

# Large Filing Separator Sheet

Case Number : 03-93-EL-ATA

03-2079-EL-AAM

03-2080-EL-AAM

03-2081-EL-ATA

05-724-EL-UNC

05-725-EL-UNC

06-1068-EL-UNC

06-1069-EL-UNC

06-1085-EL-UNC

File Date : 6/22/2009

Section : 2 of 2

Number of Pages : 197

Description of Document : Response

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ARTICLE VIII  
GOVERNING LAW - DISPUTE RESOLUTION

- 8.1 Governing Law and Jurisdiction. 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 AND SHALL BE BROUGHT IN THE STATE AND FEDERAL COURTS LOCATED IN HAMILTON COUNTY OHIO.
- 8.2 Dispute Resolution. If a dispute arises between the Parties relating to this Agreement, the Parties agree to use the following procedure prior to either Party pursuing other available remedies: (A) A meeting shall be held promptly between the Parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute. (B) If, within thirty (30) days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, they will jointly appoint a mutually acceptable neutral person not affiliated with either of the Parties (the "Neutral") to act as a mediator. If the Parties are unable to agree on the Neutral within fifteen (15) days, they shall seek assistance in such regard from the CPR Institute for Dispute Resolution, Inc. ("CPR"). The fees of the Neutral and all other common fees and expenses shall be shared equally by the Parties. (C) The mediation may proceed in accordance with CPR's Model Procedure for Mediation of Business Disputes, or the Parties may mutually establish their own procedure. (D) The Parties shall pursue mediation in good faith and in a timely manner. In the event the mediation does not result in resolution of the dispute within forty-five (45) days, then, the parties shall pursue all remedies available to it a law or in equity.
- Notwithstanding the foregoing, the Parties may cancel or terminate this Agreement in accordance with its terms and conditions without being required to follow the procedures set forth in this Article.

ARTICLE IX  
MISCELLANEOUS

- 9.1 Representations and Warranties. On the Effective Date and on the date of entering into this Agreement, each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction; (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement; (c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision applicable to it;

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(d) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (e) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligation under this Agreement or any other document relating to this Agreement; (f) no Event of Default or event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement or any Transaction; and (g) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether such Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement.

9.2 Assignment. This Agreement shall be assignable by CRS without the Counterparty's consent provided such assignment is to any other direct or indirect subsidiary of Cinergy Corp. provided that such direct or indirect subsidiary has an equivalent or higher credit rating than CRS. Any other assignment by either Party of this Agreement or any rights or obligation hereunder shall be made only with the written consent of the other Party, which consent shall not be unreasonably withheld.

9.3 Notices. All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form provided there is some form of confirmation that the receiving party actually received the notice. Notice by regular mail shall be deemed to have been received three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight or courier shall be deemed to have been received two (2) Business Days after it has been sent. A Party may change its addresses by providing notice of the same in accordance with this Section 9.3.

To CRS:

James B. Gainer  
139 East Fourth Street  
Cincinnati, OH 45202  
Phone - 513-287-2633  
Fax - 513-287-1902

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**To Counterparty:**

Liz Banks  
Summit Behavioral Healthcare  
1101 Summit Rd  
Cincinnati, Ohio 45237  
Phone - 513-948-3600

Dan Moles  
Summit Behavioral Healthcare  
1101 Summit Rd  
Cincinnati, Ohio 45237  
Phone - 513-948-3943

- 9.4 General. This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless set forth in writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights contained herein shall survive the termination or expiration of this Agreement for three (3) years.
- 9.5 Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement to a 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 in connection with any court or regulatory proceeding applicable to such Party; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.
- 9.6 Counterparts. This Agreement may be separately executed in counterparts each of which when so executed shall be deemed to constitute one and the same Agreement.

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9.7 This Agreement supersedes and replaces in its entirety the agreement between CRS and Counterparty dated October 28, 2004 and as well as any other settlement agreements between Counterparty and Cinergy Corp. or any other Cinergy entity related to PUCO Case No. 99-1658-EL-ETP. By signing this Agreement, Counterparty, CRS and Cinergy Corp. (on behalf of all Cinergy entities) agree to this provision.

The Parties have caused this Agreement to be executed by their duly authorized representatives in multiple counterparts as of the Effective Date.

CINERGY RETAIL SALES, LLC

COUNTERPARTY

By: [Signature]

Title: VP & General Counsel

Date: 1/25/05

By: [Signature]

Title: CEO

Date: 1-14-05

As to clause 9.7:

CINERGY CORP.

By: [Signature]

Title: VP & Gen. Counsel

Date: Jan 25, 2005

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**Exhibit A:**  
**Customer Group: Summit Behavioral Healthcare**  
**Quarterly Option Payment Calculation**

The CRS option payment will be equivalent to the actual amount paid to The Cincinnati Gas & Electric Company for the following billing charges under its market-based standard service offer approved by the Commission in Case No. 03-93-EL-ATA:

- One (1) Mill per kWh of generation
- Annually Adjusted Component of POLR Charge (AAC)
- Fuel and Purchase Power (PPP) - excluding Emission Allowance Expense
- Infrastructure Maintenance Fund (IMF) Charge in excess of 4% of "title g"
- Electric Choice Inefficient Return Notice Fee charged to customers, who have given notice of their return to CG&E standard tariff service on or before 12/30/2004 and are actively taking CG&E service no later than 01/31/2005.

A customer not paying the market-based standard service offer approved by the Commission in Case No. 03-93-EL-ATA to The Cincinnati Gas & Electric Company, who avoids the System Reliability Tracker (SRT), will have their option payments adjusted for the value of the SRT that CG&E would have received had the customer been a standard tariff customer beginning January 1, 2005. The adjustment will be calculated by taking the total value of the SRT that CG&E would have received in 2005 and deducting it equally from the first four option payments to be received by the customer.

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**EXHIBIT B:**  
**Customer Group: Summit Behavioral Healthcare**  
**CRS Generation and Transmission Rates for former Rate DP Standard Service Customers**

**Net Monthly Bill**

Computed in accordance with the following charges. (Kilowatt of demand is abbreviated as kW and kilowatt-hours are abbreviated as kWh):

**Generation Charges**

**(a) Demand Charge**

First 1,000 kilowatts ..... \$6.9150 per kW  
Additional kilowatts ..... \$5.4450 per kW

**(b) Energy Charge**

Billing Demand times 300 ..... \$0.021048 per kWh  
Additional kilowatt-hours ..... \$0.016682 per kWh

**Emission Allowance Charges**

Customer will pay monthly an amount equivalent to the emission allowance expense component of the PUCO approved CG&E fuel clause.

**Transmission Charges**

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer.

**Rate Stabilization Charge**

Energy Retail Sales will reimburse the customer for any Rate Stabilization Charge (RSC) actually paid by the customer.

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**Exhibit C:**  
**Customer Group: Summit Behavioral Healthcare**  
**Customer Account List**

This agreement pertains to the following Summit Behavioral Healthcare accounts:

[REDACTED]

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OPTION AGREEMENT

BY AND BETWEEN

CINERGY RETAIL SALES, LLC

AND

PROCTER & GAMBLE CO.

This Option Agreement (the "Agreement") is entered into as of this 14th day of January 2005 (the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware limited liability company, and The Procter & Gamble Co. ("P&G"), an Ohio corporation (each individually a "Party" or collectively the "Parties").

RECITALS

WHEREAS, P&G operates manufacturing research and office facilities in Greater Cincinnati and purchases electric power service from The Cincinnati Gas & Electric Company (CG&E) on metered accounts listed on Exhibit C.

WHEREAS, CRS has been certified by the Public Utilities Commission of Ohio as a Certified Retail Electric Supplier ("CRES") and has the authority to engage in the sale of electrical power at retail;

WHEREAS, CRS and P&G desire to establish terms and conditions for this option.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the Parties agree as follows:

ARTICLE I  
DEFINITIONS

The following definitions and any terms defined in this Agreement shall apply hereunder.

"Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or

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indirect ownership of ten (10) percent or more.

"Base Contract Price" means the price in \$US as set forth in Exhibit B to be paid by P&G to CRS for the purchase of Generation and Transmission service under this Agreement.

"Business Day" means a day on which Federal Reserve member banks in Ohio are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. eastern prevailing time, unless otherwise agreed to by the Parties in writing.

"Maximum Demand" means P&G's combined maximum annual demands for all of P&G's accounts listed on Exhibit C with Cincinnati Gas & Electric ("CG&E") for the twelve months ending December 31, 2004.

"Capacity" has the meaning set forth in any Transmission Provider's tariff or MISO's transmission tariff, as amended from time to time, or as defined in any transmission tariff of a successor to MISO.

"Defaulting Party" shall have the meaning specified in Section 6.1.

"Energy" means electric energy of the character commonly known as three-phase, sixty hertz electric energy that is delivered at the nominal voltage of the Delivery Point, expressed in megawatt hours (MWh).

"Event of Default" shall have the meaning specified in Section 6.1.

"FERC" means the Federal Energy Regulatory Commission or any successor agency thereto.

"Firm" means that the only excuse for the failure to deliver Energy by CRS or the failure to receive Energy by P&G is Force Majeure or the other Party's failure to perform.

"Full Requirements Energy" means, except as provided herein, that P&G shall purchase all of its retail Energy requirements for its facility from CRS and that P&G shall not resell any of the Energy provided hereunder to any third party.

"Interest Rate" means, for any date the lesser of (a) two (2) percent over the per annum rate of interest equal to the prime lending rate ("Prime Rate") as may be published from time to time in the Federal Reserve Statistical Release H. 15; or (b) the maximum lawful interest rate.

"MW" means megawatt.

"Term" shall have the meaning specified in Article 4.1.

"Transmission Providers" means the entity or entities transmitting or transporting the Energy on behalf of CRS or P&G to the Delivery Point.

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## ARTICLE II OPTION

- 2.1 P&G currently purchases its generation electric service from The Cincinnati Gas & Electric Company ("CG&E") pursuant to the applicable tariffs or will provide notice by December 30, 2004 that it will purchase generation electric service from CG&E starting no later than December 31, 2005 in accordance with applicable CG&E tariff requirements. P&G hereby grants to CRS the exclusive option, upon thirty (30) days notice, to provide generation electric service for all of P&G's accounts and load set forth in Exhibit C, including any increases in accordance with Section 3.1, as of December 31, 2004 ("Option"). In the event that an Electric Choice Insufficient Return Notice Fee is incurred by P&G due to switching back to CG&E standard tariffed service prior to January 31, 2005, an amount equivalent to said fee will be paid to P&G by CRS.
- 2.2 CRS shall have the right to exercise this Option at any time during the Term of this Agreement.
- 2.3 In exchange for P&G granting CRS this option, CRS agrees to pay P&G each calendar year quarter of the Term, until exercise of the Option, the amount set forth on Exhibit A ("Option Payment"). The Parties agree that if P&G defaults or is delinquent, after any applicable cure period, in any of its payments to any Cinergy affiliated company for any service provided to P&G, then CRS has the right to offset the Option Payment due hereunder with any amounts that are owed by P&G to the Cinergy affiliated company.
- 2.4 Because this is an exclusive Option, in the event P&G leaves its current electric service and receives electric service from any third party that is not CRS or an Affiliate of CRS, then CRS shall cease all Option Payments and this Agreement shall terminate and all obligations of the Parties hereunder shall terminate.
- 2.5 If CRS exercises its Option, the Parties shall enter into a power sale agreement, including the terms set forth in Article III.

## ARTICLE III CRS POWER CONTRACT TERMS

- 3.1 In the event CRS exercises its option, a power sale agreement between CRS and P&G will be negotiated. The power sale agreement shall include generally accepted terms and conditions relating to the sale of competitive retail electric generation service, including, among others, the following terms:

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- a. Energy Quantity and Type. CRS shall provide P&G with Firm, Full Requirements Energy and Capacity up to 3 MWs greater than P&G's Maximum Demand ("Quantity"). If during the Term of this Agreement, P&G has additional load or accounts greater than 3MW, then such new load or account is not included within the terms of this Agreement and CRS shall have no obligation to provide Energy and Capacity to P&G above the Quantity set forth herein.
- b. Transmission Service and Charges. Transmission service will be provided in accordance with the open access transmission tariff of the Midwest Independent Transmission System Operator, Inc. or CG&E (or an affiliate on its behalf), whichever is applicable, as filed with the FERC and as it may be amended, from time to time, or any successor tariff.
- c. Base Contract Price. The Base Contract Price is set forth in Exhibit B.
- d. Change to Prices. As a retail sale, the power sale agreement is not subject to the jurisdiction of the FERC; nor shall either Party seek to have the FERC assert jurisdiction over the Agreement. However, to the extent that either the FERC or the Public Utilities Commission of Ohio asserts jurisdiction over the Agreement, the Parties agree that the Contract Price specified above is just and reasonable and consistent with the public interest. Neither CRS nor P&G shall seek to modify the Base Contract Price through the auspices of any regulatory body.
- e. Term. The term of the power sale agreement shall be through December 31, 2008.
- f. Credit. The power sale agreement will have terms and conditions as similar as possible to CG&E's existing unbundled tariffs. CRS will not require surety bonds, deposits or other corporate guarantees.
- g. Adjusted Base Contract Price. If CRS exercises this option, then the combined net generation cost paid to CRS and CG&E will be an amount equivalent to Big G, plus FPP (excluding emission allowances) plus IMF up to 4% of little g. In addition, there will be transmission charges to be paid to CRS as set forth in Exhibit B.

#### ARTICLE IV TERM OF AGREEMENT

- 4.1 Agreement Term and Effective Date. This Agreement shall become effective upon

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execution by the Parties. This Agreement shall extend from January 1, 2005 through and including December 31, 2008, unless terminated earlier in accordance with the terms of this Agreement ("Term").

4.2 Agreement Termination. This Agreement terminates if the Commission in the ongoing CG&E fuel cost recovery cases, fails to approve as part of the capped Provider of Last Resort Charge, a fuel cost recovery mechanism such that fuel costs equal the average embedded fuel costs for all consumers in CG&E's service territory served by any Cinergy company. This Agreement shall also terminate if a court or administrative agency of competent jurisdiction issues an order depriving the Parties of the benefits of this Agreement or otherwise voiding this Agreement. Before termination of this Agreement, the Parties agree to use best efforts to fulfill the intent of this Agreement by negotiating amendments to this Agreement that put the Parties in substantially the same overall economic positions as created under the PUCO's Order dated November 23, 2004 in Case No. 03-93-EL-ATA and this Agreement.

4.3 After Termination. The applicable provisions of this Agreement shall continue in effect after termination thereof to the extent necessary to provide for final billing, billing adjustments and payments.

#### ARTICLE V BILLING

5.1 Payment. CRS shall submit the Option Payment to P&G by check or wire transfer within forty-five (45) days after the end of each calendar year quarter. The payment shall be submitted to an account or address designated by P&G:

The Procter & Gamble Co.  
Attn: NA Energy Purchases, T. Kopp  
Two Procter & Gamble Plaza  
Cincinnati, OH 45202

#### ARTICLE VI DEFAULTS AND REMEDIES

6.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:

- 6.1.1 any representation or warranty made by the Defaulting Party herein shall at any time prove to be false or misleading in any respect material to this Agreement;
- 6.1.2 the failure of the Defaulting Party to materially perform any covenant set forth in this Agreement (except to the extent constituting a separate Event of Default,) and such failure is not cured within five (5) Business Days after

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written notice thereof to the Defaulting Party;

- 6.1.3 the Defaulting Party consolidates or amalgamates with, merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all of the obligations of such Party under this Agreement;
  - 6.1.4 the failure to make when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written notice of such failure is given by the other Party; or
  - 6.1.5 the Defaulting Party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is unable to pay its debts as they fall due.
- 6.2 Remedies upon an Event of Default. Upon the occurrence (and continuation beyond the applicable cure period) of an Event of Default with respect to a Defaulting Party, the Non-Defaulting Party shall have the right to terminate this Agreement and exercise all rights and remedies available to it in law or in equity.

#### ARTICLE VII DUTY TO MITIGATE

- 7.1 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 any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

#### ARTICLE VIII GOVERNING LAW - DISPUTE RESOLUTION

- 8.1 Governing Law and Jurisdiction. 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.

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8.2 Dispute Resolution. Any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, shall be resolved fully and finally by binding arbitration under the Commercial Rules, but not the administration, of the American Arbitration Association, except to the extent that the Commercial Rules conflict with this provision, in which event, this Agreement shall control. This arbitration provision shall not limit the right of either Party prior to or during any such dispute to seek, use, and employ ancillary, or preliminary or permanent rights and/or remedies, judicial or otherwise, for the purposes maintaining the status quo until such time as the arbitration award is rendered or the dispute is otherwise resolved. The arbitration shall be conducted in Cincinnati, Ohio and the laws of Ohio shall govern the construction and interpretation of this Agreement, except to provisions related to conflict of laws. Within ten (10) Business Days of service of a Demand for Arbitration, the parties may agree upon a sole arbitrator, or if a sole arbitrator cannot be agreed upon, a panel of three arbitrators shall be named. One arbitrator shall be selected by CRS and one shall be selected by P&G. A knowledgeable, disinterested and impartial arbitrator shall be selected by the two arbitrators so appointed by the parties. If the arbitrators appointed by the parties cannot agree upon the third arbitrator within ten (10) Business Days, then either Party may apply to any judge in any court of competent jurisdiction for appointment of the third arbitrator. There shall be no discovery during the arbitration other than the exchange of information that is provided to the arbitrator(s) by the Parties. The arbitrator(s) shall have the authority only to award equitable relief and compensatory damages, and shall not have the authority to award punitive damages or other non-compensatory damages. The decision of the arbitrator(s) shall be rendered within ninety (90) Business Days after the date of the selection of the arbitrator(s) or within such period as the Parties may otherwise agree. Each Party shall be responsible for the fees, expenses and costs incurred by the arbitrator appointed by each Party, and the fees, expenses and costs of the third arbitrator (or single arbitrator) shall be borne equally by the Parties. The decision of the arbitrator(s) shall be final and binding and may not be appealed. Any Party may apply to any court having jurisdiction to enforce the decision of the arbitrator(s) and to obtain a judgment thereon.

Notwithstanding the foregoing, the Parties may cancel or terminate this Agreement in accordance with its terms and conditions without being required to follow the procedures set forth in this Article.

ARTICLE IX  
MISCELLANEOUS

9.1 Representations and Warranties. On the Effective Date and on the date of entering into this Agreement, each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction; (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this

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Agreement and any other documentation relating to this Agreement; (c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision applicable to it; (d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; (e) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (f) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligation under this Agreement or any other document relating to this Agreement; (g) no Event of Default or event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement or any Transaction; and (h) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether such Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement.

- 9.2 Assignment. This Agreement shall be assignable, by CRS without the P&G's consent provided such assignment is to any other direct or indirect subsidiary of Cinergy Corp. provided that such direct or indirect subsidiary has an equivalent or higher credit rating than CRS. Any other assignment by either Party of this Agreement or any rights or obligation hereunder shall be made only with the written consent of the other Party, which consent shall not be unreasonably withheld.
- 9.3 Notices. All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice by regular mail shall be deemed to have been received three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight or courier shall be deemed to have been received two (2) Business Days after it has been sent. A Party may change its addresses by providing notice of the same in accordance with this Section 9.3.

To CRS:

James B. Gainer  
139 East Fourth Street  
Cincinnati, OH 45202

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Phone - 513-287-2633  
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**To P&G:**

David F. Boehm, Esq.  
Michael L. Kurtz, Esq.  
Boehm, Kurtz & Lowry  
36 E. Seventh Street, Suite 1510  
Cincinnati, Ohio 45202  
Ph: 513.421.2255 Fax: 513.421.2764

- 9.4 General. This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless set forth in writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise effect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights contained herein shall survive the termination or expiration of this Agreement for three (3) years.
- 9.5 Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement to a 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 in connection with any court or regulatory proceeding applicable to such Party; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.
- 9.6 Counterparts. This Agreement may be separately executed in counterparts each of which when so executed shall be deemed to constitute one and the same Agreement.
- 9.7 This Agreement supersedes and replaces the agreement between CRS and P&G dated November 22, 2004. During the term of this Agreement, it supersedes and replaces any other agreements between the Parties or their affiliates related to PUCO Case No. 99-1658-EL-ETP. Upon the termination of this Agreement, any other settlement agreements between the Parties or

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their affiliates related to PUCO Case No. 99-1658-EL-ETP shall be in full force and effect according to their original terms.

The Parties have caused this Agreement to be executed by their duly authorized representatives in multiple counterparts as of the Effective Date.

CINERGY RETAIL SALES, LLC

The Procter & Gamble Company

By: [Signature]  
Title: VP General Counsel  
Date: MAR 2, 2005

By: [Signature]  
Title: Assoc. Dir. P&G Purchasing  
Date: JAN 14, 2005

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Quarterly Option Payment Calculation**

The CRS option payment made quarterly for the period January 1, 2005 through December 31, 2008 or the date upon which the option is exercised whichever comes first, will be equivalent to the following calculation:

The actual amount paid by The Procter and Gamble Co. to The Cincinnati Gas and Electric Company during the applicable calendar quarter under its market-based standard service offer (MBSSO) generation rate approved by the Commission in Case No. 03-93-EL-ATA. The MBSSO generation rate includes all charges related to generation service, but excludes transmission and distribution.

Less the following amount:

The applicable tariffed unbundled generation rate approved by the Commission in Case No. 99-1658-EL-ETP and also known as "Big G" shown in the tariff schedule below:

Tariff Schedule	Demand Charge (\$ per kW)			Energy Charge (\$ per kWh)		
	First Step	Second Step	Additional	First Step	Second Step	Additional
DM <sup>1</sup>	N/A	N/A	N/A	\$0.078728	\$0.018173	\$0.009804
DP	\$6.9150	\$5.4450	N/A	\$0.028898	\$0.017782	N/A
DS	\$7.6574	\$6.0574	N/A	\$0.028368	\$0.016366	N/A
TS	\$8.3830	\$6.0430	N/A	\$0.019994	\$0.016481	N/A

<sup>1</sup> DM only shows summer seasonal rates

Plus

Fuel and Purchase Power (FPP) - excluding Emission Allowance Expense

Plus

Infrastructure Maintenance Fund (IMF) up to an amount equal to 4% of "line g"

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**EXHIBIT B:**

**Customer Group: The Procter and Gamble Co.  
CRS Generation and Transmission Rates for Former Rate DP Standard Service  
Customers**

**Net Monthly Generation and Transmission Bill Will Be The Following Plus IMF Up To 4% Of Little g**

Computed in accordance with the following charges. (Kilowatt of demand is abbreviated as kW and kilowatt-hours are abbreviated as kWh):

**Generation Charges**

**(a) Demand Charge**

First 1,000 kilowatts ..... \$6.9150 per kW  
Additional kilowatts ..... \$5.4450 per kW

**(b) Energy Charge**

Billing Demand times 300 ..... \$0.022048 per kWh  
Additional kilowatt-hours ..... \$0.017682 per kWh

**(c) Fuel Charge**

The Fuel Charge shall be equal to the Fuel and Purchase Power (FPP) charge excluding Emission Allowance Expense imposed by CG&E.

**Transmission Charges**

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer. Transmission charges to be paid include, but are not limited to the following FUCO approved charges:

- (1) Network Transmission Services
- (2) MISO Schedule Charges
- (3) Net Congestion Charges

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**EXHIBIT B:**  
**Customer Group: The Procter and Gamble Co.**  
**CRS Generation and Transmission Rates for Former Rate DS Standard Service Customers**

**Net Monthly Generation and Transmission Bill Will Be The Following Plus IMF Up To 4% Of Little g**

Computed in accordance with the following charges. (Kilowatt of demand is abbreviated as kW and kilowatt-hours are abbreviated as kWh):

**Generation Charges**

**(a) Demand Charge**

First 1,000 kilowatts ..... \$7.6574 per kW  
Additional kilowatts ..... \$6.8574 per kW

**(b) Energy Charge**

Billing Demand times 300 ..... \$0.019576 per kWh  
Additional kilowatt-hours ..... \$0.016266 per kWh

**(c) Fuel Charge**

The Fuel Charge shall be equal to the Fuel and Purchase Power (PPP) charge excluding Emission Allowance Expense imposed by CG&E.

**Transmission Charges**

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer. Transmission charges to be paid include, but are not limited to the following PUCO approved charges:

- (4) Network Transmission Services
- (5) MISO Schedule Charges
- (6) Net Congestion Charges

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**EXHIBIT B:**

**Customer Group: The Procter and Gamble Co.  
CRS Generation and Transmission Rates for Former Rate TS Real Time  
Pricing Customers**

**Net Monthly Bill**

Computed in accordance with the following charges. (Kilovolt amperes are abbreviated as kVA and kilowatt-hours are abbreviated as kWh):

Real Time Pricing Program Charge ..... \$150.00

Load Management Rider Customer Charge..... \$100.00

**Generation Charges**

**(c) Demand Charge**

First 50,000 kVA ..... \$8.3830 per kVA

Additional kVA ..... \$6.0430 per kVA

**(b) Energy Charge**

Billing Demand times 300 ..... \$0.014404 per kWh

Additional kilowatt-hours ..... \$0.016381 per kWh

Real Time Pricing Incremental Cost ..... Calculated Monthly  
(Based on CRI and DRI in CG&E RTP Agreement)

Energy Efficiency Revolving Loan Program ..... \$0.00108 per kWh

**Universal Service Fund Charge**

Billing Demand times 300 ..... \$0.000487 per kWh

Additional kilowatt-hours ..... \$0.000469 per kWh

**Transmission Charges**

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer. Transmission charges to be paid include, but are not limited to the following PUCO approved charges:

(7) Network Transmission Services

(8) MISO Schedule Charges

(9) Net Congestion Charges

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**EXHIBIT B:**

**Customer Group: The Procter and Gamble Co.**  
**CRS Generation and Transmission Rates for Former Rate TS Standard Service Customers**

**Net Monthly Bill**

Computed in accordance with the following charges. (Kilovolt amperes are abbreviated as kVA and kilowatt-hours are abbreviated as kWh):

**Generation Charges**

**(a) Demand Charge**

First 50,000 KVA ..... \$2.3830 per kVA

Additional KVA ..... \$6.0430 per kVA

**(b) Energy Charge**

Billing Demand times 300 ..... \$0.014404 per kWh

Additional kilowatt-hours ..... \$0.016381 per kWh

**(c) Fuel Charge**

The Fuel Charge shall be equal to the Fuel and Purchase Power (FPP) charge excluding Emission Allowance Expense imposed by CG&E.

