PARTY SHALL BE ENTITLED TO: NO MORE THAN 5 DEPOSITIONS OF NO MORE THAN 5 HOURS EACH PER SIDE, NO MORE THAN 1 WRITTEN SET OF NO MORE THAN THIRTY (30) INTERROGATORIES, AND NO MORE THAN FIFTY (50) REQUESTS FOR PRODUCTION, UNLESS THE MAJORITY OF THE ARBITRATORS GRANT THE PARTIES THE RIGHT TO ADDITIONAL DISCOVERY. THE ARBITRATION PROCEEDINGS AND HEARINGS WILL BE CONDUCTED IN DALLAS, TEXAS OR AT SUCH OTHER PLACE AS MAY BE SELECTED BY MUTUAL AGREEMENT. EACH PARTY SHALL BEAR ITS OWN COSTS AND EXPENSES (INCLUDING ATTORNEY FEES), AS WELL AS AN EQUAL SHARE OF THE ARBITRATORS' FEES AND ADMINISTRATIVE FEES OF ARBITRATION. NO PARTY OR ARBITRATOR(S) MAY DISCLOSE THE EXISTENCE, CONTENT OR RESULTS OF ANY ARBITRATION HEREUNDER WITHOUT THE PRIOR WRITTEN CONSENT OF ALL PARTIES.

12.15 **Contract Execution; Counterparts; Original Documents.** Each Party agrees that this Agreement, as well as any amendments thereto, may be executed by written or electronic signature and may be delivered by facsimile or other electronic transfer in multiple counterparts, each of which will be as binding on the Party or Parties as an original document. Each Party understands and agrees that such facsimiles or other electronic transmissions shall be deemed to constitute the original of such documents, and that any objections that they do not constitute the "best evidence" of the documents, or that they do not comply with the "Statute of Frauds," as well as any other similar objections to the validity or admissibility of the document, are hereby expressly waived by the Parties.

Exhibit A – Point of Delivery Listing



Legal Name: Clay County

Quote: S0307726

TDSP	ESI ID	ESI ID Address	Congestion Zone	Meter Cycle	Special Start Date	Special End Date	Profile	Meter Type	Standing Charge	ESI Peak KW
ONCOR ELECTRIC DELIVERY COMPANY, LLC	10443720005499195	210 W IKARD ST HENRIETTA TX 76365-2828	West	08	April 1, 2020		BUSLOLF	AMSR	\$0.00	25

Total Number of Points of Delivery = 1

Total Peak KW = 25

Total Monthly Standing Charges = \$0.00

ESI ID ACKNOWLEDGEMENT

Buyer represents and warrants that each and every ESI ID and Premise listed in this Exhibit A primarily serves Buyer's commercial non-residential purposes, and that all information listed therein (including the Monthly Contract Usage Quantities on Exhibit A-1) is accurate and correct. Buyer agrees to bear all responsibility, liability, and associated costs, and shall indemnify and hold Seller harmless, with regard to (i) the foregoing representation and warranty, as well as (ii) any missing ESI IDs not listed in Exhibit A, and/or ESI IDs erroneously listed on Exhibit A.

In the event this Exhibit A contains temporary placeholder ESI ID numbers (typically denoted by "TPH" at the beginning of the ESI ID number) for contracted future Buyer ESI IDs, then (i) Buyer shall give Seller at least thirty (30) days prior written notice of the date that each such ESI ID will be energized as a Buyer ESI ID (i.e., when Buyer will begin utilizing the applicable facility located at Buyer's Premise), (ii) Seller will not be obligated to serve any such ESI ID under the Agreement until, at the earliest, after the expiration of at least thirty (30) days after Buyer's written notice has been given to Seller, and (iii), in any event, Buyer's giving, or failure to give, timely notice to Seller shall not affect Buyer's obligation, under the Agreement, to be responsible for all volumes contracted for under the Agreement as reflected on Exhibit A-1.

Exhibit A-1 – Monthly Contract Quantities



Legal Name: Clay County

Quote: S0307726

Total Contract kWh: 146,068

Period*	Contract Quantities (KWh)
4/1/2020	2,183
5/1/2020	2,607
6/1/2020	3,150
7/1/2020	3,651
8/1/2020	4,012
9/1/2020	3,176
10/1/2020	2,408
11/1/2020	2,153
12/1/2020	4,563
1/1/2021	4,176
2/1/2021	5,180
3/1/2021	1,975
4/1/2021	2,183
5/1/2021	2,607
6/1/2021	3,150
7/1/2021	3,651
8/1/2021	4,012
9/1/2021	3,176
10/1/2021	2,408
11/1/2021	2,153
12/1/2021	4,563
1/1/2022	4,176
2/1/2022	5,180
3/1/2022	1,975
4/1/2022	2,183
5/1/2022	2,607
6/1/2022	3,150
7/1/2022	3,651
8/1/2022	4,012
9/1/2022	3,176
10/1/2022	2,408
11/1/2022	2,153
12/1/2022	4,563
1/1/2023	4,176
2/1/2023	5,180
3/1/2023	1,975
4/1/2023	2,183
5/1/2023	2,607
6/1/2023	3,150
7/1/2023	3,651
8/1/2023	4,012
9/1/2023	3,176
10/1/2023	2,408

1/1/2023	2,153
12/1/2023	4,563
1/1/2024	463

Total Number of Periods = 46

* The first and/or last period(s) may reflect partial month volumes based on beginning and ending meter read cycles