**Transmission Charges**

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer. Transmission charges to be paid include, but are not limited to the following PUCO approved charges:

(10) Network Transmission Services

(11) MISO Schedule Charges

(12) Net Congestion Charges

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**Exhibit C:**  
**Customer Group: The Procter & Gamble Co.**  
**Customer Account List**

This agreement pertains to the following The Procter & Gamble Co. accounts:

**Cincinnati Gas & Electric - Currently on CG&E Tariff**

Service Address	Elec. Account #	Rate
POLS		POLS
11810 Miami River Rd E		DP03
8876 Becken Rd		DS
8860 Becken Rd		DS
5391 Spring Grove		DM01
212 Township		DM02
5748 Enc		DS
8870 Becken Rd		DS
POLS 25 POL Lights		POLS
8868 Becken Rd		DS
5348 Vinc		DM
6330 Center Hill Rd		DS01
1340 Mason Montgomery Rd		DP06
POLS		POLS
301 6TH E		DS01
8834-8840 Becken Rd		DS
8872 Becken Rd		DS
8611 Becken Rd, Ste CD		DS07
8834-8876, 8880 Becken Rd		DS
8611 Becken Rd, Ste D		DS07

**Cincinnati Gas & Electric - On Competitive Choice, electing to move to Tariff  
No Later Than 6/1/2005**

Service Address	Elec. Account #	Rate	On Comp Gen	Off Comp Gen
649 Colvon, Lot B		DM01	5/22/2003	6/1/2005
654 Wilmer		DS01	5/19/2003	6/1/2005
11511 Reed Hartman Hwy		DS01	5/22/2003	6/1/2005
5201 Spring Grove		DS01	5/6/2003	6/1/2005
8256 Union Centre		DS01	11/30/2001	6/1/2005
5301 Spring Grove		DM01	3/6/2003	6/1/2005
6083 Center Hill Rd		DP04	11/30/2001	6/1/2005
418 5TH E		DS01	11/30/2001	6/1/2005
4831 Spring Grove		DS	5/6/2003	6/1/2005
634 Broadway		DM01	5/22/2003	6/1/2005
8862 BECKETT RD		DS	5/19/2003	6/1/2005
8611 Becken Rd		DS01	11/30/2001	6/1/2005
5250 Vinc		DS	5/22/2003	6/1/2005
5880 Center Hill Rd		DM01	5/30/2003	6/1/2005
628 Broadway		DS	5/22/2003	6/1/2005
11325 Reed Hartman Hwy, Ste 106		DS01	5/22/2003	6/1/2005

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5220 Beech	[REDACTED]	DS01	5/6/2003	6/1/2005
6120 Center Hill Rd	[REDACTED]	DS01	11/30/2001	6/1/2005
2150 Sunnyside Dr	[REDACTED]	DS	5/2/2003	6/1/2005
648 Colvert	[REDACTED]	DM01	5/22/2003	6/1/2005
301 6TH E	[REDACTED]	DS01	11/30/2001	6/1/2005
11335 Reed Herman Hwy, Ste 121	[REDACTED]	DS01	5/22/2003	6/1/2005
5388 Vinc	[REDACTED]	DM	5/2/2003	6/1/2005
5300 Vinc	[REDACTED]	DS01	11/30/2001	6/1/2005

Cinergy Solutions of St. Bernard, LLC, as agent for P&G

5201 Spring Grove Ave	[REDACTED]	TS12
Junc Street	[REDACTED]	OL
Junc Street	[REDACTED]	OL
Junc Street	[REDACTED]	OL
Junc Street	[REDACTED]	OL

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**OPTION AGREEMENT  
BY AND BETWEEN  
CINERGY RETAIL SALES, LLC**

**AND**

**AIR PRODUCTS AND CHEMICALS, INC.**

This Option Agreement (this "Agreement") is entered into as of this 19th day of January 2005 (the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware limited liability company, and Air Products and Chemicals, Inc. ("Air Products"), a Delaware corporation (each individually a "Party" or collectively the "Parties").

**RECITALS**

WHEREAS, Air Products operates an industrial gas manufacturing facility in Middletown, Ohio and purchases electric power service from The Cincinnati Gas & Electric Company ("CG&E") on metered accounts listed on Exhibit C.

WHEREAS, CRS has been certified by the Public Utilities Commission of Ohio as a Certified Retail Electric Supplier and has the authority to engage in the sale of electrical power at retail.

WHEREAS, CRS and Air Products desire to establish terms and conditions for this option.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the Parties agree as follows:

**ARTICLE I  
DEFINITIONS**

The following definitions and any terms defined in this Agreement shall apply hereunder.

"Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of ten (10) percent or more.

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Cinergy Corporate Records

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"Base Contract Price" means the price in \$US as set forth in Exhibit B to be paid by Air Products to CRS for the purchase of Generation and Transmission service under this Agreement.

"Business Day" means a day on which Federal Reserve member banks in Ohio are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. eastern prevailing time, unless otherwise agreed to by the Parties in writing.

"Capacity" has the meaning set forth in any Transmission Provider's tariff or MISO's transmission tariff, as amended from time to time, or as defined in any transmission tariff of a successor to MISO.

"Defaulting Party" shall have the meaning specified in Section 6.1.

"Energy" means electric energy of the character commonly known as three-phase, sixty hertz electric energy that is delivered at the nominal voltage of the Delivery Point, expressed in megawatt hours (MWh).

"Event of Default" shall have the meaning specified in Section 6.1.

"FERC" means the Federal Energy Regulatory Commission or any successor agency thereto.

"Firm" means that the only excuse for the failure to deliver Energy by CRS or the failure to receive Energy by Air Products is Force Majeure (an event beyond the reasonable control of the affected Party) or the other Party's failure to perform.

"Full Requirements Energy" means, except as provided herein, that Air Products shall purchase all of its retail Energy requirements for its Middletown, Ohio facility from CRS and that Air Products shall not resell any of the Energy provided hereunder to any third party.

"Interest Rate" means, for any date the lesser of (a) two (2) percent over the per annum rate of interest equal to the prime lending rate ("Prime Rate") as may be published from time to time in the Federal Reserve Statistical Release H. 15; or (b) the maximum lawful interest rate.

"Maximum Demand" means Air Products' combined maximum annual demands for all of Air Products' accounts listed on Exhibit C with CG&E for the twelve months ending December 31, 2004.

"MW" means megawatt.

"Term" shall have the meaning specified in Article 4.1.

"Transmission Providers" means the entity or entities transmitting or transporting the Energy on behalf of CRS or Air Products to the Delivery Point.

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ARTICLE II  
OPTION

- 2.1 Air Products provided notice to CG&E before December 30, 2004 that Air Products will purchase generation electric service from CG&E starting no later than December 31, 2005 in accordance with applicable CG&E tariff requirements. Air Products hereby grants to CRS the exclusive option, upon thirty (30) days prior written notice, to provide generation electric service for all of Air Products' accounts and load set forth in Exhibit C, including any increases in accordance with Section 3.1, any time after Air Products returns to purchase generation electric service from CG&E ("Option"). In the event that an Electric Choice Insufficient Return Notice Fee is incurred by Air Products due to switching back to CG&E standard tariffed service prior to January 31, 2005, an amount equivalent to said fee will be paid to Air Products by CRS.
- 2.2 CRS shall have the right to exercise this Option at any time during the Term after Air Products returns to purchase generation electric service from CG&E.
- 2.3 The Parties agree that if Air Products defaults or is delinquent, after any applicable cure period, in any of its payments to any CRS Affiliate for any service provided to Air Products, then CRS has the right to offset the Option Payments due hereunder against any amounts that are owed by Air Products to such Affiliate. In consideration for Air Products granting the Option, CRS agrees to make the following payments (the "Option Payments") to Air Products:
- a. Commencing on the date that Air Products begins to purchase electric generation from CG&E, CRS agrees to pay Air Products each calendar year quarter of the Term until exercise of the Option the amount set forth on Exhibit A.1.
  - b. CRS agrees to pay Air Products each calendar year quarter of 2005 until the date that Air Products returns to CG&E's MBSSO the amount set forth on Exhibit A.2.
- 2.4 Because this is an exclusive Option, if at anytime after Air Products returns to purchase generation electric service from CG&E Air Products leaves such electric service and receives electric service from any third party that is not CRS or an Affiliate of CRS during the Term, then CRS shall cease all Option Payments and this Agreement shall terminate and all obligations of the Parties hereunder shall terminate.
- 2.5 If CRS exercises its Option, the Parties shall enter into a power sale agreement, including the terms set forth in Article III.

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ARTICLE III  
CRS POWER CONTRACT TERMS

- 3.1 In the event CRS exercises its option, a power sale agreement between CRS and Air Products will be negotiated. The power sale agreement shall include generally accepted terms and conditions relating to the sale of competitive retail electric generation service, including, among others, the following terms:
- a. Energy Quantity and Type. CRS shall provide Air Products with Firm, Full Requirements Energy and Capacity up to 3 MWs greater than Air Products' Maximum Demand ("Quantity"). If during the Term of this Agreement, Air Products has additional load or accounts greater than 3MW, then such new load or account is not included within the terms of this Agreement and CRS shall have no obligation to provide Energy and Capacity to Air Products above the Quantity set forth herein.
  - b. Transmission Service and Charges. Transmission service will be provided in accordance with the open access transmission tariff of the Midwest Independent Transmission System Operator, Inc. or CG&E (or an affiliate on its behalf), whichever is applicable, as filed with the FERC and as it may be amended, from time to time, or any successor tariff.
  - c. Base Contract Price. The Base Contract Price is set forth in Exhibit B.
  - d. Change to Prices. As a retail sale, the power sale agreement is not subject to the jurisdiction of the FERC; nor shall either Party seek to have the FERC assert jurisdiction over this Agreement. However, to the extent that either the FERC or the Public Utilities Commission of Ohio asserts jurisdiction over this Agreement, the Parties agree that the Base Contract Price specified above is just and reasonable and consistent with the public interest. Neither CRS nor Air Products shall seek to modify the Base Contract Price through the auspices of any regulatory body.
  - e. Term. The term of the power sale agreement shall be through December 31, 2008.
  - f. Credit. The power sale agreement will have terms and conditions as similar as possible to CG&E's existing unbundled tariffs. CRS will not require surety bonds, deposits or other corporate guarantees.
  - g. Adjusted Base Contract Price. If CRS exercises this option, then the combined net generation cost paid to CRS and CG&E will be an amount equivalent to Big G, plus FPP (excluding emission allowances) plus IMF up to 4% of little g. In addition, there will be transmission charges to be paid to CRS as set forth in Exhibit B.

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#### ARTICLE IV TERM OF AGREEMENT

- 4.1 Agreement Term and Effective Date. This Agreement shall become effective upon execution by the Parties. Payments under this Agreement shall cover the period from January 1, 2005 through and including December 31, 2008, unless terminated earlier in accordance with the terms of this Agreement ("Term").
- 4.2 Agreement Termination. This Agreement terminates if the Public Utility Commission of Ohio in the ongoing CG&E fuel cost recovery cases, fails to approve as part of the capped Provider of Last Resort Charge, a fuel cost recovery mechanism such that fuel costs equal the average embedded fuel costs for all consumers in CG&E's service territory served by CRS or any of its Affiliates. This Agreement shall also terminate if a court or administrative agency of competent jurisdiction issues an order depriving the Parties of the benefits of this Agreement or otherwise voiding this Agreement. Before termination of this Agreement, the Parties agree to use best efforts to fulfill the intent of this Agreement by negotiating amendments to this Agreement that put the Parties in substantially the same overall economic positions as created under the PUCO's Order dated November 23, 2004 in Case No. 03-93-HL-ATA and this Agreement.
- 4.3 After Termination. The applicable payment and billing provisions of this Agreement shall continue in effect after termination thereof to the extent necessary to provide for final billing, billing adjustments and payments.

#### ARTICLE V BILLING

- 5.1 Payment. CRS shall submit the Option Payment to Air Products by check or wire transfer within forty-five (45) days after the end of each calendar year quarter. The payment shall be submitted to an account or address designated by Air Products.

#### ARTICLE VI DEFAULTS AND REMEDIES

- 6.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:
- 6.1.1 any representation or warranty made by the Defaulting Party herein shall at any time prove to be false or misleading in any respect material to this Agreement;

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- 6.1.2 the failure of the Defaulting Party to materially perform any covenant set forth in this Agreement (except to the extent constituting a separate Event of Default,) and such failure is not cured within five (5) Business Days after written notice thereof to the Defaulting Party;
  - 6.1.3 the Defaulting Party consolidates or amalgamates with, merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all of the obligations of such Party under this Agreement;
  - 6.1.4 the failure to make when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written notice of such failure is given by the other Party; or
  - 6.1.5 the Defaulting Party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is unable to pay its debts as they fall due.
- 6.2 Remedies upon an Event of Default. Upon the occurrence (and continuation beyond the applicable cure period) of an Event of Default with respect to a Defaulting Party, the Non-Defaulting Party shall have the right to terminate this Agreement and exercise all rights and remedies available to it in law or in equity.

#### ARTICLE VII DUTY TO MITIGATE

- 7.1 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 any damages it may incur as a result of the other Party's default hereunder.

#### ARTICLE VIII GOVERNING LAW - DISPUTE RESOLUTION

- 8.1 Governing Law and Jurisdiction. This Agreement and the rights and duties of the Parties

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hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of Ohio.

- 8.2 Dispute Resolution. Any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, shall be resolved fully and finally by binding arbitration under the Commercial Rules, but not the administration, of the American Arbitration Association, except to the extent that the Commercial Rules conflict with this provision, in which event, this Agreement shall control. This arbitration provision shall not limit the right of either Party prior to or during any such dispute to seek, use, and employ ancillary, or preliminary or permanent rights and/or remedies, judicial or otherwise, for the purposes maintaining the status quo until such time as the arbitration award is rendered or the dispute is otherwise resolved. The arbitration shall be conducted in Cincinnati, Ohio and the laws of Ohio shall govern the construction and interpretation of this Agreement, except to provisions related to conflict of laws. Within ten (10) Business Days of service of a Demand for Arbitration, the parties may agree upon a sole arbitrator, or if a sole arbitrator cannot be agreed upon, a panel of three arbitrators shall be named. One arbitrator shall be selected by CRS and one shall be selected by Air Products. A knowledgeable, disinterested and impartial arbitrator shall be selected by the two arbitrators so appointed by the parties. If the arbitrators appointed by the parties cannot agree upon the third arbitrator within ten (10) Business Days, then either Party may apply to any judge in any court of competent jurisdiction for appointment of the third arbitrator. There shall be no discovery during the arbitration other than the exchange of information that is provided to the arbitrator(s) by the Parties. The arbitrator(s) shall have the authority only to award equitable relief and compensatory damages, and shall not have the authority to award punitive damages or other non-compensatory damages. The decision of the arbitrator(s) shall be rendered within ninety (90) Business Days after the date of the selection of the arbitrator(s) or within such period as the Parties may otherwise agree. Each Party shall be responsible for the fees, expenses and costs incurred by the arbitrator appointed by each Party, and the fees, expenses and costs of the third arbitrator (or single arbitrator) shall be borne equally by the Parties. The decision of the arbitrator(s) shall be final and binding and may not be appealed. Any Party may apply to any court having jurisdiction to enforce the decision of the arbitrator(s) and to obtain a judgment thereon.

Notwithstanding the foregoing, the Parties may cancel or terminate this Agreement in accordance with its terms and conditions without being required to follow the procedures set forth in this Article.

#### ARTICLE IX MISCELLANEOUS

- 9.1 Representations and Warranties. On the Effective Date, each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its

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business in such jurisdiction; (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement; (c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision applicable to it; (d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; (e) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (f) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligation under this Agreement or any other document relating to this Agreement; (g) no Event of Default or event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement or any Transaction; and (h) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether such Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement.

- 9.2 Assignment. This Agreement shall be assignable by CRS without Air Products' consent provided such assignment is to any other direct or indirect subsidiary of Cinergy Corp. and provided that such direct or indirect subsidiary has an equivalent or higher credit rating than CRS. Any other assignment by either Party of this Agreement or any rights or obligation hereunder shall be made only with the prior written consent of the other Party, which consent shall not be unreasonably withheld.
- 9.3 Notices. All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice by regular mail shall be deemed to have been received three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight or courier shall be deemed to have been received two (2) Business Days after it has been sent. A Party may change its addresses by providing notice of the same in accordance with this Section 9.3.

To CRS:

James B. Gainer  
139 East Fourth Street

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Cincinnati, OH 45202

Phone - 513-287-2633

Fax - 513-287-1902

**To Air Products:**

David F. Boehm, Esq.  
Michael L. Kurtz, Esq.  
Boehm, Kurtz & Lowry  
36 E. Seventh Street, Suite 1510  
Cincinnati, Ohio 45202  
Ph: 513.421.2255 Fax: 513.421.2764

- 9.4 General. This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless set forth in writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only.
- 9.5 Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement to a 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 in connection with any court or regulatory proceeding applicable to such Party; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.
- 9.6 Counterparts. This Agreement may be separately executed in counterparts each of which when so executed shall be deemed to constitute one and the same Agreement.
- 9.7 This Agreement supersedes and replaces the agreement between CRS and Air Products dated November 22, 2004. During the term of this Agreement, it supersedes and replaces any other agreements between the Parties or their affiliates related to FUCO Case No. 99-1658-EL-

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ETP. Upon the termination of this Agreement, any other settlement agreements between the Parties or their affiliates related to FUCO Case No. 99-1658-EL-ETP shall be in full force and effect according to their original terms.

The Parties have caused this Agreement to be executed by their duly authorized representatives in multiple counterparts as of the Effective Date.

CINERGY RETAIL SALES, LLC

AIR PRODUCTS AND CHEMICALS, INC.

By: [Signature]  
Title: VP & General Counsel

By: [Signature]  
Victor F. Sawicki  
Title: Manager, Electric Supply

Date: Nov 2, 2005

Date: 11/19/05

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TRADE SECRET**Exhibit A.1:****Customer Group: Air Products and Chemicals, Inc.  
Quarterly Option Payment Calculation**

The Option Payment made quarterly from the date that Air Products returns to CG&E's market-based standard service offer (MBSSO) generation rate through December 31, 2008 or the date upon which the Option is exercised whichever comes first, will be equivalent to the following calculation: The actual amount paid by Air Products to CG&E during the applicable calendar quarter under its MBSSO generation rate approved by the Commission in Case No. 03-93-EL-ATA. The MBSSO generation rate includes all charges related to generation service, but excludes transmission and distribution.

Less the following amount:

The applicable tariffed unbundled generation rate approved by the Commission in Case No. 99-1651-EL-ETP and also known as "Big G" shown in the tariff schedule below:

Tariff Schedule	Demand Charge (\$ per kW)			Energy Charge (\$ per kWh)		
	First Step	Second Step	Additional	First Step	Second Step	Additional
DM <sup>1</sup>	N/A	N/A	N/A	\$0.070728	\$0.018173	\$0.009004
DP	\$6.9150	\$5.4450	N/A	\$0.028898	\$0.017782	N/A
DS	\$7.6574	\$6.0574	N/A	\$0.028568	\$0.016366	N/A
TS	\$8.3130	\$6.0430	N/A	\$0.019994	\$0.016481	N/A

<sup>1</sup> DM only shows customer seasonal rates

Plus

Fuel and Purchase Power (FPP) - excluding Emission Allowance Expense

Plus

Infrastructure Maintenance Fund (IMF) up to an amount equal to 4% of "little g"

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TRADE SECRET**Exhibit A.2:****Customer Group: Air Products and Chemicals, Inc.  
Quarterly Option Payment Calculation**

The CRS option payment made quarterly for the period January 1, 2005 until the date Air Products returns to CG&E's MBSSO will be equivalent to the sum of the following:

- 1) one half of the SRT actually paid
- 2) one half of the AAC actually paid
- 3) any IMF charge in excess of 4% of Rate g actually paid
- 4) and the following amount per KWh of electric consumption.

Tariff Schedule	Billing Demand X 300 (\$/kWh)	Additional kWh (\$/kWh)
DS	\$0.006992	\$0.000100
TS	\$0.005590	\$0.000100

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**EXHIBIT B:**

**Customer Group: Air Products and Chemicals, Inc.  
CRS Generation and Transmission Rates for Former Rate DS Standard Service  
Customers**

Net monthly generation and transmission bill will be the following plus IMF up to 4% of little "g."

Computed in accordance with the following charges. (Kilowatt of demand is abbreviated as kW and kilowatt-hours are abbreviated as kWh):

**Generation Charges**

**(a) Demand Charge**

First 1,000 kilowatts ..... \$7.6574 per kW  
Additional kilowatts ..... \$6.0574 per kW

**(b) Energy Charge**

Billing Demand times 300 ..... \$0.019576 per kWh  
Additional kilowatt-hours ..... \$0.016266 per kWh

**(c) Fuel Charge**

The Fuel Charge shall be equal to the Fuel and Purchase Power (FPP) charge excluding Emission Allowance Expense imposed by CG&E.

**Transmission Charges**

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer. Transmission charges to be paid include, but are not limited to the following PUCO approved charges:

- (1) Network Transmission Services
- (2) MISO Schedule Charges
- (3) Net Congestion Charges

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**EXHIBIT B:**

**Customer Group: Air Products and Chemicals, Inc.**  
**CRS Generation and Transmission Rates for Former Rate TS Standard Service Customers**

**Net Monthly Bill**

Computed in accordance with the following charges. (Kilovolt amperes are abbreviated as KVA and kilowatt-hours are abbreviated as kWh):

**Generation Charges**

**(b) Demand Charge**

First 50,000 KVA ..... \$8.3830 per kVA  
Additional KVA ..... \$6.0430 per kVA

**(b) Energy Charge**

Billing Demand times 300 ..... \$0.014404 per kWh  
Additional kilowatt-hours ..... \$0.016381 per kWh

**(d) Fuel Charge**

The Fuel Charge shall be equal to the Fuel and Purchase Power (FPP) charge excluding Emission Allowance Expense imposed by CG&E.

**Transmission Charges**

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer. Transmission charges to be paid include, but are not limited to the following PUCO approved charges:

- (4) Network Transmission Services
- (5) MISO Schedule Charges
- (6) Net Congestion Charges

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**Exhibit C:**  
**Customer Group: Air Products and Chemicals, Inc.**  
**Customer Account List**

This agreement pertains to the following Air Products and Chemicals, Inc. accounts:

[REDACTED]

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OPTION AGREEMENT

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BY AND BETWEEN

CINERGY RETAIL SALES, LLC

AND

CHRIST HOSPITAL

This Option Agreement (the "Agreement") is entered into as of this 21st day of January, 2008 (the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware limited liability company, and Christ Hospital ("Counterparty"), a \_\_\_\_\_ corporation (each individually a "Party" or collectively the "Parties").

RECITALS

WHEREAS, Christ Hospital is a member of the Ohio Hospitals Association and is located within the retail delivery service territory of The Cincinnati Gas & Electric Company ("CG&E");

WHEREAS, CRS has been certified by the Public Utilities Commission of Ohio as a Certified Retail Electric Supplier ("CRES") and has the authority to engage in the sale of electrical power at retail;

WHEREAS, CRS and Counterparty desire to establish terms and condition for this option.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the Parties agree as follows:

ARTICLE I  
DEFINITIONS

The following definitions and any terms defined in this Agreement shall apply hereunder.

"Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of ten (10) percent or more.

"Business Day" means a day on which Federal Reserve member banks in Ohio are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. eastern prevailing time, unless otherwise agreed to by the Parties in writing.

"Counterparty's Maximum Demand" means Counterparty's combined maximum demand for all

Cinergy Corporate Records

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Document Code

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of Counterparty's accounts as of January 1, 2005.

"Capacity" has the meaning set forth in any Transmission Provider's tariff or MISO's transmission tariff, as amended from time to time, or as defined in any transmission tariff of a successor to MISO.

"Contract Price" means the price in \$US as set forth in Exhibit B to be paid by Counterparty to CRS for the purchase of the Energy under this Agreement.

"Defaulting Party" shall have the meaning specified in Section 6.1.

"Energy" means electric energy of the character commonly known as three-phase, sixty hertz electric energy that is delivered at the nominal voltage of the Delivery Point, expressed in megawatt hours (MWh).

"Event of Default" shall have the meaning specified in Section 6.1.

"FERC" means the Federal Energy Regulatory Commission or any successor agency thereto.

"Firm" means, with respect to a Transaction, that the only excuse for the failure to deliver Energy by CRS or the failure to receive Energy by the Counterparty is Force Majeure or the other Party's failure to perform.

"Full Requirements Energy" means, except as provided herein, that Counterparty shall purchase all of its retail Energy requirements for its facility from CRS and that Counterparty shall not resell any of the Energy provided hereunder to any third party.

"Interest Rate" means, for any date the lesser of (a) two (2) percent over the per annum rate of interest equal to the prime lending rate ("Prime Rate") as may be published from time to time in the Federal Reserve Statistical Release H. 15; or (b) the maximum lawful interest rate.

"MW" means megawatt.

"Term" shall have the meaning specified in Article 4.1.

"Transmission Providers" means the entity or entities transmitting or transporting the Energy on behalf of CRS or Counterparty to the Delivery Point.

## ARTICLE II OPTION

- 2.1 Counterparty currently receives its electric service from The Cincinnati Gas & Electric Company ("CG&E") pursuant to the applicable tariffs rates or will provide notice that it

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will take electric service from CG&E in accordance with applicable CG&E tariff requirements. Counterparty hereby grants to CRS the exclusive option, upon thirty (30) days notice, to serve all of Counterparty's accounts and load set forth in Exhibit C, including any increases in accordance with Section 3.1, as of December 31, 2004 ("Option").

- 2.2 CRS shall have the right to exercise this Option at any time during the Term of this Agreement.
- 2.3 In exchange for Counterparty granting CRS this option, CRS agrees to pay Counterparty each calendar year quarter of the Term, until exercise of the Option, the amount set forth on Exhibit A ("Option Payment").
- 2.4 Because this is an exclusive Option, in the event Counterparty leaves its current electric service and receives electric service from any third party that is not CRS or an Affiliate of CRS, then CRS shall cease all Option Payments and this Agreement shall terminate and all obligations of the Parties hereunder shall terminate.
- 2.5 If CRS exercises its Option, the Parties shall enter into a power sale agreement, including the terms set forth in Article III.

#### ARTICLE III CRS POWER CONTRACT TERMS

- 3.1 In the event CRS exercises its option, the power sale agreement between CRS and Counterparty shall include the following terms:
  - a. Energy Quantity and Type. CRS shall provide Counterparty with Firm, Full Requirements Energy and Capacity up to 3 MWs greater than Counterparty's Maximum Demand for all of its accounts as of January 1, 2005 ("Quantity"). If during the Term of this Agreement, Counterparty has additional load or accounts greater than 3MW, then such new load or account is not included within the terms of this Agreement and CRS shall have no obligation to provide Energy and Capacity to Counterparty above the Quantity set forth herein.
  - b. Transmission Service and Charges. Transmission service will be provided in accordance with the open access transmission tariff of the Midwest Independent Transmission System Operator, Inc. Charges will be assessed consistent with the otherwise applicable CG&E retail tariff rates and riders as they may be amended, from time to time, or any successor tariff.
  - c. Contract Price. The Contract Price is set forth in Exhibits A and B.
  - d. Change to Prices. As a retail sale, the power sale agreement is not subject to

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the jurisdiction of the FERC; nor shall either Party seek to have the FERC assert jurisdiction over the Agreement. However, to the extent that either the FERC or the Public Utilities Commission of Ohio asserts jurisdiction over the Agreement, the Parties agree that the Contract Price specified above is just and reasonable and consistent with the public interest. Neither CRS nor Counterparty shall seek to modify the Contract Price through the auspices of any regulatory body.

- a. Term. The term of the power sale agreement shall be through December 31, 2008.

#### ARTICLE IV TERM OF AGREEMENT


- 4.1 Agreement Term and Effective Date. This Agreement shall become effective upon execution by the Parties. This Agreement shall extend from January 1, 2005 through and including December 31, 2008, unless terminated earlier in accordance with the terms of this Agreement ("Term").
- 4.2 After Termination. The applicable provisions of this Agreement shall continue in effect after termination thereof to the extent necessary to provide for final billing, billing adjustments and payments.

#### ARTICLE V BILLING

- 5.1 Payment. CRS shall submit the Option Payment to Counterparty within thirty (30) days after the end of each calendar year quarter. The payment shall be submitted to the following account or address:

The Christ Hospital  
2132 Auburn Ave  
Cincinnati Ohio 45219  
Attn John Renner  
Mark "electric rebate" [insert account information]

45219



#### ARTICLE VI DEFAULTS AND REMEDIES

- 6.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:

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- 6.1.1 any representation or warranty made by the Defaulting Party herein shall at any time prove to be false or misleading in any respect material to this Agreement;
  - 6.1.2 the failure of the Defaulting Party to perform any covenant set forth in this Agreement (except to the extent constituting a separate Event of Default,) and such failure is not cured within fifteen (15) Business Days after written notice via certified mail thereof to the Defaulting Party;
  - 6.1.3 the Defaulting Party consolidates or amalgamates with, merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all of the obligations of such Party under this Agreement;
  - 6.1.4 the failure to make when due, any payment required pursuant to this Agreement if such failure is not remedied within fifteen (15) Business Days after written notice via certified mail of such failure is given by the other Party; or
  - 6.1.5 the Defaulting Party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is unable to pay its debts as they fall due.
- 6.2 Remedies upon an Event of Default. Upon the occurrence (and continuation beyond the applicable cure period) of an Event of Default with respect to a Defaulting Party, the Non-Defaulting Party shall have the right to terminate this Agreement and exercise all rights and remedies available to it in law or in equity.
- 6.3 Other Termination Events. Termination may occur upon thirty 30 days written notice by either Party upon issuance of an order by a court or regulatory body of competent jurisdiction that substantially prevents either party from performing obligations pursuant to this agreement. In the event that terminating event of this kind occurs, the Parties agree to negotiate in good faith to return both Parties to an economic outcome equivalent to the one created by this agreement.

ARTICLE VII  
LIMITATIONS; DUTY TO MITIGATE

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- 7.1 Limitation of Remedies, Liability and Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, 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 PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, 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. UNLESS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS 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, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.
- 7.2 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 any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

#### ARTICLE VII GOVERNING LAW - DISPUTE RESOLUTION

- 8.1 Governing Law and Jurisdiction. 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 AND SHALL BE BROUGHT IN THE STATE AND FEDERAL COURTS LOCATED IN HAMILTON COUNTY OHIO.
- 8.2 Dispute Resolution. Any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, shall be resolved fully and finally by binding arbitration under the Commercial Rules, but not the administration, of the American Arbitration

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Association, except to the extent that the Commercial Rules conflict with this provision, in which event, this Agreement shall control. This arbitration provision shall not limit the right of either Party prior to or during any such dispute to seek, use, and employ ancillary, or preliminary or permanent rights and/or remedies, judicial or otherwise, for the purposes maintaining the status quo until such time as the arbitration award is rendered of the dispute is otherwise resolved. The arbitration shall be conducted in Cincinnati, Ohio and the laws of Ohio shall govern the construction and interpretation of this Agreement, except to provisions related to conflict of laws. Within ten (10) Business Days of service of a Demand for Arbitration, the parties may agree upon a sole arbitrator, or if a sole arbitrator cannot be agreed upon, a panel of three arbitrators shall be named. One arbitrator shall be selected by CRS and one shall be selected by Buyer. A knowledgeable, disinterested and impartial arbitrator shall be selected by the two arbitrators so appointed by the parties. If the arbitrators appointed by the parties cannot agree upon the third arbitrator within ten (10) Business Days, then either Party may apply to any judge in any court of competent jurisdiction for appointment of the third arbitrator. There shall be no discovery during the arbitration other than the exchange of information that is provided to the arbitrator(s) by the Parties. The arbitrator(s) shall have the authority only to award equitable relief and compensatory damages, and shall not have the authority to award punitive damages or other non-compensatory damages. The decision of the arbitrator(s) shall be rendered within sixty (60) Business Days after the date of the selection of the arbitrator(s) or within such period as the Parties may otherwise agree. Each Party shall be responsible for the fees, expenses and costs incurred by the arbitrator appointed by each Party, and the fees, expenses and costs of the third arbitrator (or single arbitrator) shall be borne equally by the Parties. The decision of the arbitrator(s) shall be final and binding and may not be appealed. Any Party may apply to any court having jurisdiction to enforce the decision of the arbitrator(s) and to obtain a judgment thereon.

Notwithstanding the foregoing, the Parties may cancel or terminate this Agreement in accordance with its terms and conditions without being required to follow the procedures set forth in this Article.

#### ARTICLE IX MISCELLANEOUS

- 9.1 Representations and Warranties. On the Effective Date and on the date of entering into this Agreement, each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction; (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement; (c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision applicable to it;

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(d) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (e) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligation under this Agreement or any other document relating to this Agreement; (f) no Event of Default or event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement or any Transaction; and (g) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether such Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement.

9.2 **Assignment.** This Agreement shall be assignable by CRS without the Counterparty's consent provided such assignment is to any other direct or indirect subsidiary of Cinergy Corp. provided that such direct or indirect subsidiary has an equivalent or higher credit rating than CRS. Any other assignment by either Party of this Agreement or any rights or obligation hereunder shall be made only with the written consent of the other Party, which consent shall not be unreasonably withheld.

9.3 **Notices.** All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form provided there is some form of confirmation that the receiving party actually received the notice. Notice by regular mail shall be deemed to have been received three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight or courier shall be deemed to have been received two (2) Business Days after it has been sent. A Party may change its addresses by providing notice of the same in accordance with this Section 9.3.

**To CRS:**

James B. Gainer  
139 East Fourth Street  
Cincinnati, OH 45202

Phone - 513-287-2633  
Fax - 513-287-1902

**To Counterparty:**

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Rick Perkinson  
Phone - 513-585-2726

- 9.4 General. This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless set forth in writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights contained herein shall survive the termination or expiration of this Agreement for three (3) years.
- 9.5 Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's employees, Affiliates, leaders, 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 in connection with any court or regulatory proceeding applicable to such Party; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.
- 9.6 Counterparts. This Agreement may be separately executed in counterparts each of which when so executed shall be deemed to constitute one and the same Agreement.
- 9.7 This Agreement supersedes and replaces in its entirety the agreement between CRS and Counterparty dated October 28, 2004 and as well as any other settlement agreements between Counterparty and Cinergy Corp. or any other Cinergy entity related to PUCO Case No. 99-1658-EL-ETP. By signing this Agreement, Counterparty, CRS and Cinergy Corp. (on behalf of all Cinergy entities) agree to this provision.

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The Parties have caused this Agreement to be executed by their duly authorized representatives in multiple counterparts as of the Effective Date.

CINERGY RETAIL SALES, LLC

COUNTERPARTY

By: [Signature]  
Title: Vp National Counsel  
Commercial Business Unit  
Date: 1/25/05

By: [Signature]  
Title: Executive Director / SRP  
Date: 1/25/04

As to clause 9.7:

CINERGY CORP.

By: [Signature]  
Title: VP & Gen. Counsel  
Date: Jan 25, 2005

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**Exhibit A:**  
**Customer Group: Christ Hospital**  
**Quarterly Option Payment Calculation**

The CRS option payment will be equivalent to the actual amount paid to The Cincinnati Gas & Electric Company for the following billing charges under its market-based standard service offer approved by the Commission in Case No. 03-93-EL-ATA:

- One (1) Mill per kWh of generation
- Annually Adjusted Component of POLR Charge (AAC)
- Fuel and Purchase Power (FPP) – excluding Emission Allowance Expense
- Infrastructure Maintenance Fund (IMF) Charge in excess of 6% of "little g"
- Electric Choice Insufficient Return Notice Fee charged to customers, who have given notice of their return to CG&E standard tariff service on or before 12/30/2004 and are actively taking CG&E service no later than 01/31/2005.

A customer not paying the market-based standard service offer approved by the Commission in Case No. 03-93-EL-ATA to The Cincinnati Gas & Electric Company, who avoids the System Reliability Tracker (SRT), will have their option payments adjusted for the value of the SRT that CG&E would have received had the customer been a standard tariff customer beginning January 1, 2005. The adjustment will be calculated by taking the total value of the SRT that CG&E would have received in 2005 and deducting it equally from the first four option payments to be received by the customer.

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**EXHIBIT B:**  
**Customer Group: Christ Hospital**  
**CRS Generation and Transmission Rates for former Rate DP Standard Service Customers**

**Net Monthly Bill**

Computed in accordance with the following charges. (Kilowatt of demand is abbreviated as kW and kilowatt-hours are abbreviated as kWh):

**Generation Charges**

**(a) Demand Charge**

First 1,000 kilowatts ..... \$7.6574 per kW  
Additional kilowatts ..... \$6.0574 per kW

**(b) Energy Charge**

Billing Demand times 300 ..... \$0.019576 per kWh  
Additional kilowatt-hours ..... \$0.016266 per kWh

**Emission Allowance Charges**

Customer will pay monthly an amount equivalent to the emission allowance expense component of the FUCO approved CG&E fuel clause

**Transmission Charges**

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer.

**Rate Stabilization Charge**

Energy Retail Sales will reimburse the customer for any Rate Stabilization Charge (RSC) actually paid by the customer.

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**Exhibit C:**  
**Customer Group: Christ Hospital**  
**Customer Account List**

This agreement pertains to the following Christ Hospital accounts:  
[REDACTED]

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OPTION AGREEMENT

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BY AND BETWEEN

CINERGY RETAIL SALES, LLC

AND

JEWISH HOSPITAL

This Option Agreement (the "Agreement") is entered into as of this 25<sup>th</sup> day of January 2004 (the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware limited liability company, and Jewish Hospital ("Counterparty"), a \_\_\_\_\_ corporation (each individually a "Party" or collectively the "Parties").

RECITALS

WHEREAS, Jewish Hospital is a member of the Ohio Hospitals Association and is located within the retail delivery service territory of The Cincinnati Gas & Electric Company ("CG&E").

WHEREAS, CRS has been certified by the Public Utilities Commission of Ohio as a Certified Retail Electric Supplier ("CRES") and has the authority to engage in the sale of electrical power at retail;

WHEREAS, CRS and Counterparty desire to establish terms and condition for this option.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the Parties agree as follows:

ARTICLE I  
DEFINITIONS

The following definitions and any terms defined in this Agreement shall apply hereunder.

"Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of ten (10) percent or more.

"Business Day" means a day on which Federal Reserve member banks in Ohio are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. eastern prevailing time, unless otherwise agreed to by the Parties in writing.

"Counterparty's Maximum Demand" means Counterparty's combined maximum demand for all

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of Counterparty's accounts as of January 1, 2005.

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"Capacity" has the meaning set forth in any Transmission Provider's tariff or MISO's transmission tariff, as amended from time to time, or as defined in any transmission tariff of a successor to MISO.

"Contract Price" means the price in JUS as set forth in Exhibit B to be paid by Counterparty to CRS for the purchase of the Energy under this Agreement.

"Defaulting Party" shall have the meaning specified in Section 6.1.

"Energy" means electric energy of the character commonly known as three-phase, sixty hertz electric energy that is delivered at the nominal voltage of the Delivery Point, expressed in megawatt hours (MWh).

"Event of Default" shall have the meaning specified in Section 6.1.

"FERC" means the Federal Energy Regulatory Commission or any successor agency thereto.

"Firm" means, with respect to a Transaction, that the only excuse for the failure to deliver Energy by CRS or the failure to receive Energy by the Counterparty is Force Majeure or the other Party's failure to perform.

"Full Requirements Energy" means, except as provided herein, that Counterparty shall purchase all of its retail Energy requirements for its facility from CRS and that Counterparty shall not resell any of the Energy provided hereunder to any third party.

"Interest Rate" means, for any date the lesser of (a) two (2) percent over the per annum rate of interest equal to the prime lending rate ("Prime Rate") as may be published from time to time in the Federal Reserve Statistical Release H. 15; or (b) the maximum lawful interest rate.

"MW" means megawatt.

"Term" shall have the meaning specified in Article 4.1.

"Transmission Providers" means the entity or entities transmitting or transporting the Energy on behalf of CRS or Counterparty to the Delivery Point.

## ARTICLE II OPTION

- 2.1 Counterparty currently receives its electric service from The Cincinnati Gas & Electric Company ("CG&E") pursuant to the applicable tariffs rates or will provide notice that it

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will take electric service from CG&E in accordance with applicable CG&E tariff requirements. Counterparty hereby grants to CRS the exclusive option, upon thirty (30) days notice, to serve all of Counterparty's accounts and load set forth in Exhibit C, including any increases in accordance with Section 3.1, as of December 31, 2004 ("Option").

- 2.2 CRS shall have the right to exercise this Option at any time during the Term of this Agreement.
- 2.3 In exchange for Counterparty granting CRS this option, CRS agrees to pay Counterparty each calendar year quarter of the Term, until exercise of the Option, the amount set forth on Exhibit A ("Option Payment").
- 2.4 Because this is an exclusive Option, in the event Counterparty leaves its current electric service and receives electric service from any third party that is not CRS or an Affiliate of CRS, then CRS shall cease all Option Payments and this Agreement shall terminate and all obligations of the Parties hereunder shall terminate.
- 2.5 If CRS exercises its Option, the Parties shall enter into a power sale agreement, including the terms set forth in Article III.

### ARTICLE III CRS POWER CONTRACT TERMS

- 3.1 In the event CRS exercises its option, the power sale agreement between CRS and Counterparty shall include the following terms:
  - a. Energy Quantity and Type. CRS shall provide Counterparty with Firm, Full Requirements Energy and Capacity up to 3 MWs greater than Counterparty's Maximum Demand for all of its accounts as of January 1, 2005 ("Quantity"). If during the Term of this Agreement, Counterparty has additional load or accounts greater than 3MW, then such new load or account is not included within the terms of this Agreement and CRS shall have no obligation to provide Energy and Capacity to Counterparty above the Quantity set forth herein.
  - b. Transmission Service and Charges. Transmission service will be provided in accordance with the open access transmission tariff of the Midwest Independent Transmission System Operator, Inc. Charges will be assessed consistent with the otherwise applicable CG&E retail tariff rates and riders as they may be amended, from time to time, or any successor tariff.
  - c. Contract Price. The Contract Price is set forth in Exhibits A and B.
  - d. Change to Prices. As a retail sale, the power sale agreement is not subject to

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the jurisdiction of the FERC; nor shall either Party seek to have the FERC assert jurisdiction over the Agreement. However, to the extent that either the FERC or the Public Utilities Commission of Ohio asserts jurisdiction over the Agreement, the Parties agree that the Contract Price specified above is just and reasonable and consistent with the public interest. Neither CRS nor Counterparty shall seek to modify the Contract Price through the auspices of any regulatory body.

- c. Term. The term of the power sale agreement shall be through December 31, 2008.

#### ARTICLE IV TERM OF AGREEMENT

- 4.1 Agreement Term and Effective Date. This Agreement shall become effective upon execution by the Parties. This Agreement shall extend from January 1, 2005 through and including December 31, 2008, unless terminated earlier in accordance with the terms of this Agreement ("Term").
- 4.2 After Termination. The applicable provisions of this Agreement shall continue in effect after termination thereof to the extent necessary to provide for final billing, billing adjustments and payments.

#### ARTICLE V BILLING

- 5.1 Payment. CRS shall submit the Option Payment to Counterparty within thirty (30) days after the end of each calendar year quarter. The payment shall be submitted to the following account or address:

[insert account information]

#### ARTICLE VI DEFAULTS AND REMEDIES

- 6.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:
- 6.1.1 any representation or warranty made by the Defaulting Party herein shall at any time prove to be false or misleading in any respect material to this Agreement;

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- 6.1.2 the failure of the Defaulting Party to perform any covenant set forth in this Agreement (except to the extent constituting a separate Event of Default) and such failure is not cured within fifteen (15) Business Days after written notice via certified mail thereof to the Defaulting Party;
- 6.1.3 the Defaulting Party consolidates or amalgamates with, merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all of the obligations of such Party under this Agreement;
- 6.1.4 the failure to make when due, any payment required pursuant to this Agreement if such failure is not remedied within fifteen (15) Business Days after written notice via certified mail of such failure is given by the other Party; or
- 6.1.5 the Defaulting Party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is unable to pay its debts as they fall due.
- 6.2 Remedies upon an Event of Default. Upon the occurrence (and continuation beyond the applicable cure period) of an Event of Default with respect to a Defaulting Party, the Non-Defaulting Party shall have the right to terminate this Agreement and exercise all rights and remedies available to it in law or in equity.
- 6.3 Other Termination Events. Termination may occur upon thirty (30) days written notice by either Party upon issuance of an order by a court or regulatory body of competent jurisdiction that substantially prevents either party from performing obligations pursuant to this agreement. In the event that terminating event of this kind occurs, the Parties agree to negotiate in good faith to return both Parties to an economic outcome equivalent to the one created by this agreement.

#### ARTICLE VII LIMITATIONS; DUTY TO MITIGATE

- 7.1 Limitation of Remedies, Liability and Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR

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MEASURE OF DAMAGES IS PROVIDED, 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 PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, 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. UNLESS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS 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, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

- 7.2 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 any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

#### ARTICLE VIII GOVERNING LAW - DISPUTE RESOLUTION

- 8.1 Governing Law and Jurisdiction. 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 AND SHALL BE BROUGHT IN THE STATE AND FEDERAL COURTS LOCATED IN HAMILTON COUNTY OHIO.
- 8.2 Dispute Resolution. Any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, shall be resolved fully and finally by binding arbitration under the Commercial Rules, but not the administration, of the American Arbitration Association, except to the extent that the Commercial Rules conflict with this provision, in which event, this Agreement shall control. This arbitration provision shall not limit the right of either Party prior to or during any such dispute to seek, use, and employ ancillary, or preliminary or permanent rights and/or remedies, judicial or otherwise, for the purposes

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maintaining the status quo until such time as the arbitration award is rendered of the dispute is otherwise resolved. The arbitration shall be conducted in Cincinnati, Ohio and the laws of Ohio shall govern the construction and interpretation of this Agreement, except to provisions related to conflict of laws. Within ten (10) Business Days of service of a Demand for Arbitration, the parties may agree upon a sole arbitrator, or if a sole arbitrator cannot be agreed upon, a panel of three arbitrators shall be named. One arbitrator shall be selected by CRS and one shall be selected by Buyer. A knowledgeable, disinterested and impartial arbitrator shall be selected by the two arbitrators so appointed by the parties. If the arbitrators appointed by the parties cannot agree upon the third arbitrator within ten (10) Business Days, then either Party may apply to any judge in any court of competent jurisdiction for appointment of the third arbitrator. There shall be no discovery during the arbitration other than the exchange of information that is provided to the arbitrator(s) by the Parties. The arbitrator(s) shall have the authority only to award equitable relief and compensatory damages, and shall not have the authority to award punitive damages or other non-compensatory damages. The decision of the arbitrator(s) shall be rendered within sixty (60) Business Days after the date of the selection of the arbitrator(s) or within such period as the Parties may otherwise agree. Each Party shall be responsible for the fees, expenses and costs incurred by the arbitrator appointed by each Party, and the fees, expenses and costs of the third arbitrator (or single arbitrator) shall be borne equally by the Parties. The decision of the arbitrator(s) shall be final and binding and may not be appealed. Any Party may apply to any court having jurisdiction to enforce the decision of the arbitrator(s) and to obtain a judgment thereon.

Notwithstanding the foregoing, the Parties may cancel or terminate this Agreement in accordance with its terms and conditions without being required to follow the procedures set forth in this Article.

#### ARTICLE IX MISCELLANEOUS

- 9.1 Representations and Warranties. On the Effective Date and on the date of entering into this Agreement, each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction; (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement; (c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision applicable to it; (d) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (e) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligation under this Agreement or any other document relating to

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this Agreement; (f) no Event of Default or event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement or any Transaction; and (g) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether such Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement.

- 9.2 Assignment. This Agreement shall be assignable by CRS without the Counterparty's consent provided such assignment is to any other direct or indirect subsidiary of Cinergy Corp. provided that such direct or indirect subsidiary has an equivalent or higher credit rating than CRS. Any other assignment by either Party of this Agreement or any rights or obligation hereunder shall be made only with the written consent of the other Party, which consent shall not be unreasonably withheld.
- 9.3 Notices. All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form provided there is some form of confirmation that the receiving party actually received the notice. Notice by regular mail shall be deemed to have been received three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight or courier shall be deemed to have been received two (2) Business Days after it has been sent. A Party may change its addresses by providing notice of the same in accordance with this Section 9.3.

To CRS:

James B. Gainer  
139 East Fourth Street  
Cincinnati, OH 45202

Phone - 513-287-2633  
Fax - 513-287-1902

To Counterparty:

Bill Studt  
Phone - 513-686-5815

Alternate:

Sam Cordray  
513-686-5130

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- 9.4 General. This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless set forth in writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights contained herein shall survive the termination or expiration of this Agreement for three (3) years.
- 9.5 Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement to a 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 in connection with any court or regulatory proceeding applicable to such Party; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.
- 9.6 Counterparts. This Agreement may be separately executed in counterparts each of which when so executed shall be deemed to constitute one and the same Agreement.
- 9.7 This Agreement supersedes and replaces in its entirety the agreement between CRS and Counterparty dated October 28, 2004 and as well as any other settlement agreements between Counterparty and Cinergy Corp. or any other Cinergy entity related to PUCD Case No. 99-1658-EL-ETP. By signing this Agreement, Counterparty, CRS and Cinergy Corp. (on behalf of all Cinergy entities) agree to this provision.

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The Parties have caused this Agreement to be executed by their duly authorized representatives in multiple counterparts as of the Effective Date.

CINERGY RETAIL SALES, LLC

COUNTERPARTY

By: [Signature]

Title: VP General Counsel  
Commercial Business Unit

Date: 1/25/05

By: Bill Studdt

Title: Manager

Date: 1-05-05

As to clause 9.7:

CINERGY CORP.

By: [Signature]

Title: VP & Gen. Counsel

Date: Jan. 25, 2005

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**Exhibit A:**  
**Customer Group: Jewish Hospital**  
**Quarterly Option Payment Calculation**

The CRS option payment will be equivalent to the actual amount paid to The Cincinnati Gas & Electric Company for the following billing charges under its market-based standard service offer approved by the Commission in Case No. 03-93-EL-ATA:

- One (1) Mill per kWh of generation
- Annually Adjusted Component of POLR Charge (AAC)
- Fuel and Purchase Power (FPP) - excluding Emission Allowance Expense
- Infrastructure Maintenance Fund (IMF) Charge in excess of 4% of "little g"
- Electric Choice Insufficient Return Notice Fee charged to customers, who have given notice of their return to CG&E standard tariff service on or before 12/30/2004 and are actively taking CG&E service no later than 01/31/2005.

A customer not paying the market-based standard service offer approved by the Commission in Case No. 03-93-EL-ATA to The Cincinnati Gas & Electric Company, who avoids the System Reliability Tracker (SRT), will have their option payments adjusted for the value of the SRT that CG&E would have received had the customer been a standard tariff customer beginning January 1, 2005. The adjustment will be calculated by taking the total value of the SRT that CG&E would have received in 2005 and deducting it equally from the first four option payments to be received by the customer.

**Customer Group: Jewish Hospital**  
**(RTP Agreement)**  
**Quarterly Option Payment Calculation**

The CRS option payment will be equivalent to the following calculation:

Actual Amount paid to The Cincinnati Gas & Electric Company under its market-based standard service offer approved by the Commission in Case No. 03-93-EL-ATA and the terms and conditions under of their RTP Service Agreements for Supply of Electric Energy dated October 25, 2000 and the applicable CG&E tariff rates then in effect.

*Less the sum of following:*

The calculated rate under the RTP Service Agreement between Jewish Hospital and The Cincinnati Gas & Electric Company dated November 13, 1996 and the applicable CG&E tariff rates then in effect.

*Plus*

Rate Stabilization Charge (RSC) paid to CG&E

*Plus*

Annually Adjusted Component of POLR Charge (AAC) paid to CG&E

*Plus*

Fuel and Purchase Power (FPP) paid to CG&E - excluding Emission Allowance Expense

*Plus*

Infrastructure Maintenance Fund (IMF) Charge paid to CG&E in excess of 4% of "little g"

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**EXHIBIT B:**  
**Customer Group: Jewish Hospital**  
**CRS Generation and Transmission Rates for former Rate DP Standard Service Customers**

**Net Monthly Bill**

Computed in accordance with the following charges. (Kilowatt of demand is abbreviated as kW and kilowatt-hours are abbreviated as kWh):

**Generation Charges**

**(a) Demand Charge**

First 1,000 kilowatts ..... \$7.6574 per kW  
Additional kilowatts ..... \$6.6574 per kW

**(b) Energy Charge**

Billing Demand times 300 ..... \$0.019576 per kWh  
Additional kilowatt-hours ..... \$0.016266 per kWh

**Emission Allowance Charges**

Customer will pay monthly an amount equivalent to the emission allowance expense component of the PUCO approved CG&E fuel clause.

**Transmission Charges**

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer.

**Rate Stabilization Charge**

Georgia Retail Sales will reimburse the customer for any Rate Stabilization Charge (RSC) actually paid by the customer.

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**EXHIBIT B:**  
**Customer Group: Jewish Hospital**  
**CRS Generation Rates for Former Rate DS Standard Service Customers**

**Net Monthly Bill**

Computed in accordance with the following charges. (Kilowatt of demand is abbreviated as kW and kilowatt-hours are abbreviated as kWh):

**Generation Charges**

**(b) Demand Charge**

First 1,000 kilowatts ..... \$7.6574 per kW  
Additional kilowatts ..... \$6.8574 per kW

**(b) Energy Charge**

Billing Demand times 300 ..... \$0.018576 per kWh  
Additional kilowatt-hours ..... \$0.015266 per kWh

**Emission Allowance Charges**

Customer will pay monthly an amount equivalent to the emission allowance expense component of the PUCO approved CC&E fuel clause.

**Transmission Charges**

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer.

**Rate Stabilization Charge**

Energy Retail Sales will reimburse the customer for any Rate Stabilization Charge (RSC) actually paid by the customer.

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**EXHIBIT B:**  
**Customer Group: Jewish Hospital**  
**CRS Generation Rates for Former Rate DP Real Time Pricing Customers**  
(Consistent with RTP Rider in effect prior to the Transition Case)

**Net Monthly Bill**

Computed in accordance with the following charges. (Kilowatt of demand is abbreviated as kW and kilowatt-hours are abbreviated as kWh):

Real Time Pricing Program Charge ..... \$150.00

**Generation Charges**

**(c) Demand Charge**

First 1,000 kilowatts ..... \$10.7950 per kW  
Additional kilowatts ..... \$9.3350 per kW

**(b) Energy Charge**

Billing Demand times 300 ..... \$0.01905 per kWh  
Additional kilowatt-hours ..... \$0.00710 per kWh

Real Time Pricing Incremental Cost ..... Calculated Monthly

Universal Service Fund Charge ..... \$0.000244 per kWh

Energy Fuel Component Charge ..... \$0.012788 per kWh

**Emission Allowance Charges**

Customer will pay monthly an amount equivalent to the emission allowance expense component of the PUCO approved CG&E fuel clause.

**Transmission Charges**

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer.

**Rate Stabilization Charge**

Energy Retail Sales will reimburse the customer for any Rate Stabilization Charge (RSC) actually paid by the customer.

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TRADE SECRET

**Exhibit C:**  
**Customer Group: Jewish Hospital**  
**Customer Account List**

This agreement pertains to the following Jewish Hospital accounts:

[REDACTED]

**Customer Group: Jewish Hospital**  
**Customer Account List (RTP Account)**

This agreement pertains to the following Jewish Hospital account:

[REDACTED]

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OPTION AGREEMENT

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BY AND BETWEEN

CINERGY RETAIL SALES, LLC

AND

CHILDREN'S HOSPITAL MEDICAL CENTER

This Option Agreement (the "Agreement") is entered into as of this 25<sup>th</sup> day of January, 2004 (the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware limited liability company, and Children's Hospital Medical Center ("Counterparty"), a corporation (each individually a "Party" or collectively the "Parties").

RECITALS

WHEREAS, Children's Hospital Medical Center is a member of the Ohio Hospitals Association and is located within the retail delivery service territory of The Cincinnati Gas & Electric Company ("CG&E").

WHEREAS, CRS has been certified by the Public Utilities Commission of Ohio as a Certified Retail Electric Supplier ("CRESS") and has the authority to engage in the sale of electrical power at retail;

WHEREAS, CRS and Counterparty desire to establish terms and condition for this option.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the Parties agree as follows:

ARTICLE I  
DEFINITIONS

The following definitions and any terms defined in this Agreement shall apply hereunder.

"Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of ten (10) percent or more.

"Business Day" means a day on which Federal Reserve member banks in Ohio are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. eastern prevailing time, unless otherwise agreed to by the Parties in writing.

"Counterparty's Maximum Demand" means Counterparty's combined maximum demand for all

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of Counterparty's accounts as of January 1, 2005.

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"Capacity" has the meaning set forth in any Transmission Provider's tariff or MISO's transmission tariff, as amended from time to time, or as defined in any transmission tariff of a successor to MISO.

"Contract Price" means the price in \$US as set forth in Exhibit B to be paid by Counterparty to CRS for the purchase of the Energy under this Agreement.

"Defaulting Party" shall have the meaning specified in Section 6.1.

"Energy" means electric energy of the character commonly known as three-phase, sixty hertz electric energy that is delivered at the nominal voltage of the Delivery Point, expressed in megawatt hours (MWh).

"Event of Default" shall have the meaning specified in Section 6.1.

"FERC" means the Federal Energy Regulatory Commission or any successor agency thereto.

"Firm" means, with respect to a Transaction, that the only excuse for the failure to deliver Energy by CRS or the failure to receive Energy by the Counterparty is Force Majeure or the other Party's failure to perform.

"Full Requirements Energy" means, except as provided herein, that Counterparty shall purchase all of its retail Energy requirements for its facility from CRS and that Counterparty shall not resell any of the Energy provided hereunder to any third party.

"Interest Rate" means, for any date the lesser of (a) two (2) percent over the per annum rate of interest equal to the prime lending rate ("Prime Rate") as may be published from time to time in the Federal Reserve Statistical Release H. 15; or (b) the maximum lawful interest rate.

"MW" means megawatt.

"Term" shall have the meaning specified in Article 4.1.

"Transmission Providers" means the entity or entities transmitting or transporting the Energy on behalf of CRS or Counterparty to the Delivery Point.

## ARTICLE II OPTION

- 2.1 Counterparty currently receives its electric service from The Cincinnati Gas & Electric Company ("CG&E") pursuant to the applicable tariffs rates or will provide notice that it

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will take electric service from CG&E in accordance with applicable CG&E tariff requirements. Counterparty hereby grants to CRS the exclusive option, upon thirty (30) days notice, to serve all of Counterparty's accounts and load set forth in Exhibit C, including any increases in accordance with Section 3.1, as of December 31, 2004 ("Option").

- 2.2 CRS shall have the right to exercise this Option at any time during the Term of this Agreement.
- 2.3 In exchange for Counterparty granting CRS this option, CRS agrees to pay Counterparty each calendar year quarter of the Term, until exercise of the Option, the amount set forth on Exhibit A ("Option Payment").
- 2.4 Because this is an exclusive Option, in the event Counterparty leaves its current electric service and receives electric service from any third party that is not CRS or an Affiliate of CRS, then CRS shall cease all Option Payments and this Agreement shall terminate and all obligations of the Parties hereunder shall terminate.
- 2.5 If CRS exercises its Option, the Parties shall enter into a power sale agreement, including the terms set forth in Article III.

#### ARTICLE III CRS POWER CONTRACT TERMS

- 3.1 In the event CRS exercises its option, the power sale agreement between CRS and Counterparty shall include the following terms:
  - a. Energy Quantity and Type. CRS shall provide Counterparty with Firm, Full Requirements Energy and Capacity up to 3 MWs greater than Counterparty's Maximum Demand for all of its accounts as of January 1, 2005 ("Quantity"). If during the Term of this Agreement, Counterparty has additional load or accounts greater than 3MW, then such new load or account is not included within the terms of this Agreement and CRS shall have no obligation to provide Energy and Capacity to Counterparty above the Quantity set forth herein.
  - b. Transmission Service and Charges. Transmission service will be provided in accordance with the open access transmission tariff of the Midwest Independent Transmission System Operator, Inc. Charges will be assessed consistent with the otherwise applicable CG&E retail tariff rates and riders as they may be amended, from time to time, or any successor tariff.
  - c. Contract Price. The Contract Price is set forth in Exhibits A and B.
  - d. Change to Prices. As a retail sale, the power sale agreement is not subject to

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the jurisdiction of the FERC; nor shall either Party seek to have the FERC assert jurisdiction over the Agreement. However, to the extent that either the FERC or the Public Utilities Commission of Ohio asserts jurisdiction over the Agreement, the Parties agree that the Contract Price specified above is just and reasonable and consistent with the public interest. Neither CRS nor Counterparty shall seek to modify the Contract Price through the auspices of any regulatory body.

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- c. Term. The term of the power sale agreement shall be through December 31, 2008.

#### ARTICLE IV TERM OF AGREEMENT

- 4.1 Agreement Term and Effective Date. This Agreement shall become effective upon execution by the Parties. This Agreement shall extend from January 1, 2005 through and including December 31, 2008, unless terminated earlier in accordance with the terms of this Agreement ("Term").
- 4.2 After Termination. The applicable provisions of this Agreement shall continue in effect after termination thereof to the extent necessary to provide for final billing, billing adjustments and payments.

#### ARTICLE V BILLING

- 5.1 Payment. CRS shall submit the Option Payment to Counterparty within thirty (30) days after the end of each calendar year quarter. The payment shall be submitted to the following account or address:

Finance Department, Cincinnati Children's Hospital Medical Center, 3333 Burnet Ave, Cincinnati, OH 45229

(Delete all from second information)

#### ARTICLE VI DEFAULTS AND REMEDIES

- 6.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:
- 6.1.1 any representation or warranty made by the Defaulting Party herein shall at any

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- 6.1.2 the failure of the Defaulting Party to perform any covenant set forth in this Agreement (except to the extent constituting a separate Event of Default,) and such failure is not cured within fifteen (15) Business Days after written notice via certified mail thereof to the Defaulting Party;
- 6.1.3 the Defaulting Party consolidates or amalgamates with, merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all of the obligations of such Party under this Agreement;
- 6.1.4 the failure to make when due, any payment required pursuant to this Agreement if such failure is not remedied within fifteen (15) Business Days after written notice via certified mail of such failure is given by the other Party; or
- 6.1.5 the Defaulting Party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is unable to pay its debts as they fall due.
- 6.2 Remedies upon an Event of Default. Upon the occurrence (and continuation beyond the applicable cure period) of an Event of Default with respect to a Defaulting Party, the Non-Defaulting Party shall have the right to terminate this Agreement and exercise all rights and remedies available to it in law or in equity.
- 6.3 Other Termination Events. Termination may occur upon thirty 30 days written notice by either Party upon issuance of an order by a court or regulatory body of competent jurisdiction that substantially prevents either party from performing obligations pursuant to this agreement. In the event that terminating event of this kind occurs, the Parties agree to negotiate in good faith to return both Parties to an economic outcome equivalent to the one created by this agreement.

#### ARTICLE VII LIMITATIONS; DUTY TO MITIGATE

- 7.1 Limitation of Remedies, Liability and Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR

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MEASURE OF DAMAGES IS PROVIDED, 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 PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, 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. UNLESS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS 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, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

- 7.2 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 any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

#### ARTICLE VIII GOVERNING LAW - DISPUTE RESOLUTION

- 8.1 Governing Law and Jurisdiction. 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 AND SHALL BE BROUGHT IN THE STATE AND FEDERAL COURTS LOCATED IN HAMILTON COUNTY OHIO.
- 8.2 Dispute Resolution. Any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, shall be resolved fully and finally by binding arbitration under the Commercial Rules, but not the administration, of the American Arbitration Association, except to the extent that the Commercial Rules conflict with this provision, in which event, this Agreement shall control. This arbitration provision shall not limit the right of either Party prior to or during any such dispute to seek, use, and employ ancillary, or preliminary or permanent rights and/or remedies, judicial or otherwise, for the purposes

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maintaining the status quo until such time as the arbitration award is rendered or the dispute is otherwise resolved. The arbitration shall be conducted in Cincinnati, Ohio and the laws of Ohio shall govern the construction and interpretation of this Agreement, except to provisions related to conflict of laws. Within ten (10) Business Days of service of a Demand for Arbitration, the parties may agree upon a sole arbitrator, or if a sole arbitrator cannot be agreed upon, a panel of three arbitrators shall be named. One arbitrator shall be selected by CRS and one shall be selected by Buyer. A knowledgeable, disinterested and impartial arbitrator shall be selected by the two arbitrators so appointed by the parties. If the arbitrators appointed by the parties cannot agree upon the third arbitrator within ten (10) Business Days, then either Party may apply to any judge in any court of competent jurisdiction for appointment of the third arbitrator. There shall be no discovery during the arbitration other than the exchange of information that is provided to the arbitrator(s) by the Parties. The arbitrator(s) shall have the authority only to award equitable relief and compensatory damages, and shall not have the authority to award punitive damages or other non-compensatory damages. The decision of the arbitrator(s) shall be rendered within sixty (60) Business Days after the date of the selection of the arbitrator(s) or within such period as the Parties may otherwise agree. Each Party shall be responsible for the fees, expenses and costs incurred by the arbitrator appointed by each Party, and the fees, expenses and costs of the third arbitrator (or single arbitrator) shall be borne equally by the Parties. The decision of the arbitrator(s) shall be final and binding and may not be appealed. Any Party may apply to any court having jurisdiction to enforce the decision of the arbitrator(s) and to obtain a judgment thereon.

Notwithstanding the foregoing, the Parties may cancel or terminate this Agreement in accordance with its terms and conditions without being required to follow the procedures set forth in this Article.

#### ARTICLE IX MISCELLANEOUS

- 9.1 Representations and Warranties. On the Effective Date and on the date of entering into this Agreement, each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction; (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement; (c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision applicable to it; (d) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (e) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligation under this Agreement or any other document relating to

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this Agreement; (f) no Event of Default or event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement or any Transaction; and (g) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether such Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement.

- 9.2 Assignment. This Agreement shall be assignable by CRS without the Counterparty's consent provided such assignment is to any other direct or indirect subsidiary of Cinergy Corp. provided that such direct or indirect subsidiary has an equivalent or higher credit rating than CRS. Any other assignment by either Party of this Agreement or any rights or obligation hereunder shall be made only with the written consent of the other Party, which consent shall not be unreasonably withheld.
- 9.3 Notices. All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form provided there is some form of confirmation that the receiving party actually received the notice. Notice by regular mail shall be deemed to have been received three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight or courier shall be deemed to have been received two (2) Business Days after it has been sent. A Party may change its addresses by providing notice of the same in accordance with this Section 9.3.

**To CRS:**

James B. Gainer  
139 East Fourth Street  
Cincinnati, OH 45202

Phone - 513-287-2633  
Fax - 513-287-1902

**To Counterparty:**

Tom Kinman  
Phone - 513-636-4832

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- 9.4 General. This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless set forth in writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights contained herein shall survive the termination or expiration of this Agreement for three (3) years.
- 9.5 Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement to a 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 in connection with any court or regulatory proceeding applicable to such Party; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.
- 9.6 Counterparts. This Agreement may be separately executed in counterparts each of which when so executed shall be deemed to constitute one and the same Agreement.
- 9.7 This Agreement supersedes and replaces in its entirety the agreement between CRS and Counterparty dated October 28, 2004 and as well as any other settlement agreements between Counterparty and Cinergy Corp. or any other Cinergy entity related to PUCO Case No. 99-1658-EL-ETP. By signing this Agreement, Counterparty, CRS and Cinergy Corp. (on behalf of all Cinergy entities) agree to this provision.

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The Parties have caused this Agreement to be executed by their duly authorized representatives in multiple counterparts as of the Effective Date.

CINERGY RETAIL SALES, LLC

COUNTERPARTY

By: [Signature]  
Title: VP & General Counsel  
Commercial Business Unit  
Date: 1/25/05

By: [Signature]  
Title: VICE PRESIDENT, FACILITIES MGMT  
Date: 1/7/05

As to clause 9.7:

CINERGY CORP.  
By: [Signature]  
Title: VP & Gen. Counsel  
Date: Jan 25, 2005

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**Exhibit A:**  
**Customer Group: Children's Hospital Medical Center**  
**Quarterly Option Payment Calculation**

The CRS option payment will be equivalent to the actual amount paid to The Cincinnati Gas & Electric Company for the following billing charges under its market-based standard service offer approved by the Commission in Case No. 03-93-EL-ATA:

- One (1) Mill per kWh of generation
- Annually Adjusted Component of POLR Charge (AAC)
- Fuel and Purchase Power (FPP) - excluding Emission Allowance Expense
- Infrastructure Maintenance Fund (IMF) Charge in excess of 4% of "little g"
- Electric Choice Insufficient Return Notice Fee charged to customers, who have given notice of their return to CG&E standard tariff service on or before 12/30/2004 and are actively taking CG&E service no later than 01/31/2005.

A customer not paying the market-based standard service offer approved by the Commission in Case No. 03-93-EL-ATA to The Cincinnati Gas & Electric Company, who avoids the System Reliability Tracker (SRT), will have their option payments adjusted for the value of the SRT that CG&E would have received had the customer been a standard tariff customer beginning January 1, 2005. The adjustment will be calculated by taking the total value of the SRT that CG&E would have received in 2005 and deducting it equally from the first four option payments to be received by the customer.

**Customer Group: Children's Hospital Medical Center**  
**(RTP Agreement)**  
**Quarterly Option Payment Calculation**

The CRS option payment will be equivalent to the following calculation:

Actual Amount paid to The Cincinnati Gas & Electric Company under its market-based standard service offer approved by the Commission in Case No. 03-93-EL-ATA and the terms and conditions under of their RTP Service Agreements for Supply of Electric Energy dated November 16, 2000 and the applicable CG&E tariff rates then in effect.

*Less the sum of following:*

The calculated rate under the RTP Service Agreement between Children's Hospital Medical Center and The Cincinnati Gas & Electric Company dated August 9, 1999 and the applicable CG&E tariff rates then in effect.

*Plus*

Rate Stabilization Charge (RSC) paid to CG&E

*Plus*

Annually Adjusted Component of POLR Charge (AAC) paid to CG&E

*Plus*

Fuel and Purchase Power (FPP) paid to CG&E - excluding Emission Allowance Expense

*Plus*

Infrastructure Maintenance Fund (IMF) Charge paid to CG&E in excess of 4% of "little g"

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**EXHIBIT B:**

**Customer Group: Children's Hospital Medical Center  
CRS Generation and Transmission Rates for former Rate DP Standard  
Service Customers**

**Net Monthly Bill**

Computed in accordance with the following charges. (Kilowatt of demand is abbreviated as kW and kilowatt-hours are abbreviated as kWh):

**Generation Charges**

**(a) Demand Charge**

First 1,000 kilowatts ..... \$6.9150 per kW  
Additional kilowatts ..... \$5.4450 per kW

**(b) Energy Charge**

Billing Demand times 300 ..... \$0.021048 per kWh  
Additional kilowatt-hours ..... \$0.016682 per kWh

**Emission Allowance Charges**

Customer will pay monthly an amount equivalent to the emission allowance expense component of the PUCO approved CG&E fuel charge.

**Transmission Charges**

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer.

**Rate Stabilization Charge**

Energy Retail Sales will reimburse the customer for any Rate Stabilization Charge (RSC) actually paid by the customer.

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**EXHIBIT B:**

**Customer Group: Children's Hospital Medical Center  
CRS Generation and Transmission Rates for former Rate DM Standard  
Service Customers**

**Net Monthly Bill**

Computed in accordance with the following charges. (Glossart of demand is abbreviated as kW and kilowatt-hours are abbreviated as kWh):

**Generation Charges**

**(a) Summer**

First 2,800 kilowatt-hours ..... \$0.057562 per kWh  
Next 3,200 kilowatt-hours ..... \$0.013952 per kWh  
Additional kilowatt-hours ..... \$0.005520 per kWh

**(b) Winter**

First 2,800 kilowatt-hours ..... \$0.045480 per kWh  
Next 3,200 kilowatt-hours ..... \$0.013969 per kWh  
Additional kilowatt-hours ..... \$0.005191 per kWh

**Emission Allowance Charges**

Customer will pay monthly an amount equivalent to the emission allowance expense component of the FUCO approved CG&E fuel clause.

**Transmission Charges**

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer.

**Rate Stabilization Charge**

Energy Retail Sales will reimburse the customer for any Rate Stabilization Charge (RSC) actually paid by the customer.

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**EXHIBIT B:**

**Customer Group: Children's Hospital Medical Center  
CRS Generation Rates for Former Rate DS Standard Service Customers**

**Net Monthly Bill**

Computed in accordance with the following charges. (Kilowatt) of demand is abbreviated as kW and kilowatt-hours are abbreviated as kWh):

**Generation Charges**

**(a) Demand Charge**

First 1,000 kilowatts ..... \$1.6574 per kW  
Additional kilowatts ..... \$6.0574 per kW

**(b) Energy Charge**

Billing Demand times 300 ..... \$0.018576 per kWh  
Additional kilowatt-hours ..... \$0.015266 per kWh

**Emission Allowance Charges**

Customer will pay monthly an amount equivalent to the emission allowance expense component of the PUCO approved CG&E fuel clause.

**Transmission Charges**

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer.

**Rate Stabilization Charge**

Cinergy Retail Sales will reimburse the customer for any Rate Stabilization Charge (RSC) actually paid by the customer.

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# **EXHIBIT B:**

## **Customer Group: Children's Hospital Medical Center CRS Generation Rates for Former Rate DP Real Time Pricing Customers (Consistent with RTP Rider in effect prior to the Transition Case)**

### **Net Monthly Bill**

Computed in accordance with the following charges. (Kilowatt of demand is abbreviated as kW and kilowatt-hours are abbreviated as kWh):

Real Time Pricing Program Charge ..... \$150.00

### **Generation Charges**

#### **(c) Demand Charge**

First 1,000 kilowatts ..... \$10.7350 per kW  
Additional kilowatts ..... \$9.3350 per kW

#### **(b) Energy Charge**

Billing Demand times 300 ..... \$0.01905 per kWh  
Additional kilowatt-hours ..... \$0.00720 per kWh

Real Time Pricing Incremental Cost ..... Calculated Monthly

Universal Service Fund Charge ..... \$0.000244 per kWh

Energy Fuel Component Charge ..... \$0.012785 per kWh

### **Emission Allowance Charges**

Customer will pay monthly an amount equivalent to the emission allowance expense component of the PUCO approved CG&E fuel clause.

### **Transmission Charges**

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer.

### **Rate Stabilization Charge**

City of Retail Sales will reimburse the customer for any Rate Stabilization Charge (RSC) actually paid by the customer.

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**Exhibit C:**  
**Customer Group: Children's Hospital Medical Center**  
**Customer Account List**

This agreement pertains to the following Children's Hospital Medical Center accounts:

[REDACTED]

**Customer Group: Children's Hospital Medical Center**  
**Customer Account List (RTP Account)**

This agreement pertains to the following Children's Hospital Medical Center account:

[REDACTED]

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OPTION AGREEMENT

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BY AND BETWEEN

CINERGY RETAIL SALES, LLC

AND

DRAKE CENTER

This Option Agreement (the "Agreement") is entered into as of this 28<sup>th</sup> day of December 2004 (the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware limited liability company, and Drake Center ("Counterparty"), an OHIO corporation (each individually a "Party" or collectively the "Parties").

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WHEREAS, Drake Center is a member of the Ohio Hospitals Association and is located within the retail delivery service territory of The Cincinnati Gas & Electric Company ("CG&E").

WHEREAS, CRS has been certified by the Public Utilities Commission of Ohio as a Certified Retail Electric Supplier ("CRES") and has the authority to engage in the sale of electrical power at retail;

WHEREAS, CRS and Counterparty desire to establish terms and condition for this option.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the Parties agree as follows:

ARTICLE I  
DEFINITIONS

The following definitions and any terms defined in this Agreement shall apply hereunder.

"Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of ten (10) percent or more.

"Business Day" means a day on which Federal Reserve member banks in Ohio are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. eastern prevailing time, unless otherwise agreed to by the Parties in writing.

"Counterparty's Maximum Demand" means Counterparty's combined maximum demand for all

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Cinergy Corporate Records

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of Counterparty's accounts as of January 1, 2005.

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"Capacity" has the meaning set forth in any Transmission Provider's tariff or MISO's transmission tariff, as amended from time to time, or as defined in any transmission tariff of a successor to MISO.

"Contract Price" means the price in \$US as set forth in Exhibit B to be paid by Counterparty to CRS for the purchase of the Energy under this Agreement.

"Defaulting Party" shall have the meaning specified in Section 6.1.

"Energy" means electric energy of the character commonly known as three-phase, sixty hertz electric energy that is delivered at the nominal voltage of the Delivery Point, expressed in megawatt hours (MWh).

"Event of Default" shall have the meaning specified in Section 6.1.

"FERC" means the Federal Energy Regulatory Commission or any successor agency thereto.

"Firm" means, with respect to a Transaction, that the only excuse for the failure to deliver Energy by CRS or the failure to receive Energy by the Counterparty is Force Majeure or the other Party's failure to perform.

"Full Requirements Energy" means, except as provided herein, that Counterparty shall purchase all of its retail Energy requirements for its facility from CRS and that Counterparty shall not resell any of the Energy provided hereunder to any third party.

"Interest Rate" means, for any date the lesser of (a) two (2) percent over the per annum rate of interest equal to the prime lending rate ("Prime Rate") as may be published from time to time in the Federal Reserve Statistical Release H. 15; or (b) the maximum lawful interest rate.

"MW" means megawatt.

"Term" shall have the meaning specified in Article 4.1.

"Transmission Providers" means the entity or entities transmitting or transporting the Energy on behalf of CRS or Counterparty to the Delivery Point.

## ARTICLE II OPTION

- 2.1 Counterparty currently receives its electric service from The Cincinnati Gas & Electric Company ("CG&E") pursuant to the applicable tariffs rates or will provide notice that it

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will take electric service from CG&E in accordance with applicable CG&E tariff requirements. Counterparty hereby grants to CRS the exclusive option, upon thirty (30) days notice, to serve all of Counterparty's accounts and load set forth in Exhibit C, including any increases in accordance with Section 3.1, as of December 31, 2004 ("Option").

- 2.2 CRS shall have the right to exercise this Option at any time during the Term of this Agreement.
- 2.3 In exchange for Counterparty granting CRS this option, CRS agrees to pay Counterparty each calendar year quarter of the Term, until exercise of the Option, the amount set forth on Exhibit A ("Option Payment").
- 2.4 Because this is an exclusive Option, in the event Counterparty leaves its current electric service and receives electric service from any third party that is not CRS or an Affiliate of CRS, then CRS shall cease all Option Payments and this Agreement shall terminate and all obligations of the Parties hereunder shall terminate.
- 2.5 If CRS exercises its Option, the Parties shall enter into a power sale agreement, including the terms set forth in Article III.

#### ARTICLE III CRS POWER CONTRACT TERMS

- 3.1 In the event CRS exercises its option, the power sale agreement between CRS and Counterparty shall include the following terms:

- a. Energy Quantity and Type. CRS shall provide Counterparty with Firm, Full Requirements Energy and Capacity up to 3 MWs greater than Counterparty's Maximum Demand for all of its accounts as of January 1, 2005 ("Quantity"). If during the Term of this Agreement, Counterparty has additional load or accounts greater than 3MW, then such new load or account is not included within the terms of this Agreement and CRS shall have no obligation to provide Energy and Capacity to Counterparty above the Quantity set forth herein.
- b. Transmission Service and Charges. Transmission service will be provided in accordance with the open access transmission tariff of the Midwest Independent Transmission System Operator, Inc. Charges will be assessed consistent with the otherwise applicable CG&E retail tariff rates and riders as they may be amended, from time to time, or any successor tariff.
- c. Contract Price. The Contract Price is set forth in Exhibits A and B.
- d. Change to Prices. As a retail sale, the power sale agreement is not subject to

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the jurisdiction of the FERC; nor shall either Party seek to have the FERC assert jurisdiction over the Agreement. However, to the extent that either the FERC or the Public Utilities Commission of Ohio asserts jurisdiction over the Agreement, the Parties agree that the Contract Price specified above is just and reasonable and consistent with the public interest. Neither CRS nor Counterparty shall seek to modify the Contract Price through the auspices of any regulatory body.

- c. Term. The term of the power sale agreement shall be through December 31, 2008.

#### ARTICLE IV TERM OF AGREEMENT

- 4.1 Agreement Term and Effective Date. This Agreement shall become effective upon execution by the Parties. This Agreement shall extend from January 1, 2005 through and including December 31, 2008, unless terminated earlier in accordance with the terms of this Agreement ("Term").
- 4.2 After Termination. The applicable provisions of this Agreement shall continue in effect after termination thereof to the extent necessary to provide for final billing, billing adjustments and payments.

#### ARTICLE V BILLING

- 5.1 Payment. CRS shall submit the Option Payment to Counterparty within thirty (30) days after the end of each calendar year quarter. The payment shall be submitted to the following account or address:

[insert account information]

DRAKE CENTER, INC  
151 WEST GALBRAITH RD  
CINCINNATI OHIO 45216

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[Signature]

#### ARTICLE VI DEFAULTS AND REMEDIES

- 6.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:
- 6.1.1 any representation or warranty made by the Defaulting Party herein shall at any time prove to be false or misleading in any respect material to this Agreement;

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- 6.1.2 the failure of the Defaulting Party to perform any covenant set forth in this Agreement (except to the extent constituting a separate Event of Default) and such failure is not cured within fifteen (15) Business Days after written notice via certified mail thereof to the Defaulting Party;
- 6.1.3 the Defaulting Party consolidates or amalgamates with, merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all of the obligations of such Party under this Agreement;
- 6.1.4 the failure to make when due, any payment required pursuant to this Agreement if such failure is not remedied within fifteen (15) Business Days after written notice via certified mail of such failure is given by the other Party, or
- 6.1.5 the Defaulting Party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is unable to pay its debts as they fall due.
- 6.2 Remedies upon an Event of Default. Upon the occurrence (and continuation beyond the applicable cure period) of an Event of Default with respect to a Defaulting Party, the Non-Defaulting Party shall have the right to terminate this Agreement and exercise all rights and remedies available to it in law or in equity.
- 6.3 Other Termination Events. Termination may occur upon thirty (30) days written notice by either Party upon issuance of an order by a court or regulatory body of competent jurisdiction that substantially prevents either party from performing obligations pursuant to this agreement. In the event that terminating event of this kind occurs, the Parties agree to negotiate in good faith to return both Parties to an economic outcome equivalent to the one created by this agreement.

ARTICLE VII  
LIMITATIONS; DUTY TO MITIGATE

- 7.1 Limitation of Remedies, Liability and Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR

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MEASURE OF DAMAGES IS PROVIDED, 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 PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, 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. UNLESS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS 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, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

- 7.2 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 any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

#### ARTICLE VIII GOVERNING LAW - DISPUTE RESOLUTION

- 8.1 Governing Law and Jurisdiction. 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 AND SHALL BE BROUGHT IN THE STATE AND FEDERAL COURTS LOCATED IN HAMILTON COUNTY OHIO.
- 8.2 Dispute Resolution. Any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, shall be resolved fully and finally by binding arbitration under the Commercial Rules, but not the administration, of the American Arbitration Association, except to the extent that the Commercial Rules conflict with this provision, in which event, this Agreement shall control. This arbitration provision shall not limit the right of either Party prior to or during any such dispute to seek, use, and employ ancillary, or preliminary or permanent rights and/or remedies, judicial or otherwise, for the purposes

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maintaining the status quo until such time as the arbitration award is rendered of the dispute is otherwise resolved. The arbitration shall be conducted in Cincinnati, Ohio and the laws of Ohio shall govern the construction and interpretation of this Agreement, except to provisions related to conflict of laws. Within ten (10) Business Days of service of a Demand for Arbitration, the parties may agree upon a sole arbitrator, or if a sole arbitrator cannot be agreed upon, a panel of three arbitrators shall be named. One arbitrator shall be selected by CRS and one shall be selected by Buyer. A knowledgeable, disinterested and impartial arbitrator shall be selected by the two arbitrators so appointed by the parties. If the arbitrators appointed by the parties cannot agree upon the third arbitrator within ten (10) Business Days, then either Party may apply to any judge in any court of competent jurisdiction for appointment of the third arbitrator. There shall be no discovery during the arbitration other than the exchange of information that is provided to the arbitrator(s) by the Parties. The arbitrator(s) shall have the authority only to award equitable relief and compensatory damages, and shall not have the authority to award punitive damages or other non-compensatory damages. The decision of the arbitrator(s) shall be rendered within sixty (60) Business Days after the date of the selection of the arbitrator(s) or within such period as the Parties may otherwise agree. Each Party shall be responsible for the fees, expenses and costs incurred by the arbitrator appointed by each Party, and the fees, expenses and costs of the third arbitrator (or single arbitrator) shall be borne equally by the Parties. The decision of the arbitrator(s) shall be final and binding and may not be appealed. Any Party may apply to any court having jurisdiction to enforce the decision of the arbitrator(s) and to obtain a judgment thereon.

Notwithstanding the foregoing, the Parties may cancel or terminate this Agreement in accordance with its terms and conditions without being required to follow the procedures set forth in this Article.

#### ARTICLE IX MISCELLANEOUS

- 9.1 Representations and Warranties. On the Effective Date and on the date of entering into this Agreement, each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction; (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement; (c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision applicable to it; (d) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (e) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligation under this Agreement or any other document relating to

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this Agreement; (f) no Event of Default or event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement or any Transaction; and (g) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether such Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement.

- 9.2 Assignment. This Agreement shall be assignable by CRS without the Counterparty's consent provided such assignment is to any other direct or indirect subsidiary of Cinergy Corp. provided that such direct or indirect subsidiary has an equivalent or higher credit rating than CRS. Any other assignment by either Party of this Agreement or any rights or obligation hereunder shall be made only with the written consent of the other Party, which consent shall not be unreasonably withheld.
- 9.3 Notices. All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form provided there is some form of confirmation that the receiving party actually received the notice. Notice by regular mail shall be deemed to have been received three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight or courier shall be deemed to have been received two (2) Business Days after it has been sent. A Party may change its addresses by providing notice of the same in accordance with this Section 9.3.

**To CRS:**

James B. Gainer  
139 East Fourth Street  
Cincinnati, OH 45202

Phone - 513-287-2633  
Fax - 513-287-1902

**To Counterparty:**

Joe Froelicher  
Or  
Mark Poland  
Phone - 513-948-2503

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- 9.4 General. This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless set forth in writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights contained herein shall survive the termination or expiration of this Agreement for three (3) years.
- 9.5 Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement to a 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 in connection with any court or regulatory proceeding applicable to such Party; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.
- 9.6 Counterparts. This Agreement may be separately executed in counterparts each of which when so executed shall be deemed to constitute one and the same Agreement.
- 9.7 This Agreement supersedes and replaces in its entirety the agreement between CRS and Counterparty dated October 28, 2004 and as well as any other settlement agreements between Counterparty and Cinergy Corp. or any other Cinergy entity related to PUCO Case No. 99-1658-EL-ETP. By signing this Agreement, Counterparty, CRS and Cinergy Corp. (on behalf of all Cinergy entities) agree to this provision.

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The Parties have caused this Agreement to be executed by their duly authorized representatives in multiple counterparts as of the Effective Date.

CINERGY RETAIL SALES, LLC

COUNTERPARTY

By: [Signature]  
Title: VP & Gen Counsel CSR  
Date: 1/31/05

By: [Signature]  
Title: CFO  
Date: 12/28/04

As to clause 9.7:

CINERGY CORP.  
By: [Signature]  
Title: VP & Gen Counsel CSR  
Date: Jan. 31, 2005

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**Exhibit A:**  
**Customer Group: Drake Center**  
**Quarterly Option Payment Calculation**

The CRS option payment will be equivalent to the actual amount paid to The Cincinnati Gas & Electric Company for the following billing charges under its market-based standard service offer approved by the Commission in Case No. 03-93-EL-ATA:

- One (1) Mill per kWh of generation
- Annually Adjusted Component of POLR Charge (AAC)
- Fuel and Purchase Power (FPP) - excluding Emission Allowance Expense
- Infrastructure Maintenance Fund (IMF) Charge in excess of 4% of "little g"
- Electric Choice Insufficient Return Notice Fee charged to customers, who have given notice of their return to CG&E standard tariff service on or before 12/30/2004 and are actively taking CG&E service no later than 01/31/2005.

A customer not paying the market-based standard service offer approved by the Commission in Case No. 03-93-EL-ATA to The Cincinnati Gas & Electric Company, who avoids the System Reliability Tracker (SRT), will have their option payments adjusted for the value of the SRT that CG&E would have received had the customer been a standard tariff customer beginning January 1, 2005. The adjustment will be calculated by taking the total value of the SRT that CG&E would have received in 2005 and deducting it equally from the first four option payments to be received by the customer.

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**EXHIBIT B:**

**Customer Group: Drake Center**

**CRS Generation and Transmission Rates for former Rate DP Standard Service Customers**

**Net Monthly Bill**

Computed in accordance with the following charges. (Kilowatt of demand is abbreviated as kW and kilowatt-hours are abbreviated as kWh):

**Generation Charges**

**(a) Demand Charge**

First 1,000 kilowatts ..... \$7.6574 per kW  
Additional kilowatts ..... \$6.0574 per kW

**(b) Energy Charge**

Billing Demand times 300 ..... \$8.019576 per kWh  
Additional kilowatt-hours ..... \$8.016266 per kWh

**Emission Allowance Charges**

Customer will pay monthly an amount equivalent to the emission allowance expense component of the PUCO approved CG&E fuel clause

**Transmission Charges**

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer.

**Rate Stabilization Charge**

Energy Retail Sales will reimburse the customer for any Rate Stabilization Charge (RSC) actually paid by the customer.

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**Exhibit C:**  
**Customer Group: Drake Center**  
**Customer Account List**

This agreement pertains to the following Drake Center accounts:

[REDACTED]

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OPTION AGREEMENT

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BY AND BETWEEN

CINERGY RETAIL SALES, LLC

AND

MERCY FRANCISCAN HOSPITAL MOUNT AIRY

This Option Agreement (the "Agreement") is entered into as of this 27 day of December 2004 (the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware limited liability company, and Mercy Franciscan Hospital Mount Airy ("Counterparty"), a corporation (each individually a "Party" or collectively the "Parties").

RECITALS

WHEREAS, Mercy Franciscan Hospital Mount Airy is a member of the Ohio Hospitals Association and is located within the retail delivery service territory of The Cincinnati Gas & Electric Company ("CG&E").

WHEREAS, CRS has been certified by the Public Utilities Commission of Ohio as a Certified Retail Electric Supplier ("CRES") and has the authority to engage in the sale of electrical power at retail;

WHEREAS, CRS and Counterparty desire to establish terms and condition for this option.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the Parties agree as follows:

ARTICLE I  
DEFINITIONS

The following definitions and any terms defined in this Agreement shall apply hereunder.

"Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of ten (10) percent or more.

"Business Day" means a day on which Federal Reserve member banks in Ohio are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. eastern prevailing time, unless otherwise agreed to by the Parties in writing.

"Counterparty's Maximum Demand" means Counterparty's combined maximum demand for all

Cinergy Corporate Records

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Document Code

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of Counterparty's accounts as of January 1, 2005.

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"Capacity" has the meaning set forth in any Transmission Provider's tariff or MISO's transmission tariff, as amended from time to time, or as defined in any transmission tariff of a successor to MISO.

"Contract Price" means the price in \$US as set forth in Exhibit B to be paid by Counterparty to CRS for the purchase of the Energy under this Agreement.

"Defaulting Party" shall have the meaning specified in Section 6.1.

"Energy" means electric energy of the character commonly known as three-phase, sixty hertz electric energy that is delivered at the nominal voltage of the Delivery Point, expressed in megawatt hours (MWh).

"Event of Default" shall have the meaning specified in Section 6.1.

"FERC" means the Federal Energy Regulatory Commission or any successor agency thereto.

"Firm" means, with respect to a Transaction, that the only excuse for the failure to deliver Energy by CRS or the failure to receive Energy by the Counterparty is Force Majeure or the other Party's failure to perform.

"Full Requirements Energy" means, except as provided herein, that Counterparty shall purchase all of its retail Energy requirements for its facility from CRS and that Counterparty shall not resell any of the Energy provided hereunder to any third party.

"Interest Rate" means, for any date the lesser of (a) two (2) percent over the per annum rate of interest equal to the prime lending rate ("Prime Rate") as may be published from time to time in the Federal Reserve Statistical Release H. 15; or (b) the maximum lawful interest rate.

"MW" means megawatt.

"Term" shall have the meaning specified in Article 4.1.

"Transmission Providers" means the entity or entities transmitting or transporting the Energy on behalf of CRS or Counterparty to the Delivery Point.

## ARTICLE II OPTION

- 2.1 Counterparty currently receives its electric service from The Cincinnati Gas & Electric Company ("CG&E") pursuant to the applicable tariffs rates or will provide notice that it

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will take electric service from CG&E in accordance with applicable CG&E tariff requirements. Counterparty hereby grants to CRS the exclusive option, upon thirty (30) days notice, to serve all of Counterparty's accounts and load set forth in Exhibit C, including any increases in accordance with Section 3.1, as of December 31, 2004 ("Option").

- 2.2 CRS shall have the right to exercise this Option at any time during the Term of this Agreement.
- 2.3 In exchange for Counterparty granting CRS this option, CRS agrees to pay Counterparty each calendar year quarter of the Term, until exercise of the Option, the amount set forth on Exhibit A ("Option Payment").
- 2.4 Because this is an exclusive Option, in the event Counterparty leaves its current electric service and receives electric service from any third party that is not CRS or an Affiliate of CRS, then CRS shall cease all Option Payments and this Agreement shall terminate and all obligations of the Parties hereunder shall terminate.
- 2.5 If CRS exercises its Option, the Parties shall enter into a power sale agreement, including the terms set forth in Article III.

### ARTICLE III CRS POWER CONTRACT TERMS

- 3.1 In the event CRS exercises its option, the power sale agreement between CRS and Counterparty shall include the following terms:
  - a. Energy Quantity and Type. CRS shall provide Counterparty with Firm, Full Requirements Energy and Capacity up to 3 MWs greater than Counterparty's Maximum Demand for all of its accounts as of January 1, 2005 ("Quantity"). If during the Term of this Agreement, Counterparty has additional load or accounts greater than 3MW, then such new load or account is not included within the terms of this Agreement and CRS shall have no obligation to provide Energy and Capacity to Counterparty above the Quantity set forth herein.
  - b. Transmission Service and Charges. Transmission service will be provided in accordance with the open access transmission tariff of the Midwest Independent Transmission System Operator, Inc. Charges will be assessed consistent with the otherwise applicable CG&E retail tariff rates and riders as they may be amended, from time to time, or any successor tariff.
  - c. Contract Price. The Contract Price is set forth in Exhibits A and B.
  - d. Change to Prices. As a retail sale, the power sale agreement is not subject to

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the jurisdiction of the FERC; nor shall either Party seek to have the FERC assert jurisdiction over the Agreement. However, to the extent that either the FERC or the Public Utilities Commission of Ohio asserts jurisdiction over the Agreement, the Parties agree that the Contract Price specified above is just and reasonable and consistent with the public interest. Neither CRS nor Counterparty shall seek to modify the Contract Price through the auspices of any regulatory body.

- c. Term. The term of the power sale agreement shall be through December 31, 2008.

#### ARTICLE IV TERM OF AGREEMENT

- 4.1 Agreement Term and Effective Date. This Agreement shall become effective upon execution by the Parties. This Agreement shall extend from January 1, 2005 through and including December 31, 2008, unless terminated earlier in accordance with the terms of this Agreement ("Term").
- 4.2 After Termination. The applicable provisions of this Agreement shall continue in effect after termination thereof to the extent necessary to provide for final billing, billing adjustments and payments.

#### ARTICLE V BILLING

- 5.1 Payment. CRS shall submit the Option Payment to Counterparty within thirty (30) days after the end of each calendar year quarter. The payment shall be submitted to the following account or address:

(insert account information)

DAVE HAMPTON  
DIRECTOR FACILITIES  
MERCY MT. AIRY  
2446 KIPPLING  
CINCINNATI, OHIO

#### ARTICLE VI DEFAULTS AND REMEDIES

- 6.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:
- 6.1.1 any representation or warranty made by the Defaulting Party herein shall at any time prove to be false or misleading in any respect material to this Agreement;

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- 6.1.2 the failure of the Defaulting Party to perform any covenant set forth in this Agreement (except to the extent constituting a separate Event of Default) and such failure is not cured within fifteen (15) Business Days after written notice via certified mail thereof to the Defaulting Party;
- 6.1.3 the Defaulting Party consolidates or amalgamates with, merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all of the obligations of such Party under this Agreement;
- 6.1.4 the failure to make when due, any payment required pursuant to this Agreement if such failure is not remedied within fifteen (15) Business Days after written notice via certified mail of such failure is given by the other Party; or
- 6.1.5 the Defaulting Party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is unable to pay its debts as they fall due.
- 6.2 Remedies upon an Event of Default. Upon the occurrence (and continuation beyond the applicable cure period) of an Event of Default with respect to a Defaulting Party, the Non-Defaulting Party shall have the right to terminate this Agreement and exercise all rights and remedies available to it in law or in equity.
- 6.3 Other Termination Events. Termination may occur upon thirty (30) days written notice by either Party upon issuance of an order by a court or regulatory body of competent jurisdiction that substantially prevents either party from performing obligations pursuant to this agreement. In the event that terminating event of this kind occurs, the Parties agree to negotiate in good faith to return both Parties to an economic outcome equivalent to the one created by this agreement.

ARTICLE VII  
LIMITATIONS; DUTY TO MITIGATE

- 7.1 Limitation of Remedies, Liability and Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR

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MEASURE OF DAMAGES IS PROVIDED, 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 PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, 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, UNLESS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREBUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

- 7.2 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 any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

#### ARTICLE VIII GOVERNING LAW - DISPUTE RESOLUTION

- 8.1 Governing Law and Jurisdiction. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREBUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OHIO AND SHALL BE BROUGHT IN THE STATE AND FEDERAL COURTS LOCATED IN HAMILTON COUNTY OHIO.
- 8.2 Dispute Resolution. Any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, shall be resolved fully and finally by binding arbitration under the Commercial Rules, but not the administration, of the American Arbitration Association, except to the extent that the Commercial Rules conflict with this provision, in which event, this Agreement shall control. This arbitration provision shall not limit the right of either Party prior to or during any such dispute to seek, use, and employ ancillary, or preliminary or permanent rights and/or remedies, judicial or otherwise, for the purposes

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maintaining the status quo until such time as the arbitration award is rendered of the dispute is otherwise resolved. The arbitration shall be conducted in Cincinnati, Ohio and the laws of Ohio shall govern the construction and interpretation of this Agreement, except to provisions related to conflict of laws. Within ten (10) Business Days of service of a Demand for Arbitration, the parties may agree upon a sole arbitrator, or if a sole arbitrator cannot be agreed upon, a panel of three arbitrators shall be named. One arbitrator shall be selected by CRS and one shall be selected by Buyer. A knowledgeable, disinterested and impartial arbitrator shall be selected by the two arbitrators so appointed by the parties. If the arbitrators appointed by the parties cannot agree upon the third arbitrator within ten (10) Business Days, then either Party may apply to any judge in any court of competent jurisdiction for appointment of the third arbitrator. There shall be no discovery during the arbitration other than the exchange of information that is provided to the arbitrator(s) by the Parties. The arbitrator(s) shall have the authority only to award equitable relief and compensatory damages, and shall not have the authority to award punitive damages or other non-compensatory damages. The decision of the arbitrator(s) shall be rendered within sixty (60) Business Days after the date of the selection of the arbitrator(s) or within such period as the Parties may otherwise agree. Each Party shall be responsible for the fees, expenses and costs incurred by the arbitrator appointed by each Party, and the fees, expenses and costs of the third arbitrator (or single arbitrator) shall be borne equally by the Parties. The decision of the arbitrator(s) shall be final and binding and may not be appealed. Any Party may apply to any court having jurisdiction to enforce the decision of the arbitrator(s) and to obtain a judgment thereon.

Notwithstanding the foregoing, the Parties may cancel or terminate this Agreement in accordance with its terms and conditions without being required to follow the procedures set forth in this Article.

#### ARTICLE IX MISCELLANEOUS

- 9.1 Representations and Warranties. On the Effective Date and on the date of entering into this Agreement, each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction; (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement; (c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision applicable to it; (d) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (e) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligation under this Agreement or any other document relating to

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this Agreement; (f) no Event of Default or event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement or any Transaction; and (g) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether such Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement.

9.2 Assignment. This Agreement shall be assignable by CRS without the Counterparty's consent provided such assignment is to any other direct or indirect subsidiary of Cinergy Corp. provided that such direct or indirect subsidiary has an equivalent or higher credit rating than CRS. Any other assignment by either Party of this Agreement or any rights or obligation hereunder shall be made only with the written consent of the other Party, which consent shall not be unreasonably withheld.

9.3 Notices. All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form provided there is some form of confirmation that the receiving party actually received the notice. Notice by regular mail shall be deemed to have been received three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight or courier shall be deemed to have been received two (2) Business Days after it has been sent. A Party may change its addresses by providing notice of the same in accordance with this Section 9.3.

**To CRS:**

James B. Gainer  
139 East Fourth Street  
Cincinnati, OH 45202  
Phone - 513-287-2633  
Fax - 513-287-1902

**To Counterparty:**

Dick Wiese  
Director Facilities Management  
Mercy Hospital Clermont  
3000 Hospital Drive  
Batavia, OH 45103-1998  
Phone - 513-732-8568

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- 9.4 General. This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless set forth in writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights contained herein shall survive the termination or expiration of this Agreement for three (3) years.
- 9.5 Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement to a 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 in connection with any court or regulatory proceeding applicable to such Party; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.
- 9.6 Counterparts. This Agreement may be separately executed in counterparts each of which when so executed shall be deemed to constitute one and the same Agreement.
- 9.7 This Agreement supersedes and replaces in its entirety the agreement between CRS and Counterparty dated October 28, 2004 and as well as any other settlement agreements between Counterparty and Cinergy Corp. or any other Cinergy entity related to PUCO Case No. 99-1658-EL-ETP. By signing this Agreement, Counterparty, CRS and Cinergy Corp. (on behalf of all Cinergy entities) agree to this provision.

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The Parties have caused this Agreement to be executed by their duly authorized representatives in multiple counterparts as of the Effective Date.

CINERGY RETAIL SALES, LLC

COUNTERPARTY

By: 

Title: VP General Counsel  
Commercial Business Unit

Date: 1/28/05

By: 

Title: DIRECTOR, FINANCIAL

Date: 12/29/04

As to clause 9.7:

CINERGY CORP.

By: 

Title: VP & Gen Counsel

Date: Jan 25, 2005

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**Exhibit A:**  
**Customer Group: Mercy Franciscan Hospital Mount Airy**  
**Quarterly Option Payment Calculation**

The C&E option payment will be equivalent to the actual amount paid to The Cincinnati Gas & Electric Company for the following billing charges under its market-based standard service offer approved by the Commission in Case No. 03-93-EL-ATA:

- One (1) Mill per kWh of generation
- Annually Adjusted Component of POLR Charge (AAC)
- Fuel and Purchase Power (FPP) – excluding Emission Allowance Expense
- Infrastructure Maintenance Fund (IMF) Charge in excess of 4% of "little g"
- Electric Choice Insufficient Return Notice Fee charged to customers, who have given notice of their return to C&E standard tariff service on or before 12/30/2004 and are actively taking C&E service no later than 01/31/2005.

A customer not paying the market-based standard service offer approved by the Commission in Case No. 03-93-EL-ATA to The Cincinnati Gas & Electric Company, who avoids the System Reliability Tracker (SRT), will have their option payments adjusted for the value of the SRT that C&E would have received had the customer been a standard tariff customer beginning January 1, 2005. The adjustment will be calculated by taking the total value of the SRT that C&E would have received in 2005 and deducting it equally from the first four option payments to be received by the customer.

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**EXHIBIT B:**

**Customer Group: Mercy Franciscan Hospital Mount Airy  
CRS Generation and Transmission Rates for former Rate DP Standard  
Service Customers**

**Net Monthly Bill**

Computed in accordance with the following charges. (Kilowatt of demand is abbreviated as kW and kilowatt-hours are abbreviated as kWh):

**Generation Charges**

**(a) Demand Charge**

First 1,000 kilowatts ..... \$6.9150 per kW  
Additional kilowatts ..... \$5.4450 per kW

**(b) Energy Charge**

Billing Demand times 300 ..... \$0.021048 per kWh  
Additional kilowatt-hours ..... \$0.016682 per kWh

**Emission Allowance Charges**

Customer will pay monthly an amount equivalent to the emission allowance expense component of the PUCO approved CG&E fuel clause

**Transmission Charges**

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer.

**Rate Stabilization Charge**

Clergy Retail Sales will reimburse the customer for any Rate Stabilization Charge (RSC) actually paid by the customer.

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**Exhibit C:**

**Customer Group: Mercy Franciscan Hospital Mount Airy**

**Customer Account List**

This agreement pertains to the following Mercy Franciscan Hospital Mount Airy accounts:

[REDACTED]

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OPTION AGREEMENT

BY AND BETWEEN

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CINERGY RETAIL SALES, LLC

AND

MERCY HOSPITAL ANDERSON

This Option Agreement (the "Agreement") is entered into as of this 29 day of December 2004 (the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware limited liability company, and Mercy Hospital Anderson ("Counterparty"), a Ohio corporation (each individually a "Party" or collectively the "Parties").

RECITALS

WHEREAS, Mercy Hospital Anderson is a member of the Ohio Hospitals Association and is located within the retail delivery service territory of The Cincinnati Gas & Electric Company ("CG&E").

WHEREAS, CRS has been certified by the Public Utilities Commission of Ohio as a Certified Retail Electric Supplier ("CRES") and has the authority to engage in the sale of electrical power at retail;

WHEREAS, CRS and Counterparty desire to establish terms and condition for this option.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the Parties agree as follows:

ARTICLE I  
DEFINITIONS

The following definitions and any terms defined in this Agreement shall apply hereunder.

"Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of ten (10) percent or more.

"Business Day" means a day on which Federal Reserve member banks in Ohio are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. eastern prevailing time, unless otherwise agreed to by the Parties in writing.

"Counterparty's Maximum Demand" means Counterparty's combined maximum demand for all

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Cinergy Corporate Records

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Document Code

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of Counterparty's accounts as of January 1, 2005.

"Capacity" has the meaning set forth in any Transmission Provider's tariff or MISO's transmission tariff, as amended from time to time, or as defined in any transmission tariff of a successor to MISO.

"Contract Price" means the price in \$US as set forth in Exhibit B to be paid by Counterparty to CRS for the purchase of the Energy under this Agreement.

"Defaulting Party" shall have the meaning specified in Section 6.1.

"Energy" means electric energy of the character commonly known as three-phase, sixty hertz electric energy that is delivered at the nominal voltage of the Delivery Point, expressed in megawatt hours (MWh).

"Event of Default" shall have the meaning specified in Section 6.1.

"FERC" means the Federal Energy Regulatory Commission or any successor agency thereto.

"Firm" means, with respect to a Transaction, that the only excuse for the failure to deliver Energy by CRS or the failure to receive Energy by the Counterparty is Force Majeure or the other Party's failure to perform.

"Full Requirements Energy" means, except as provided herein, that Counterparty shall purchase all of its retail Energy requirements for its facility from CRS and that Counterparty shall not resell any of the Energy provided hereunder to any third party.

"Interest Rate" means, for any date the lesser of (a) two (2) percent over the per annum rate of interest equal to the prime lending rate ("Prime Rate") as may be published from time to time in the Federal Reserve Statistical Release H. 15; or (b) the maximum lawful interest rate.

"MW" means megawatt.

"Term" shall have the meaning specified in Article 4.1.

"Transmission Providers" means the entity or entities transmitting or transporting the Energy on behalf of CRS or Counterparty to the Delivery Point.

## ARTICLE II OPTION

- 2.1 Counterparty currently receives its electric service from The Cincinnati Gas & Electric Company ("CG&E") pursuant to the applicable tariffs rates or will provide notice that it

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will take electric service from CG&E in accordance with applicable CG&E tariff requirements. Counterparty hereby grants to CRS the exclusive option, upon thirty (30) days notice, to serve all of Counterparty's accounts and load set forth in Exhibit C, including any increases in accordance with Section 3.1, as of December 31, 2004 ("Option").

- 2.2 CRS shall have the right to exercise this Option at any time during the Term of this Agreement.
- 2.3 In exchange for Counterparty granting CRS this option, CRS agrees to pay Counterparty each calendar year quarter of the Term, until exercise of the Option, the amount set forth on Exhibit A ("Option Payment").
- 2.4 Because this is an exclusive Option, in the event Counterparty leaves its current electric service and receives electric service from any third party that is not CRS or an Affiliate of CRS, then CRS shall cease all Option Payments and this Agreement shall terminate and all obligations of the Parties hereunder shall terminate.
- 2.5 If CRS exercises its Option, the Parties shall enter into a power sale agreement, including the terms set forth in Article III.

ARTICLE III  
CRS POWER CONTRACT TERMS

- 3.1 In the event CRS exercises its option, the power sale agreement between CRS and Counterparty shall include the following terms:
  - a. Energy Quantity and Type. CRS shall provide Counterparty with Firm, Full Requirements Energy and Capacity up to 3 MWs greater than Counterparty's Maximum Demand for all of its accounts as of January 1, 2005 ("Quantity"). If during the Term of this Agreement, Counterparty has additional load or accounts greater than 3MW, then such new load or account is not included within the terms of this Agreement and CRS shall have no obligation to provide Energy and Capacity to Counterparty above the Quantity set forth herein.
  - b. Transmission Service and Charges. Transmission service will be provided in accordance with the open access transmission tariff of the Midwest Independent Transmission System Operator, Inc. Charges will be assessed consistent with the otherwise applicable CG&E retail tariff rates and riders as they may be amended, from time to time, or any successor tariff.
  - c. Contract Price. The Contract Price is set forth in Exhibits A and B.
  - d. Change to Prices. As a retail sale, the power sale agreement is not subject to

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the jurisdiction of the FERC; nor shall either Party seek to have the FERC assert jurisdiction over this Agreement. However, to the extent that either the FERC or the Public Utilities Commission of Ohio asserts jurisdiction over the Agreement, the Parties agree that the Contract Price specified above is just and reasonable and consistent with the public interest. Neither CRS nor Counterparty shall seek to modify the Contract Price through the auspices of any regulatory body.

- e. Term. The term of the power sale agreement shall be through December 31, 2008.

#### ARTICLE IV TERM OF AGREEMENT

- 4.1 Agreement Term and Effective Date. This Agreement shall become effective upon execution by the Parties. This Agreement shall extend from January 1, 2005 through and including December 31, 2008, unless terminated earlier in accordance with the terms of this Agreement ("Term").
- 4.2 After Termination. The applicable provisions of this Agreement shall continue in effect after termination thereof to the extent necessary to provide for final billing, billing adjustments and payments.

#### ARTICLE V BILLING

- 5.1 Payment. CRS shall submit the Option Payment to Counterparty within thirty (30) days after the end of each calendar year quarter. The payment shall be submitted to the following account or address:

[insert account information]

Bob JOHNSTON  
DIRECTOR FACILITIES  
MERCY HOSPITAL ANDERSON  
7500 STATE RD  
CINCINNATI, OHIO 45255

#### ARTICLE VI DEFAULTS AND REMEDIES

- 6.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:
- 6.1.1 any representation or warranty made by the Defaulting Party herein shall at any time prove to be false or misleading in any respect material to this Agreement;

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- 6.1.2 the failure of the Defaulting Party to perform any covenant set forth in this Agreement (except to the extent constituting a separate Event of Default,) and such failure is not cured within fifteen (15) Business Days after written notice via certified mail thereof to the Defaulting Party;
- 6.1.3 the Defaulting Party consolidates or amalgamates with, merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all of the obligations of such Party under this Agreement;
- 6.1.4 the failure to make when due, any payment required pursuant to this Agreement if such failure is not remedied within fifteen (15) Business Days after written notice via certified mail of such failure is given by the other Party; or
- 6.1.5 the Defaulting Party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes, bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is unable to pay its debts as they fall due.
- 6.2 Remedies upon an Event of Default. Upon the occurrence (and continuation beyond the applicable cure period) of an Event of Default with respect to a Defaulting Party, the Non-Defaulting Party shall have the right to terminate this Agreement and exercise all rights and remedies available to it in law or in equity.
- 6.3 Other Termination Events. Termination may occur upon thirty (30) days written notice by either Party upon issuance of an order by a court or regulatory body of competent jurisdiction that substantially prevents either party from performing obligations pursuant to this agreement. In the event that terminating event of this kind occurs, the Parties agree to negotiate in good faith to return both Parties to an economic outcome equivalent to the one created by this agreement.

#### ARTICLE VII LIMITATIONS; DUTY TO MITIGATE

- 7.1 Limitation of Remedies, Liability and Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF FOR BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR

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MEASURE OF DAMAGES IS PROVIDED, 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 PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, 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. UNLESS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS 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, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

- 7.2 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 any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

#### ARTICLE VIII GOVERNING LAW - DISPUTE RESOLUTION

- 8.1 Governing Law and Jurisdiction. 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 AND SHALL BE BROUGHT IN THE STATE AND FEDERAL COURTS LOCATED IN HAMILTON COUNTY OHIO.
- 8.2 Dispute Resolution. Any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, shall be resolved fully and finally by binding arbitration under the Commercial Rules, but not the administration, of the American Arbitration Association, except to the extent that the Commercial Rules conflict with this provision, in which event, this Agreement shall control. This arbitration provision shall not limit the right of either Party prior to or during any such dispute to seek, use, and employ ancillary, or preliminary or permanent rights and/or remedies, judicial or otherwise, for the purposes

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maintaining the status quo until such time as the arbitration award is rendered of the dispute is otherwise resolved. The arbitration shall be conducted in Cincinnati, Ohio and the laws of Ohio shall govern the construction and interpretation of this Agreement, except to provisions related to conflict of laws. Within ten (10) Business Days of service of a Demand for Arbitration, the parties may agree upon a sole arbitrator, or if a sole arbitrator cannot be agreed upon, a panel of three arbitrators shall be named. One arbitrator shall be selected by CRS and one shall be selected by Buyer. A knowledgeable, disinterested and impartial arbitrator shall be selected by the two arbitrators so appointed by the parties. If the arbitrators appointed by the parties cannot agree upon the third arbitrator within ten (10) Business Days, then either Party may apply to any judge in any court of competent jurisdiction for appointment of the third arbitrator. There shall be no discovery during the arbitration other than the exchange of information that is provided to the arbitrator(s) by the Parties. The arbitrator(s) shall have the authority only to award equitable relief and compensatory damages, and shall not have the authority to award punitive damages or other non-compensatory damages. The decision of the arbitrator(s) shall be rendered within sixty (60) Business Days after the date of the selection of the arbitrator(s) or within such period as the Parties may otherwise agree. Each Party shall be responsible for the fees, expenses and costs incurred by the arbitrator appointed by each Party, and the fees, expenses and costs of the third arbitrator (or single arbitrator) shall be borne equally by the Parties. The decision of the arbitrator(s) shall be final and binding and may not be appealed. Any Party may apply to any court having jurisdiction to enforce the decision of the arbitrator(s) and to obtain a judgment thereon.

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- 9.1 Representations and Warranties. On the Effective Date and on the date of entering into this Agreement, each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction; (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement; (c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision applicable to it; (d) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (e) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligation under this Agreement or any other document relating to

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this Agreement; (f) no Event of Default or event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement or any Transaction; and (g) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether such Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement.

9.2 Assignment. This Agreement shall be assignable by CRS without the Counterparty's consent provided such assignment is to any other direct or indirect subsidiary of Cinergy Corp. provided that such direct or indirect subsidiary has an equivalent or higher credit rating than CRS. Any other assignment by either Party of this Agreement or any rights or obligation hereunder shall be made only with the written consent of the other Party, which consent shall not be unreasonably withheld.

9.3 Notices. All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form provided there is some form of confirmation that the receiving party actually received the notice. Notice by regular mail shall be deemed to have been received three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight or courier shall be deemed to have been received two (2) Business Days after it has been sent. A Party may change its addresses by providing notice of the same in accordance with this Section 9.3.

To CRS:

James B. Gainer  
139 East Fourth Street  
Cincinnati, OH 45202  
Phone - 513-287-2633  
Fax - 513-287-1902

To Counterparty:

Dick Wiese  
Director Facilities Management  
Mercy Hospital Clermont  
3000 Hospital Drive  
Batavia, OH 45103-1998  
Phone - 513-732-8568

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- 9.4 General. This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless set forth in writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights contained herein shall survive the termination or expiration of this Agreement for three (3) years.
- 9.5 Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement to a 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 in connection with any court or regulatory proceeding applicable to such Party; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.
- 9.6 Counterparts. This Agreement may be separately executed in counterparts each of which when so executed shall be deemed to constitute one and the same Agreement.
- 9.7 This Agreement supersedes and replaces in its entirety the agreement between CRS and Counterparty dated October 28, 2004 and as well as any other settlement agreements between Counterparty and Cinergy Corp. or any other Cinergy entity related to PUCO Case No. 99-1658-EL-ETP. By signing this Agreement, Counterparty, CRS and Cinergy Corp. (on behalf of all Cinergy entities) agree to this provision.

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The Parties have caused this Agreement to be executed by their duly authorized representatives in multiple counterparts as of the Effective Date.

CINERGY RETAIL SALES, LLC

COUNTERPARTY

By: [Signature]

Title: VP General Counsel  
Commercial Services Unit

Date: 1/25/05

By: [Signature]

Title: DIRECTOR FINANCIAL

Date: 12/27/04

As to clause 9.7:

CINERGY CORP.

By: [Signature]

Title: Vice Gen. Counsel

Date: Jan 25, 2005

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**Exhibit A:**  
**Customer Group: Mercy Hospital Anderson**  
**Quarterly Option Payment Calculation**

The CRS option payment will be equivalent to the actual amount paid to The Cincinnati Gas & Electric Company for the following billing charges under its market-based standard service offer approved by the Commission in Case No. 03-93-EL-ATA:

- One (1) Mill per kWh of generation
- Annually Adjusted Component of POLK Charge (AAC)
- Fuel and Purchase Power (FPP) – excluding Emission Allowance Expense
- Infrastructure Maintenance Fund (IMF) Charge in excess of 4% of "little g"
- Electric Choice Insufficient Return Notice Fee charged to customers, who have given notice of their return to CG&E standard tariff service on or before 12/30/2004 and are actively taking CG&E service no later than 01/31/2005.

A customer not paying the market-based standard service offer approved by the Commission in Case No. 03-93-EL-ATA to The Cincinnati Gas & Electric Company, who avoids the System Reliability Tracker (SRT), will have their option payments adjusted for the value of the SRT that CG&E would have received had the customer been a standard tariff customer beginning January 1, 2005. The adjustment will be calculated by taking the total value of the SRT that CG&E would have received in 2005 and deducting it equally from the first four option payments to be received by the customer.

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**EXHIBIT B: MERCY HOSPITAL AMOSEC**

**Customer Group: ~~Mercy Franciscan Hospital Mount Airy~~  
CRS Generation and Transmission Rates for former Rate DP Standard  
Service Customers**

**Net Monthly Bill**

Computed in accordance with the following charges. (Kilowatt of demand is abbreviated as kW and kilowatt-hours are abbreviated as kWh):

**Generation Charges**

**(a) Demand Charge**

First 1,000 kilowatts ..... \$6.9150 per kW  
Additional kilowatts ..... \$5.4450 per kW

**(b) Energy Charge**

Billing Demand Times 300 ..... \$0.021048 per kWh  
Additional kilowatt-hours ..... \$0.016682 per kWh

**Emission Allowance Charges**

Customer will pay monthly an amount equivalent to the emission allowance expense component of the FUCO approved CG&E fuel clause

**Transmission Charges**

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer.

**Rate Stabilization Charge**

Energy Retail Sales will reimburse the customer for any Rate Stabilization Charge (RSC) actually paid by the customer.

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**Exhibit C:**  
**Customer Group: Mercy Hospital Anderson**  
**Customer Account List**

This agreement pertains to the following Mercy Hospital Anderson accounts:

[REDACTED]

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**OPTION AGREEMENT**

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**BY AND BETWEEN**

**CINERGY RETAIL SALES, LLC**

**AND**

**MERCY HOSPITAL CLERMONT**

This Option Agreement (the "Agreement") is entered into as of this 29 day of October, 2004 (the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware limited liability company, and Mercy Hospital Clermont ("Counterparty"), an Ohio corporation, (each individually a "Party" or collectively the "Parties").

**RECITALS**

WHEREAS, Mercy Hospital Clermont is a member of the Ohio Hospitals Association and is located within the retail delivery service territory of The Cincinnati Gas & Electric Company ("CG&E").

WHEREAS, CRS has been certified by the Public Utilities Commission of Ohio as a Certified Retail Electric Supplier ("CRES") and has the authority to engage in the sale of electrical power at retail;

WHEREAS, CRS and Counterparty desire to establish terms and condition for this option.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the Parties agree as follows:

**ARTICLE I  
DEFINITIONS**

The following definitions and any terms defined in this Agreement shall apply hereunder.

"Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of ten (10) percent or more.

"Business Day" means a day on which Federal Reserve member banks in Ohio are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. eastern prevailing time, unless otherwise agreed to by the Parties in writing.

"Counterparty's Maximum Demand" means Counterparty's combined maximum demand for all

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of Counterparty's accounts as of January 1, 2005.

"Capacity" has the meaning set forth in any Transmission Provider's tariff or MISO's transmission tariff, as amended from time to time, or as defined in any transmission tariff of a successor to MISO.

"Contract Price" means the price in \$US as set forth in Exhibit B to be paid by Counterparty to CRS for the purchase of the Energy under this Agreement.

"Defaulting Party" shall have the meaning specified in Section 6.1.

"Energy" means electric energy of the character commonly known as three-phase, sixty hertz electric energy that is delivered at the nominal voltage of the Delivery Point, expressed in megawatt hours (MWh).

"Event of Default" shall have the meaning specified in Section 6.1.

"FERC" means the Federal Energy Regulatory Commission or any successor agency thereto.

"Firm" means, with respect to a Transaction, that the only excuse for the failure to deliver Energy by CRS or the failure to receive Energy by the Counterparty is Force Majeure or the other Party's failure to perform.

"Full Requirements Energy" means, except as provided herein, that Counterparty shall purchase all of its retail Energy requirements for its facility from CRS and that Counterparty shall not resell any of the Energy provided hereunder to any third party.

"Interest Rate" means, for any date the lesser of (a) two (2) percent over the per annum rate of interest equal to the prime lending rate ("Prime Rate") as may be published from time to time in the Federal Reserve Statistical Release H. 15; or (b) the maximum lawful interest rate.

"MW" means megawatt.

"Term" shall have the meaning specified in Article 4.1.

"Transmission Providers" means the entity or entities transmitting or transporting the Energy on behalf of CRS or Counterparty to the Delivery Point.

## ARTICLE II OPTION

- 2.1 Counterparty currently receives its electric service from The Cincinnati Gas & Electric Company ("CG&E") pursuant to the applicable tariffs rates or will provide notice that it

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will take electric service from CG&E in accordance with applicable CG&E tariff requirements. Counterparty hereby grants to CRS the exclusive option, upon thirty (30) days notice, to serve all of Counterparty's accounts and load set forth in Exhibit C, including any increases in accordance with Section 3.1, as of December 31, 2004 ("Option").

- 2.2 CRS shall have the right to exercise this Option at any time during the Term of this Agreement.
- 2.3 In exchange for Counterparty granting CRS this option, CRS agrees to pay Counterparty each calendar year quarter of the Term, until exercise of the Option, the amount set forth on Exhibit A ("Option Payment").
- 2.4 Because this is an exclusive Option, in the event Counterparty leaves its current electric service and receives electric service from any third party that is not CRS or an Affiliate of CRS, then CRS shall cease all Option Payments and this Agreement shall terminate and all obligations of the Parties hereunder shall terminate.
- 2.5 If CRS exercises its Option, the Parties shall enter into a power sale agreement, including the terms set forth in Article III.

#### ARTICLE III CRS POWER CONTRACT TERMS

- 3.1 In the event CRS exercises its option, the power sale agreement between CRS and Counterparty shall include the following terms:
  - a. Energy Quantity and Type. CRS shall provide Counterparty with Firm, Peaking Requirements Energy and Capacity up to 3 MWs greater than Counterparty's Maximum Demand for all of its accounts as of January 1, 2005 ("Quantity"). If during the Term of this Agreement, Counterparty has additional load or accounts greater than 3MW, then such new load or account is not included within the terms of this Agreement and CRS shall have no obligation to provide Energy and Capacity to Counterparty above the Quantity set forth herein.
  - b. Transmission Service and Charges. Transmission service will be provided in accordance with the open access transmission tariff of the Midwest Independent Transmission System Operator, Inc. Charges will be assessed consistent with the otherwise applicable CG&E retail tariff rates and riders as they may be amended, from time to time, or any successor tariff.
  - c. Contract Price. The Contract Price is set forth in Exhibits A and B.
  - d. Change to Prices. As a retail sale, the power sale agreement is not subject to

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the jurisdiction of the FERC; nor shall either Party seek to have the FERC assert jurisdiction over the Agreement. However, to the extent that either the FERC or the Public Utilities Commission of Ohio asserts jurisdiction over the Agreement, the Parties agree that the Contract Price specified above is just and reasonable and consistent with the public interest. Neither CRS nor Counterparty shall seek to modify the Contract Price through the auspices of any regulatory body.

- e. Term. The term of the power sale agreement shall be through December 31, 2008.

#### ARTICLE IV TERM OF AGREEMENT

- 4.1 Agreement Term and Effective Date. This Agreement shall become effective upon execution by the Parties. This Agreement shall extend from January 1, 2005 through and including December 31, 2008, unless terminated earlier in accordance with the terms of this Agreement ("Term").
- 4.2 After Termination. The applicable provisions of this Agreement shall continue in effect after termination thereof to the extent necessary to provide for final billing, billing adjustments and payments.

#### ARTICLE V BILLING

- 5.1 Payment. CRS shall submit the Option Payment to Counterparty within thirty (30) days after the end of each calendar year quarter. The payment shall be submitted to the following account or address:

[insert account information]

DICH WIESE  
DIRECTOR FACILITIES  
MERCY HOSPITAL CLEVELAND  
3000 HOSPITAL DR.  
BATONIA, OHIO  
45103

#### ARTICLE VI DEFAULTS AND REMEDIES

- 6.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:
- 6.1.1 any representation or warranty made by the Defaulting Party herein shall at any time prove to be false or misleading in any respect material to this Agreement;

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- 6.1.2 the failure of the Defaulting Party to perform any covenant set forth in this Agreement (except to the extent constituting a separate Event of Default,) and such failure is not cured within fifteen (15) Business Days after written notice via certified mail thereof to the Defaulting Party;
- 6.1.3 the Defaulting Party consolidates or amalgamates with, merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all of the obligations of such Party under this Agreement;
- 6.1.4 the failure to make when due, any payment required pursuant to this Agreement if such failure is not remedied within fifteen (15) Business Days after written notice via certified mail of such failure is given by the other Party; or
- 6.1.5 the Defaulting Party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is unable to pay its debts as they fall due.
- 6.2 Remedies upon an Event of Default. Upon the occurrence (and continuation beyond the applicable cure period) of an Event of Default with respect to a Defaulting Party, the Non-Defaulting Party shall have the right to terminate this Agreement and exercise all rights and remedies available to it in law or in equity.
- 6.3 Other Termination Events. Termination may occur upon thirty (30) days written notice by either Party upon issuance of an order by a court or regulatory body of competent jurisdiction that substantially prevents either party from performing obligations pursuant to this agreement. In the event that terminating event of this kind occurs, the Parties agree to negotiate in good faith to return both Parties to an economic outcome equivalent to the one created by this agreement.

#### ARTICLE VII LIMITATIONS; DUTY TO MITIGATE

- 7.1 Limitation of Remedies, Liability and Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR

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MEASURE OF DAMAGES IS PROVIDED, 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 PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, 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. UNLESS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS 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, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

- 7.2 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 any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

#### ARTICLE VIII GOVERNING LAW - DISPUTE RESOLUTION

- 8.1 Governing Law and Jurisdiction. 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 AND SHALL BE BROUGHT IN THE STATE AND FEDERAL COURTS LOCATED IN HAMILTON COUNTY OHIO.
- 8.2 Dispute Resolution. Any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, shall be resolved fully and finally by binding arbitration under the Commercial Rules, but not the administration, of the American Arbitration Association, except to the extent that the Commercial Rules conflict with this provision, in which event, this Agreement shall control. This arbitration provision shall not limit the right of either Party prior to or during any such dispute to seek, use, and employ ancillary, or preliminary or permanent rights and/or remedies, judicial or otherwise, for the purposes

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maintaining the status quo until such time as the arbitration award is rendered of the dispute is otherwise resolved. The arbitration shall be conducted in Cincinnati, Ohio and the laws of Ohio shall govern the construction and interpretation of this Agreement, except to provisions related to conflict of laws. Within ten (10) Business Days of service of a Demand for Arbitration, the parties may agree upon a sole arbitrator, or if a sole arbitrator cannot be agreed upon, a panel of three arbitrators shall be named. One arbitrator shall be selected by CRS and one shall be selected by Buyer. A knowledgeable, disinterested and impartial arbitrator shall be selected by the two arbitrators so appointed by the parties. If the arbitrators appointed by the parties cannot agree upon the third arbitrator within ten (10) Business Days, then either Party may apply to any judge in any court of competent jurisdiction for appointment of the third arbitrator. There shall be no discovery during the arbitration other than the exchange of information that is provided to the arbitrator(s) by the Parties. The arbitrator(s) shall have the authority only to award equitable relief and compensatory damages, and shall not have the authority to award punitive damages or other non-compensatory damages. The decision of the arbitrator(s) shall be rendered within sixty (60) Business Days after the date of the selection of the arbitrator(s) or within such period as the Parties may otherwise agree. Each Party shall be responsible for the fees, expenses and costs incurred by the arbitrator appointed by each Party, and the fees, expenses and costs of the third arbitrator (or single arbitrator) shall be borne equally by the Parties. The decision of the arbitrator(s) shall be final and binding and may not be appealed. Any Party may apply to any court having jurisdiction to enforce the decision of the arbitrator(s) and to obtain a judgment thereon.

Notwithstanding the foregoing, the Parties may cancel or terminate this Agreement in accordance with its terms and conditions without being required to follow the procedures set forth in this Article.

#### ARTICLE IX MISCELLANEOUS

- 9.1 Representations and Warranties. On the Effective Date and on the date of entering into this Agreement, each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction; (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement; (c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision applicable to it; (d) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (e) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligation under this Agreement or any other document relating to

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this Agreement; (f) no Event of Default or event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement or any Transaction; and (g) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether such Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement.

9.2 Assignment. This Agreement shall be assignable by CRS without the Counterparty's consent provided such assignment is to any other direct or indirect subsidiary of Cinergy Corp. provided that such direct or indirect subsidiary has an equivalent or higher credit rating than CRS. Any other assignment by either Party of this Agreement or any rights or obligation hereunder shall be made only with the written consent of the other Party, which consent shall not be unreasonably withheld.

9.3 Notices. All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form provided there is some form of confirmation that the receiving party actually received the notice. Notice by regular mail shall be deemed to have been received three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight or courier shall be deemed to have been received two (2) Business Days after it has been sent. A Party may change its addresses by providing notice of the same in accordance with this Section 9.3.

To CRS:

James B. Gainer  
139 East Fourth Street  
Cincinnati, OH 45202  
Phone - 513-287-2633  
Fax - 513-287-1902

To Counterparty:

Dick Wiese  
Director Facilities Management  
Mercy Hospital Clermont  
3000 Hospital Drive  
Batavia, OH 45103-1998  
Phone - 513-732-8568

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- 9.4 General. This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless set forth in writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights contained herein shall survive the termination or expiration of this Agreement for three (3) years.
- 9.5 Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement to a 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 in connection with any court or regulatory proceeding applicable to such Party; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.
- 9.6 Counterparts. This Agreement may be separately executed in counterparts each of which when so executed shall be deemed to constitute one and the same Agreement.
- 9.7 This Agreement supersedes and replaces in its entirety the agreement between CRS and Counterparty dated October 28, 2004 and as well as any other settlement agreements between Counterparty and Cinergy Corp. or any other Cinergy entity related to PUCO Case No. 99-1658-EL-ETP. By signing this Agreement, Counterparty, CRS and Cinergy Corp. (on behalf of all Cinergy entities) agree to this provision.

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The Parties have caused this Agreement to be executed by their duly authorized representatives in multiple counterparts as of the Effective Date.

CINERGY RETAIL SALES, LLC

COUNTERPARTY

By: [Signature]  
Title: VP & General Counsel  
Date: 1/25/05

DICK WIESE  
By: [Signature]  
Title: DIRECTOR FREEMAN  
Date: 12/29/04

As to clause 9.7:

CINERGY CORP.

By: [Signature]  
Title: VP & GEN. COUNSEL  
Date: JAN. 25, 2005

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**Exhibit A:**  
**Customer Group: Mercy Hospital Clermont**  
**Quarterly Option Payment Calculation**

The CRS option payment will be equivalent to the actual amount paid to The Cincinnati Gas & Electric Company for the following billing charges under its market-based standard service offer approved by the Commission in Case No. 03-93-EL-ATA:

- One (1) Mill per kWh of generation
- Annually Adjusted Component of POLR Charge (AAC)
- Fuel and Purchase Power (FPP) - excluding Emission Allowance Expense
- Infrastructure Maintenance Fund (IMF) Charge in excess of 4% of "little g"
- Electric Choice Insufficient Return Notice Fee charged to customers, who have given notice of their return to CG&E standard tariff service on or before 12/30/2004 and are actively taking CG&E service no later than 01/31/2005.

A customer not paying the market-based standard service offer approved by the Commission in Case No. 03-93-EL-ATA to The Cincinnati Gas & Electric Company, who avoids the System Reliability Tracker (SRT), will have their option payments adjusted for the value of the SRT that CG&E would have received had the customer been a standard tariff customer beginning January 1, 2005. The adjustment will be calculated by taking the total value of the SRT that CG&E would have received in 2005 and deducting it equally from the first four option payments to be received by the customer.

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**EXHIBIT B:**  
**Customer Group: Mercy Hospital Clermont**  
**CRS Generation Rates for Former Rate DS Standard Service Customers**

**Net Monthly Bill**

Computed in accordance with the following charges. (Kilowatt of demand is abbreviated as kW and kilowatt-hours are abbreviated as kWh):

**Generation Charges**

**(a) Demand Charge**

First 1,000 kilowatts ..... \$7.6574 per kW  
Additional kilowatts ..... \$6.0574 per kW

**(b) Energy Charge**

Billing Demand times 300 ..... \$0.018576 per kWh  
Additional kilowatt-hours ..... \$0.015266 per kWh

**Emission Allowance Charges**

Customer will pay monthly an amount equivalent to the emission allowance expense component of the PUCO approved CG&E fuel clause.

**Transmission Charges**

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer.

**Rate Stabilization Charge**

Energy Retail Sales will reimburse the customer for any Rate Stabilization Charge (RSC) actually paid by the customer.

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**Exhibit C:**  
**Customer Group: Mercy Hospital Clermont**  
**Customer Account List**

This agreement pertains to the following Mercy Hospital Clermont accounts:

[REDACTED]

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OPTION AGREEMENT

BY AND BETWEEN

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CINERGY RETAIL SALES, LLC

AND

MCCULLOUGH-HYDE MEMORIAL HOSPITAL

This Option Agreement (the "Agreement") is entered into as of this 30th day of December 2004 (the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware limited liability company, and McCullough-Hyde Memorial Hospital ("Counterparty"), a not for profit corporation (each individually a "Party" or collectively the "Parties").

RECITALS

WHEREAS, McCullough-Hyde Memorial Hospital is a member of the Ohio Hospitals Association and is located within the retail delivery service territory of The Cincinnati Gas & Electric Company ("CG&E").

WHEREAS, CRS has been certified by the Public Utilities Commission of Ohio as a Certified Retail Electric Supplier ("CRES") and has the authority to engage in the sale of electrical power at retail;

WHEREAS, CRS and Counterparty desire to establish terms and condition for this option.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the Parties agree as follows:

ARTICLE I  
DEFINITIONS

The following definitions and any terms defined in this Agreement shall apply hereunder.

"Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of ten (10) percent or more.

"Business Day" means a day on which Federal Reserve member banks in Ohio are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. eastern prevailing time, unless otherwise agreed to by the Parties in writing.

"Counterparty's Maximum Demand" means Counterparty's combined maximum demand for all

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of Counterparty's accounts as of January 1, 2005.

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"Capacity" has the meaning set forth in any Transmission Provider's tariff or MISO's transmission tariff, as amended from time to time, or as defined in any transmission tariff of a successor to MISO.

"Contract Price" means the price in \$US as set forth in Exhibit B to be paid by Counterparty to CRS for the purchase of the Energy under this Agreement.

"Defaulting Party" shall have the meaning specified in Section 6.1.

"Energy" means electric energy of the character commonly known as three-phase, sixty hertz electric energy that is delivered at the nominal voltage of the Delivery Point, expressed in megawatt hours (MWh).

"Event of Default" shall have the meaning specified in Section 6.1.

"FERC" means the Federal Energy Regulatory Commission or any successor agency thereto.

"Firm" means, with respect to a Transaction, that the only excuse for the failure to deliver Energy by CRS or the failure to receive Energy by the Counterparty is Force Majeure or the other Party's failure to perform.

"Full Requirements Energy" means, except as provided herein, that Counterparty shall purchase all of its retail Energy requirements for its facility from CRS and that Counterparty shall not resell any of the Energy provided hereunder to any third party.

"Interest Rate" means, for any date the lesser of (a) two (2) percent over the per annum rate of interest equal to the prime lending rate ("Prime Rate") as may be published from time to time in the Federal Reserve Statistical Release H.15; or (b) the maximum lawful interest rate.

"MW" means megawatt.

"Term" shall have the meaning specified in Article 4.1.

"Transmission Providers" means the entity or entities transmitting or transporting the Energy on behalf of CRS or Counterparty to the Delivery Point.

## ARTICLE II OPTION

- 2.1 Counterparty currently receives its electric service from The Cincinnati Gas & Electric Company ("CG&E") pursuant to the applicable tariffs rates or will provide notice that it

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will take electric service from CG&E in accordance with applicable CG&E tariff requirements. Counterparty hereby grants to CRS the exclusive option, upon thirty (30) days notice, to serve all of Counterparty's accounts and load set forth in Exhibit C, including any increases in accordance with Section 3.1, as of December 31, 2004 ("Option").

- 2.2 CRS shall have the right to exercise this Option at any time during the Term of this Agreement.
- 2.3 In exchange for Counterparty granting CRS this option, CRS agrees to pay Counterparty each calendar year quarter of the Term, until exercise of the Option, the amount set forth on Exhibit A ("Option Payment").
- 2.4 Because this is an exclusive Option, in the event Counterparty leaves its current electric service and receives electric service from any third party that is not CRS or an Affiliate of CRS, then CRS shall cease all Option Payments and this Agreement shall terminate and all obligations of the Parties hereunder shall terminate.
- 2.5 If CRS exercises its Option, the Parties shall enter into a power sale agreement, including the terms set forth in Article III.

### ARTICLE III CRS POWER CONTRACT TERMS

- 3.1 In the event CRS exercises its option, the power sale agreement between CRS and Counterparty shall include the following terms:
  - a. Energy Quantity and Type. CRS shall provide Counterparty with Firm, Full Requirements Energy and Capacity up to 3 MWs greater than Counterparty's Maximum Demand for all of its accounts as of January 1, 2005 ("Quantity"). If during the Term of this Agreement, Counterparty has additional load or accounts greater than 3MW, then such new load or account is not included within the terms of this Agreement and CRS shall have no obligation to provide Energy and Capacity to Counterparty above the Quantity set forth herein.
  - b. Transmission Service and Charges. Transmission service will be provided in accordance with the open access transmission tariff of the Midwest Independent Transmission System Operator, Inc. Charges will be assessed consistent with the otherwise applicable CO&E retail tariff rates and riders as they may be amended, from time to time, or any successor tariff.
  - c. Contract Price. The Contract Price is set forth in Exhibits A and B.
  - d. Change to Prices. As a retail sale, the power sale agreement is not subject to

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the jurisdiction of the FERC; nor shall either Party seek to have the FERC assert jurisdiction over the Agreement. However, to the extent that either the FERC or the Public Utilities Commission of Ohio asserts jurisdiction over the Agreement, the Parties agree that the Contract Price specified above is just and reasonable and consistent with the public interest. Neither CRS nor Counterparty shall seek to modify the Contract Price through the auspices of any regulatory body.

- c. Term. The term of the power sale agreement shall be through December 31, 2008.

#### ARTICLE IV TERM OF AGREEMENT

- 4.1 Agreement Term and Effective Date. This Agreement shall become effective upon execution by the Parties. This Agreement shall extend from January 1, 2005 through and including December 31, 2008, unless terminated earlier in accordance with the terms of this Agreement ("Term").
- 4.2 After Termination. The applicable provisions of this Agreement shall continue in effect after termination thereof to the extent necessary to provide for final billing, billing adjustments and payments.

#### ARTICLE V BILLING

- 5.1 Payment. CRS shall submit the Option Payment to Counterparty within thirty (30) days after the end of each calendar year quarter. The payment shall be submitted to the following account or address:

Director, Accounting  
McCullough-Hyde Memorial Hospital  
110 North Poplar Street  
Oxford, Ohio 45056

#### ARTICLE VI DEFAULTS AND REMEDIES

- 6.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:

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- 6.1.1 any representation or warranty made by the Defaulting Party herein shall at any time prove to be false or misleading in any respect material to this Agreement;
  - 6.1.2 the failure of the Defaulting Party to perform any covenant set forth in this Agreement (except to the extent constituting a separate Event of Default) and such failure is not cured within fifteen (15) Business Days after written notice via certified mail thereof to the Defaulting Party;
  - 6.1.3 the Defaulting Party consolidates or amalgamates with, merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting surviving or transferee entity fails to assume all of the obligations of such Party under this Agreement;
  - 6.1.4 the failure to make when due, any payment required pursuant to this Agreement if such failure is not remedied within fifteen (15) Business Days after written notice via certified mail of such failure is given by the other Party; or
  - 6.1.5 the Defaulting Party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is unable to pay its debts as they fall due.
- 6.2 Remedies upon an Event of Default. Upon the occurrence (and continuation beyond the applicable cure period) of an Event of Default with respect to a Defaulting Party, the Non-Defaulting Party shall have the right to terminate this Agreement and exercise all rights and remedies available to it in law or in equity.
- 6.3 Other Termination Events. Termination may occur upon thirty 30 days written notice by either Party upon issuance of an order by a court or regulatory body of competent jurisdiction that substantially prevents either party from performing obligations pursuant to this agreement. In the event that terminating event of this kind occurs, the Parties agree to negotiate in good faith to return both Parties to an economic outcome equivalent to the one created by this agreement.

#### ARTICLE VII LIMITATIONS; DUTY TO MITIGATE

- 7.1 Limitation of Remedies, Liability and Damages. THE PARTIES CONFIRM THAT THE

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EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, 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 PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, 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. UNLESS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS 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, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

- 7.2 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 any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

ARTICLE VII  
GOVERNING LAW - DISPUTE RESOLUTION

- 8.1 Governing Law and Jurisdiction. 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 AND SHALL BE BROUGHT IN THE STATE AND FEDERAL COURTS LOCATED IN HAMILTON COUNTY OHIO.
- 8.2 Dispute Resolution. Any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, shall be resolved fully and finally by binding arbitration under the Commercial Rules, but not the administration, of the American Arbitration Association, except to the extent that the Commercial Rules conflict with this provision, in

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which event, this Agreement shall control. This arbitration provision shall not limit the right of either Party prior to or during any such dispute to seek, use, and employ ancillary, or preliminary or permanent rights and/or remedies, judicial or otherwise, for the purposes maintaining the status quo until such time as the arbitration award is rendered or the dispute is otherwise resolved. The arbitration shall be conducted in Cincinnati, Ohio and the laws of Ohio shall govern the construction and interpretation of this Agreement, except to provisions related to conflict of laws. Within ten (10) Business Days of service of a Demand for Arbitration, the parties may agree upon a sole arbitrator, or if a sole arbitrator cannot be agreed upon, a panel of three arbitrators shall be named. One arbitrator shall be selected by CRS and one shall be selected by Buyer. A knowledgeable, disinterested and impartial arbitrator shall be selected by the two arbitrators so appointed by the parties. If the arbitrators appointed by the parties cannot agree upon the third arbitrator within ten (10) Business Days, then either Party may apply to any judge in any court of competent jurisdiction for appointment of the third arbitrator. There shall be no discovery during the arbitration other than the exchange of information that is provided to the arbitrator(s) by the Parties. The arbitrator(s) shall have the authority only to award equitable relief and compensatory damages, and shall not have the authority to award punitive damages or other non-compensatory damages. The decision of the arbitrator(s) shall be rendered within sixty (60) Business Days after the date of the selection of the arbitrator(s) or within such period as the Parties may otherwise agree. Each Party shall be responsible for the fees, expenses and costs incurred by the arbitrator appointed by each Party, and the fees, expenses and costs of the third arbitrator (or single arbitrator) shall be borne equally by the Parties. The decision of the arbitrator(s) shall be final and binding and may not be appealed. Any Party may apply to any court having jurisdiction to enforce the decision of the arbitrator(s) and to obtain a judgment thereon.

Notwithstanding the foregoing, the Parties may cancel or terminate this Agreement in accordance with its terms and conditions without being required to follow the procedures set forth in this Article.

ARTICLE IX  
MISCELLANEOUS

- 9.1 Representations and Warranties. On the Effective Date and on the date of entering into this Agreement, each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction; (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement; (c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision applicable to it; (d) there are no bankruptcy proceedings pending or being contemplated by it or, to its

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knowledge, threatened against it; (e) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligation under this Agreement or any other document relating to this Agreement; (f) no Event of Default or event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement or any Transaction; and (g) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether such Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement.

- 9.2 Assignment. This Agreement shall be assignable by CRS without the Counterparty's consent provided such assignment is to any other direct or indirect subsidiary of Cinergy Corp. provided that such direct or indirect subsidiary has an equivalent or higher credit rating than CRS. Any other assignment by either Party of this Agreement or any rights or obligation hereunder shall be made only with the written consent of the other Party, which consent shall not be unreasonably withheld.
- 9.3 Notices. All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form provided there is some form of confirmation that the receiving party actually received the notice. Notice by regular mail shall be deemed to have been received three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight or courier shall be deemed to have been received two (2) Business Days after it has been sent. A Party may change its addresses by providing notice of the same in accordance with this Section 9.3.

To CRS:

James B. Gainer  
139 East Fourth Street  
Cincinnati, OH 45202

Phone - 513-287-2633  
Fax - 513-287-1902

To Counterparty:

John Sherron

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Phone - 513-524-5342  
Dave Lives  
Phone - 513-524-5650

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- 9.4 General. This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless set forth in writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights contained herein shall survive the termination or expiration of this Agreement for three (3) years.
- 9.5 Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement to a 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 in connection with any court or regulatory proceeding applicable to such Party; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.
- 9.6 Counterparts. This Agreement may be separately executed in counterparts each of which when so executed shall be deemed to constitute one and the same Agreement.
- 9.7 This Agreement supersedes and replaces in its entirety the agreement between CRS and Counterparty dated October 28, 2004 and as well as any other settlement agreements between Counterparty and Cinergy Corp. or any other Cinergy entity related to PUCO Case No. 99-1658-EL-ETP. By signing this Agreement, Counterparty, CRS and Cinergy Corp. (on behalf of all Cinergy entities) agree to this provision.

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The Parties have caused this Agreement to be executed by their duly authorized representatives in multiple counterparts as of the Effective Date.

CINERGY RETAIL SALES, LLC

COUNTERPARTY

By: [Signature]  
Title: VP and General Counsel  
Date: 1/25/05

By: [Signature]  
Title: Richard Daniels  
Date: 12/28/04

As to clause 9.7:

CINERGY CORP.  
By: [Signature]  
Title: VP & Gen Counsel  
Date: Jan. 25, 2005

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**Exhibit A:**  
**Customer Group: McCullough-Hyde Memorial Hospital**  
**Quarterly Option Payment Calculation**

The CRS option payment will be equivalent to the actual amount paid to The Cincinnati Gas & Electric Company for the following billing charges under its market-based standard service offer approved by the Commission in Case No. 03-93-EL-ATA:

- One (1) Mill per kWh of generation
- Annually Adjusted Component of POLR Charge (AAC)
- Fuel and Purchase Power (FPP) – excluding Emission Allowance Expense
- Infrastructure Maintenance Fund (IMF) Charge in excess of 4% of "Title g"
- Electric Choice Insufficient Return Notice Fee charged to customers, who have given notice of their return to CG&E standard tariff service on or before 12/30/2004 and are actively taking CG&E service no later than 01/31/2005.

A customer not paying the market-based standard service offer approved by the Commission in Case No. 03-93-EL-ATA to The Cincinnati Gas & Electric Company, who avoids the System Reliability Tracker (SRT), will have their option payments adjusted for the value of the SRT that CG&E would have received had the customer been a standard tariff customer beginning January 1, 2005. The adjustment will be calculated by taking the total value of the SRT that CG&E would have received in 2005 and deducting it equally from the first four option payments to be received by the customer.

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**EXHIBIT B:**

**Customer Group: McCullough-Hyde Memorial Hospital  
CRS Generation and Transmission Rates for former Rate DM Standard  
Service Customers**

**Net Monthly Bill**

Computed in accordance with the following charges. (Kilowatt of demand is abbreviated as kW and kilowatt-hours are abbreviated as kWh):

**Generation Charges**

**(a) Summer**

First 2,800 kilowatt-hours .....	\$0.057562 per kWh
Next 3,200 kilowatt-hours .....	\$0.013952 per kWh
Additional kilowatt-hours .....	\$0.005520 per kWh

**(b) Winter**

First 2,800 kilowatt-hours .....	\$0.045480 per kWh
Next 3,200 kilowatt-hours .....	\$0.013969 per kWh
Additional kilowatt-hours .....	\$0.005191 per kWh

**Emission Allowance Charges**

Customer will pay monthly an amount equivalent to the emission allowance expense component of the FUCO approved CG&E fuel clause.

**Transmission Charges**

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer.

**Rate Stabilization Charge**

Energy Retail Sales will reimburse the customer for any Rate Stabilization Charge (RSC) actually paid by the customer.

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**EXHIBIT B:**

**Customer Group: McCullough-Hyde Memorial Hospital  
CRS Generation Rates for Former Rate DS Standard Service Customers**

**Net Monthly Bill**

Computed in accordance with the following charges. (Kilowatt of demand is abbreviated as kW and kilowatt-hours are abbreviated as kWh):

**Generation Charges**

**(a) Demand Charge**

First 1,000 kilowatts ..... \$7.6574 per kW  
Additional kilowatts ..... \$6.0574 per kW

**(b) Energy Charge**

Billing Demand times 100 ..... \$0.018576 per kWh  
Additional kilowatt-hours ..... \$0.015266 per kWh

**Emission Allowance Charges**

Customer will pay monthly an amount equivalent to the emission allowance expense component of the PUCO approved CG&E fuel clause.

**Transmission Charges**

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer.

**Rate Stabilization Charge**

Energy Retail Sales will reimburse the customer for any Rate Stabilization Charge (RSC) actually paid by the customer.

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**Exhibit C:**

**Customer Group: McCullough-Hyde Memorial Hospital**

**Customer Account List**

This agreement pertains to the following McCullough-Hyde Memorial Hospital accounts:

[REDACTED]  
[REDACTED]

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OPTION AGREEMENT

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BY AND BETWEEN

CINERGY RETAIL SALES, LLC

AND

DEACONESS HOSPITAL

This Option Agreement (the "Agreement") is entered into as of this 32 day of DECEMBER 2004 (the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware limited liability company, and Deaconess Hospital ("Counterparty"), a \_\_\_\_\_ corporation (each individually a "Party" or collectively the "Parties").

RECITALS

WHEREAS, Deaconess Hospital is a member of the Ohio Hospitals Association and is located within the retail delivery service territory of The Cincinnati Gas & Electric Company ("CG&E").

WHEREAS, CRS has been certified by the Public Utilities Commission of Ohio as a Certified Retail Electric Supplier ("CRES") and has the authority to engage in the sale of electrical power at retail;

WHEREAS, CRS and Counterparty desire to establish terms and condition for this option.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the Parties agree as follows:

ARTICLE I  
DEFINITIONS

The following definitions and any terms defined in this Agreement shall apply hereunder.

"Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of ten (10) percent or more.

"Business Day" means a day on which Federal Reserve member banks in Ohio are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. eastern prevailing time, unless otherwise agreed to by the Parties in writing.

"Counterparty's Maximum Demand" means Counterparty's combined maximum demand for all

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Cinergy Corporate Records  
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Document Code

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of Counterparty's accounts as of January 1, 2005.

"Capacity" has the meaning set forth in any Transmission Provider's tariff or MISO's transmission tariff, as amended from time to time, or as defined in any transmission tariff of a successor to MISO.

"Contract Price" means the price in \$US as set forth in Exhibit B to be paid by Counterparty to CRS for the purchase of the Energy under this Agreement.

"Defaulting Party" shall have the meaning specified in Section 6.1.

"Energy" means electric energy of the character commonly known as three-phase, sixty hertz, electric energy that is delivered at the nominal voltage of the Delivery Point, expressed in megawatt hours (MWh).

"Event of Default" shall have the meaning specified in Section 6.1.

"FERC" means the Federal Energy Regulatory Commission or any successor agency thereto.

"Firm" means, with respect to a Transaction, that the only excuse for the failure to deliver Energy by CRS or the failure to receive Energy by the Counterparty is Force Majeure or the other Party's failure to perform.

"Full Requirements Energy" means, except as provided herein, that Counterparty shall purchase all of its retail Energy requirements for its facility from CRS and that Counterparty shall not resell any of the Energy provided hereunder to any third party.

"Interest Rate" means, for any date the lesser of (a) two (2) percent over the per annum rate of interest equal to the prime lending rate ("Prime Rate") as may be published from time to time in the Federal Reserve Statistical Release H. 15; or (b) the maximum lawful interest rate.

"MW" means megawatt.

"Term" shall have the meaning specified in Article 4.1.

"Transmission Providers" means the entity or entities transmitting or transporting the Energy on behalf of CRS or Counterparty to the Delivery Point.

ARTICLE II  
OPTION

- 2.1 Counterparty currently receives its electric service from The Cincinnati Gas & Electric Company ("CG&E") pursuant to the applicable tariffs rates or will provide notice that it

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will take electric service from CG&E in accordance with applicable CG&E tariff requirements. Counterparty hereby grants to CRS the exclusive option, upon thirty (30) days notice, to serve all of Counterparty's accounts and load set forth in Exhibit C, including any increases in accordance with Section 3.1, as of December 31, 2004 ("Option").

- 2.2 CRS shall have the right to exercise this Option at any time during the Term of this Agreement.
- 2.3 In exchange for Counterparty granting CRS this option, CRS agrees to pay Counterparty each calendar year quarter of the Term, until exercise of the Option, the amount set forth on Exhibit A ("Option Payment").
- 2.4 Because this is an exclusive Option, in the event Counterparty leaves its current electric service and receives electric service from any third party that is not CRS or an Affiliate of CRS, then CRS shall cease all Option Payments and this Agreement shall terminate and all obligations of the Parties hereunder shall terminate.
- 2.5 If CRS exercises its Option, the Parties shall enter into a power sale agreement, including the terms set forth in Article III.

### ARTICLE III CRS POWER CONTRACT TERMS

- 3.1 In the event CRS exercises its option, the power sale agreement between CRS and Counterparty shall include the following terms:
  - a. Energy Quantity and Type. CRS shall provide Counterparty with Firm, Full Requirements Energy and Capacity up to 3 MWs greater than Counterparty's Maximum Demand for all of its accounts as of January 1, 2005 ("Quantity"). If during the Term of this Agreement, Counterparty has additional load or accounts greater than 3MW, then such new load or account is not included within the terms of this Agreement and CRS shall have no obligation to provide Energy and Capacity to Counterparty above the Quantity set forth herein.
  - b. Transmission Service and Charges. Transmission service will be provided in accordance with the open access transmission tariff of the Midwest Independent Transmission System Operator, Inc. Charges will be assessed consistent with the otherwise applicable CG&E retail tariff rates and riders as they may be amended, from time to time, or any successor tariff.
  - c. Contract Price. The Contract Price is set forth in Exhibits A and B.
  - d. Change to Prices. As a retail sale, the power sale agreement is not subject to

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the jurisdiction of the FERC; nor shall either Party seek to have the FERC assert jurisdiction over the Agreement. However, to the extent that either the FERC or the Public Utilities Commission of Ohio asserts jurisdiction over the Agreement, the Parties agree that the Contract Price specified above is just and reasonable and consistent with the public interest. Neither CRS nor Counterparty shall seek to modify the Contract Price through the auspices of any regulatory body.

- c. Term. The term of the power sale agreement shall be through December 31, 2008.

ARTICLE IV  
TERM OF AGREEMENT

- 4.1 Agreement Term and Effective Date. This Agreement shall become effective upon execution by the Parties. This Agreement shall extend from January 1, 2005 through and including December 31, 2008, unless terminated earlier in accordance with the terms of this Agreement ("Term").
- 4.2 After Termination. The applicable provisions of this Agreement shall continue in effect after termination thereof to the extent necessary to provide for final billing, billing adjustments and payments.

ARTICLE V  
BILLING

- 5.1 Payment. CRS shall submit the Option Payment to Counterparty within thirty (30) days after the end of each calendar year quarter. The payment shall be submitted to the following account or address:

[insert account information]

49500673

attn: Ralph

ARTICLE VI  
DEFAULTS AND REMEDIES

- 6.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:
- 6.1.1 any representation or warranty made by the Defaulting Party herein shall at any time prove to be false or misleading in any respect material to this Agreement;

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- 6.1.2 the failure of the Defaulting Party to perform any covenant set forth in this Agreement (except to the extent constituting a separate Event of Default) and such failure is not cured within fifteen (15) Business Days after written notice via certified mail thereof to the Defaulting Party;
- 6.1.3 the Defaulting Party consolidates or amalgamates with, merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all of the obligations of such Party under this Agreement;
- 6.1.4 the failure to make when due, any payment required pursuant to this Agreement if such failure is not remedied within fifteen (15) Business Days after written notice via certified mail of such failure is given by the other Party; or
- 6.1.5 the Defaulting Party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is unable to pay its debts as they fall due.
- 6.2 Remedies upon an Event of Default. Upon the occurrence (and continuation beyond the applicable cure period) of an Event of Default with respect to a Defaulting Party, the Non-Defaulting Party shall have the right to terminate this Agreement and exercise all rights and remedies available to it in law or in equity.
- 6.3 Other Termination Events. Termination may occur upon thirty (30) days written notice by either Party upon issuance of an order by a court or regulatory body of competent jurisdiction that substantially prevents either party from performing obligations pursuant to this agreement. In the event that terminating event of this kind occurs, the Parties agree to negotiate in good faith to return both Parties to an economic outcome equivalent to the one created by this agreement.

ARTICLE VII  
LIMITATIONS; DUTY TO MITIGATE

- 7.1 Limitation of Remedies, Liability and Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR

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MEASURE OF DAMAGES IS PROVIDED, 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 PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, 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. UNLESS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS 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, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

- 7.2 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 any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

#### ARTICLE VIII GOVERNING LAW - DISPUTE RESOLUTION

- 8.1 Governing Law and Jurisdiction. 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 AND SHALL BE BROUGHT IN THE STATE AND FEDERAL COURTS LOCATED IN HAMILTON COUNTY OHIO.
- 8.2 Dispute Resolution. Any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, shall be resolved fully and finally by binding arbitration under the Commercial Rules, but not the administration, of the American Arbitration Association, except to the extent that the Commercial Rules conflict with this provision, in which event, this Agreement shall control. This arbitration provision shall not limit the right of either Party prior to or during any such dispute to seek, use, and employ ancillary, or preliminary or permanent rights and/or remedies, judicial or otherwise, for the purposes

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maintaining the status quo until such time as the arbitration award is rendered of the dispute is otherwise resolved. The arbitration shall be conducted in Cincinnati, Ohio and the laws of Ohio shall govern the construction and interpretation of this Agreement, except to provisions related to conflict of laws. Within ten (10) Business Days of service of a Demand for Arbitration, the parties may agree upon a sole arbitrator, or if a sole arbitrator cannot be agreed upon, a panel of three arbitrators shall be named. One arbitrator shall be selected by CRS and one shall be selected by Buyer. A knowledgeable, disinterested and impartial arbitrator shall be selected by the two arbitrators so appointed by the parties. If the arbitrators appointed by the parties cannot agree upon the third arbitrator within ten (10) Business Days, then either Party may apply to any judge in any court of competent jurisdiction for appointment of the third arbitrator. There shall be no discovery during the arbitration other than the exchange of information that is provided to the arbitrator(s) by the Parties. The arbitrator(s) shall have the authority only to award equitable relief and compensatory damages, and shall not have the authority to award punitive damages or other non-compensatory damages. The decision of the arbitrator(s) shall be rendered within sixty (60) Business Days after the date of the selection of the arbitrator(s) or within such period as the Parties may otherwise agree. Each Party shall be responsible for the fees, expenses and costs incurred by the arbitrator appointed by each Party, and the fees, expenses and costs of the third arbitrator (or single arbitrator) shall be borne equally by the Parties. The decision of the arbitrator(s) shall be final and binding and may not be appealed. Any Party may apply to any court having jurisdiction to enforce the decision of the arbitrator(s) and to obtain a judgment thereon.

Notwithstanding the foregoing, the Parties may cancel or terminate this Agreement in accordance with its terms and conditions without being required to follow the procedures set forth in this Article.

#### ARTICLE IX MISCELLANEOUS

- 9.1 Representations and Warranties. On the Effective Date and on the date of entering into this Agreement, each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction; (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement; (c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision applicable to it; (d) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (e) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligation under this Agreement or any other document relating to

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this Agreement; (f) no Event of Default or event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement or any Transaction; and (g) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether such Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement.

- 9.2 Assignment. This Agreement shall be assignable by CRS without the Counterparty's consent provided such assignment is to any other direct or indirect subsidiary of Cinergy Corp. provided that such direct or indirect subsidiary has an equivalent or higher credit rating than CRS. Any other assignment by either Party of this Agreement or any rights or obligation hereunder shall be made only with the written consent of the other Party, which consent shall not be unreasonably withheld.
- 9.3 Notices. All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form provided there is some form of confirmation that the receiving party actually received the notice. Notice by regular mail shall be deemed to have been received three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight or courier shall be deemed to have been received two (2) Business Days after it has been sent. A Party may change its addresses by providing notice of the same in accordance with this Section 9.3.

To CRS:

James B. Gainer  
139 East Fourth Street  
Cincinnati, OH 45202

Phone - 513-287-2633  
Fax - 513-287-1902

To Counterparty:

Ralph Lohman  
Or  
Don Shraer  
Phone - 513-559-2111

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- 9.4 General. This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless set forth in writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights contained herein shall survive the termination or expiration of this Agreement for three (3) years.
- 9.5 Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement to a 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 in connection with any court or regulatory proceeding applicable to such Party; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.
- 9.6 Counterparts. This Agreement may be separately executed in counterparts each of which when so executed shall be deemed to constitute one and the same Agreement.
- 9.7 This Agreement supersedes and replaces in its entirety the agreement between CRS and Counterparty dated October 28, 2004 and as well as any other settlement agreements between Counterparty and Cinergy Corp. or any other Cinergy entity related to PUCO Case No. 99-1658-EL-ETP. By signing this Agreement, Counterparty, CRS and Cinergy Corp. (on behalf of all Cinergy entities) agree to this provision.

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The Parties have caused this Agreement to be executed by their duly authorized representatives in multiple counterparts as of the Effective Date.

CINERGY RETAIL SALES, LLC

COUNTERPARTY

By: [Signature]  
Title: VP General Counsel  
Date: 1/25/05

By: [Signature]  
Title: CEO  
Date: 12-29-04

As to clause 9.7:

CINERGY CORP.

By: [Signature]  
Title: VP & Gen Counsel  
Date: JAN. 25, 2005

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**Exhibit A:**  
**Customer Group: Deaconess Hospital**  
**Quarterly Option Payment Calculation**

The CRS option payment will be equivalent to the actual amount paid to The Cincinnati Gas & Electric Company for the following billing charges under its market-based standard service offer approved by the Commission in Case No. 03-93-EL-ATA:

- One (1) Mill per kWh of generation
- Annually Adjusted Component of POLR Charge (AAC)
- Fuel and Purchase Power (FPP) -- excluding Emission Allowance Expense
- Infrastructure Maintenance Fund (IMF) Charge in excess of 4% of "Title g"
- Electric Choice Insufficient Return Notice Fee charged to customers, who have given notice of their return to CG&E standard tariff service on or before 12/01/2004 and are actively taking CG&E service no later than 01/01/2005.

A customer not paying the market-based standard service offer approved by the Commission in Case No. 03-93-EL-ATA to The Cincinnati Gas & Electric Company, who avoids the System Reliability Tracker (SRT), will have their option payments adjusted for the value of the SRT that CG&E would have received had the customer been a standard tariff customer beginning January 1, 2005. The adjustment will be calculated by taking the total value of the SRT that CG&E would have received in 2005 and deducting it equally from the first four option payments to be received by the customer.

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**EXHIBIT B:**

**Customer Group: Deaconess Hospital  
CRS Generation and Transmission Rates for former Rate DP Standard  
Service Customers**

**Net Monthly Bill**

Computed in accordance with the following charges. (Kilowatt of demand is abbreviated as kW and kilowatt-hours are abbreviated as kWh):

**Generation Charges**

**(a) Demand Charge**

First 1,000 kilowatts ..... \$6.9150 per kW  
Additional kilowatts ..... \$5.4450 per kW

**(b) Energy Charge**

Billing Demand times 300 ..... \$0.021043 per kWh  
Additional kilowatt-hours ..... \$0.016682 per kWh

**Emission Allowance Charges**

Customer will pay monthly an amount equivalent to the emission allowance expense component of the FUCO approved CG&E fuel clause

**Transmission Charges**

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer.

**Rate Stabilization Charge**

Chicago Retail Sales will reimburse the customer for any Rate Stabilization Charge (RSC) actually paid by the customer.

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**Exhibit C:**  
**Customer Group: Deaconess Hospital**  
**Customer Account List**

This agreement pertains to the following Deaconess Hospital accounts:



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OPTION AGREEMENT

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BY AND BETWEEN

CINERGY RETAIL SALES, LLC

AND

GENERAL MOTORS, INC.

This Option Agreement (the "Agreement") is entered into as of this twentieth (20<sup>th</sup>) day of December 2004 (the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware limited liability company, and General Motors, Inc. ("GM"), a Delaware limited liability company (each individually a "Party" or collectively the "Parties").

RECITALS

WHEREAS, General Motors, Inc. for the purposes of this agreement only refers to General Motors, Inc., West Chester Operation located within the retail delivery service territory of The Cincinnati Gas & Electric Company ("CG&E").

WHEREAS, CRS has been certified by the Public Utilities Commission of Ohio as a Certified Retail Electric Supplier ("CRES") and has the authority to engage in the sale of electrical power at retail;

WHEREAS, GM desires to grant an option to CRS to provide electric service and CRS desires to provide electric service pursuant to the terms outlined herein;

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the Parties agree as follows:

ARTICLE I  
DEFINITIONS

The following definitions and any terms defined in this Agreement shall apply hereunder.

"Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of ten (10) percent or more.

"Business Day" means a day on which Federal Reserve member banks in Ohio are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. eastern prevailing time, unless otherwise agreed to by the Parties in writing.

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Cinergy Corporate Records

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Document Code

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EXHIBIT

A

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"Capacity" has the meaning set forth in any Transmission Provider's tariff or MISO's transmission tariff, as amended from time to time, or as defined in any transmission tariff of a successor to MISO.

"Contract Price" means the price in \$US as set forth in Exhibit B to be paid by GM to CRS for the purchase of the Energy under this Agreement.

"Defaulting Party" shall have the meaning specified in Section 6.1.

"Energy" means electric energy of the character commonly known as three-phase, sixty hertz electric energy that is delivered at the nominal voltage of the Delivery Point, expressed in megawatt hours (MWh).

"Event of Default" shall have the meaning specified in Section 6.1.

"FERC" means the Federal Energy Regulatory Commission or any successor agency thereto.

"Firm" means, with respect to a Transaction, that the only excuse for the failure to deliver Energy by CRS or the failure to receive Energy by GM is Force Majeure or the other Party's failure to perform.

"Full Requirements Energy" means, except as provided herein, that GM shall purchase all of its retail Energy requirements for its facility from CRS and that GM shall not resell any of the Energy provided hereunder to any third party.

"Interest Rate" means, for any date the lesser of (a) two (2) percent over the per annum rate of interest equal to the prime lending rate ("Prime Rate") as may be published from time to time in the Federal Reserve Statistical Release H. 15; or (b) the maximum lawful interest rate.

"GM's Maximum Demand" means GM's combined maximum demand for all of GM's accounts listed on Exhibit C with The Cincinnati Gas & Electric Company as of January 1, 2005.

"MW" means megawatt.

"Term" shall have the meaning specified in Article 4.1.

"Transmission Providers" means the entity or entities transmitting or transporting the Energy on behalf of CRS or GM to the Delivery Point.

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ARTICLE II  
OPTION

- 2.1 GM currently receives its electric service from The Cincinnati Gas & Electric Company ("CG&E") pursuant to the applicable tariffs rates, or will provide NOTICE by December 30, 2004 that it will take electric service from CG&E in accordance with applicable CG&E tariff requirements. GM hereby grants to CRS the exclusive option, upon thirty (30) days notice, to serve all of GM's accounts and load set forth in Exhibit C, including any increases in accordance with Section 3.1, as of December 31, 2004 ("Option").
- 2.2 CRS shall have the right to exercise this Option at any time during the Term of this Agreement.
- 2.3 In exchange for GM granting CRS this option, CRS agrees to pay GM each calendar month of the Term, until exercise of the Option, the amount set forth on Exhibit A ("Option Payment"). CRS shall work in good faith with GM to establish procedures so that the Option Payment is properly distributed to each applicable GM account.
- 2.4 Because this is an exclusive Option, in the event GM leaves its current electric service and receives electric service from any third party that is not CRS or an Affiliate of CRS, then CRS shall cease all Option Payments and this Agreement shall terminate and all obligations of the Parties hereunder shall terminate.
- 2.5 If CRS exercises its Option, the Parties shall enter into a power sale agreement, including the terms set forth in Article III.

ARTICLE III  
CRS POWER CONTRACT TERMS

- 3.1 In the event CRS <sup>EXERCISES (PAC)</sup> exercises its option, the power sale agreement between CRS and GM shall include, among others, the following terms:
  - a. Energy Quantity and Type. CRS shall provide GM with Firm, Full Requirements Energy and Capacity up to 3 MWs greater than GM's Maximum Demand for all of its accounts as of January 1, 2005 ("Quantity"). If during the Term of the Agreement, GM has additional load or accounts greater than 3MW, then such new load or account is not included within the terms of the Agreement and CRS shall have no obligation to provide Energy and Capacity to GM above the Quantity set forth herein.
  - b. Transmission Service and Charges. Transmission service and charges will be provided in accordance with the open access transmission tariff of the Midwest Independent Transmission System Operator, Inc. or CG&E (or an affiliate on its behalf), whichever is applicable, as filed with the FERC and as it may be amended, from time to time, or any successor tariff. Unless otherwise agreed

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by GM, the transmission service charge shall be equal to transmission charges approved by the Public Utilities Commission of Ohio for the otherwise standard offer rate schedule applicable to each participating GM account or successors to such rate schedule.

- c. Contract Price. The Contract Price is set forth in Exhibits A and B.
- d. Change to Prices. As a retail sale, the power sale agreement is not subject to the jurisdiction of the FERC; nor shall either Party seek to have the FERC assert jurisdiction over the Agreement. However, to the extent that either the FERC or the Public Utilities Commission of Ohio asserts jurisdiction over the Agreement, the Parties agree that the Contract Price specified above is just and reasonable and consistent with the public interest. Neither CRS nor GM shall seek to modify the Contract Price through the auspices of any regulatory body.
- e. Term. The term of the power sale agreement shall be through December 31, 2008 provided that GM may terminate this Agreement in its entirety, including any contract with CRS, upon twelve (12) months written notice provided that such termination shall be effective for all GM accounts and for this entire agreement.

#### ARTICLE IV TERM OF AGREEMENT

- 4.1 Agreement Term and Effective Date. This Agreement shall become effective upon execution by the Parties. This Agreement shall extend from January 1, 2005 through and including December 31, 2008, unless terminated earlier in accordance with the terms of this Agreement ("Term").
- 4.2 After Termination. The applicable provisions of this Agreement shall continue in effect after termination thereof to the extent necessary to provide for final billing, billing adjustments and payments.

#### ARTICLE V BILLING

- 5.1 Payment. CRS shall submit the Option Payment to GM within fifteen (15) days after the end of each calendar month. The payment shall be submitted to the following account or address:

General Motors, Inc.  
NAO Util Payment Dept. C/O EUSB  
PO Box 319022  
Chicago, IL 60631

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ARTICLE VI  
DEFAULTS AND REMEDIES

- 6.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:
- 6.1.1 any representation or warranty made by the Defaulting Party herein shall at any time prove to be false or misleading in any respect material to this Agreement;
  - 6.1.2 the failure of the Defaulting Party to perform any covenant set forth in this Agreement (except to the extent constituting a separate Event of Default) and such failure is not cured within five (5) Business Days after written notice thereof to the Defaulting Party;
  - 6.1.3 the Defaulting Party consolidates or amalgamates with, merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all of the obligations of such Party under this Agreement;
  - 6.1.4 the failure to make when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written notice of such failure is given by the other Party; or
  - 6.1.5 the Defaulting Party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is unable to pay its debts as they fall due.
- 6.2 Remedies upon an Event of Default. Upon the occurrence (and continuation beyond the applicable cure period) of an Event of Default with respect to a Defaulting Party, the Non-Defaulting Party shall have the right to terminate this Agreement and exercise all rights and remedies available to it in law or in equity.
- 6.3 Other Termination Events. If performance by either Party under this Agreement becomes subject to regulation of any kind whatsoever under any law, rule, regulation, order or similar provision to a greater or different extent than that existing on the Effective Date and such regulation either renders this Agreement illegal or unenforceable or contrary to regulatory authority, then such Party shall have the right upon thirty (30) days notice to terminate this Agreement without further liability. FERC's determination that CG&E is

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prohibited from selling wholesale power to CRS pursuant to CG&E's tariff shall allow CRS to terminate this Agreement in its sole discretion with thirty (30) days written notice and without further liability.

ARTICLE VII  
LIMITATIONS; DUTY TO MITIGATE

7.1 Indemnity CRS AGREES TO PROTECT, INDEMNIFY, HOLD HARMLESS AND DEFEND GM ITS OFFICERS, DIRECTORS AND EMPLOYEES, AGAINST ALL ACTIONS, CLAIMS, DAMAGES, DEMANDS, SUITS AND OTHER LIABILITIES, INCLUDING ATTORNEY FEES AND OTHER EXPENSES OF LITIGATION ARISING OUT OF, IN WHOLE OR IN PART CRS'S EMPLOYEES, AGENTS AND SUBCONTRACTORS BREACH OF ANY TERM OF THIS CONTRACT, OR ANY ACT OR OMISSION IN THE PERFORMANCE OF THIS AGREEMENT.

GM AGREES TO PROTECT, INDEMNIFY, HOLD HARMLESS AND DEFEND CRS, ITS OFFICERS, DIRECTORS AND EMPLOYEES, AGAINST ALL ACTIONS, CLAIMS, DAMAGES, DEMANDS, SUITS AND OTHER LIABILITIES, INCLUDING ATTORNEY FEES AND OTHER EXPENSES OF LITIGATION ARISING OUT OF, IN WHOLE OR IN PART GM'S EMPLOYEES, AGENTS AND SUBCONTRACTORS BREACH OF ANY TERM OF THIS CONTRACT, OR ANY ACT OR OMISSION IN THE PERFORMANCE OF THIS AGREEMENT.

7.2 Limitation of Remedies, Liability and Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, 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 PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, 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. UNLESS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES,

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BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE, IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS 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, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

- 7.3 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 any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

#### ARTICLE VIII GOVERNING LAW - DISPUTE RESOLUTION

8.1 Governing Law and Jurisdiction. 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 AND SHALL BE BROUGHT IN THE STATE AND FEDERAL COURTS LOCATED IN HAMILTON COUNTY OHIO.

- 8.2 Dispute Resolution. Any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, shall be resolved fully and finally by binding arbitration under the Commercial Rules, but not the administration, of the American Arbitration Association, except to the extent that the Commercial Rules conflict with this provision, in which event, this Agreement shall control. This arbitration provision shall not limit the right of either Party prior to or during any such dispute to seek, use, and employ ancillary, or preliminary or permanent rights and/or remedies, judicial or otherwise, for the purposes maintaining the status quo until such time as the arbitration award is rendered or the dispute is otherwise resolved. The arbitration shall be conducted in Cincinnati, Ohio and the laws of Ohio shall govern the construction and interpretation of this Agreement, except to provisions related to conflict of laws. Within ten (10) Business Days of service of a Demand for Arbitration, the parties may agree upon a sole arbitrator, or if a sole arbitrator cannot be agreed upon, a panel of three arbitrators shall be named. One arbitrator shall be selected by CRS and one shall be selected by Buyer. A knowledgeable, disinterested and impartial arbitrator shall be selected by the two arbitrators so appointed by the parties. If the arbitrators appointed by the parties cannot agree upon the third arbitrator within ten (10) Business Days, then either Party may apply to any judge in any court of competent jurisdiction for appointment of the third arbitrator. There shall be no discovery during the

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arbitration other than the exchange of information that is provided to the arbitrator(s) by the Parties. The arbitrator(s) shall have the authority only to award equitable relief and compensatory damages, and shall not have the authority to award punitive damages or other non-compensatory damages. The decision of the arbitrator(s) shall be rendered within sixty (60) Business Days after the date of the selection of the arbitrator(s) or within such period as the Parties may otherwise agree. Each Party shall be responsible for the fees, expenses and costs incurred by the arbitrator appointed by each Party, and the fees, expenses and costs of the third arbitrator (or single arbitrator) shall be borne equally by the Parties. The decision of the arbitrator(s) shall be final and binding and may not be appealed. Any Party may apply to any court having jurisdiction to enforce the decision of the arbitrator(s) and to obtain a judgment thereon.

Notwithstanding the foregoing, the Parties may cancel or terminate this Agreement in accordance with its terms and conditions without being required to follow the procedures set forth in this Article.

#### ARTICLE IX MISCELLANEOUS

- 9.1 Representations and Warranties. On the Effective Date and on the date of entering into this Agreement, each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction; (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement; (c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision applicable to it; (d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; (e) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (f) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligation under this Agreement or any other document relating to this Agreement; (g) no Event of Default or event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement or any Transaction; and (h) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether such Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms,

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conditions and risks of this Agreement.

- 9.2 Assignment. This Agreement shall be assignable by CRS without GM's consent provided such assignment is to any other direct or indirect subsidiary of Cimergy Corp. and provided that such direct or indirect subsidiary has an equivalent or higher credit rating than CRS. This Agreement shall be assignable by GM without CRS' consent provided such assignment is to any other direct or indirect subsidiary of GM and provided that such direct or indirect subsidiary has an equivalent or higher credit rating than GM. Any other assignment by either Party of this Agreement or any rights or obligation hereunder shall be made only with the written consent of the other Party, which consent shall not be unreasonably withheld.
- 9.3 Notices. All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice by regular mail shall be deemed to have been received three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight or courier shall be deemed to have been received two (2) Business Days after it has been sent. A Party may change its addresses by providing notice of the same in accordance with this Section 9.3.

To CRS:

James B. Gainer  
139 East Fourth Street  
Cincinnati, OH 45202

Phone -513-287-2633  
Fax-513-287-1902

To GM:

Philip A. Leach  
Energy & Utility Services Group  
Worldwide Facilities Group  
PCC-Central  
Mail Code 483-520-168  
2000 Cornerpoint Parkway  
Pontiac, MI 48341

Phone: (248) 753-1763  
Fax: (248) 753-6225

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- 9.4 General. This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless set forth in writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights contained herein shall survive the termination or expiration of this Agreement for three (3) years.
- 9.5 Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement to a 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 in connection with any court or regulatory proceeding applicable to such Party; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.
- 9.6 Counterparts. This Agreement may be separately executed in counterparts each of which when so executed shall be deemed to constitute one and the same Agreement.
- 9.7 This Agreement supersedes and replaces in its entirety the agreement between CRS and GM dated November 8, 2004. Nothing in this Agreement shall affect the terms and conditions agreed to by Cinergy and the Industrial Energy Users-Ohio pursuant to the agreement dated May 8, 2000 related to the settlement of certain issues in PUCO Case No. 99-1653-EL-ETP.

The Parties have caused this Agreement to be executed by their duly authorized representatives in multiple counterparts as of the Effective Date.

CINERGY RETAIL SALES, LLC

GENERAL MOTORS, INC.

By: By: 

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*Vice President & General Counsel*  
Title: *Commercial Services Unit*

Date: *January 7, 2005*

Title: *DIRECTOR Energy & Utility Services*

Date: *December 21, 2004*

As to clause 9.7:

ENERGY CORP.

By: *[Signature]*

Title: *Vice President Regulatory and Legislative Strategy*

Date: *January 7, 2005*

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CONFIDENTIAL PROPRIETARY  
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Title: \_\_\_\_\_

Title: DIRECTOR ENERGY & UTILITY SERVICE

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

Date: DECEMBER 21, 2004

As to clause 9.7:

CINERGY CORP.

By: [Signature]

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

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

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**Exhibit A:**  
**Customer Group: General Motors, Inc.**  
**Quarterly Option Payment Calculation**

The CRS option payment will be equivalent to the actual amount paid to The Cincinnati Gas & Electric Company for the following billing charges under its market-based standard service offer approved by the Commission in Case No. 03-93-EL-ATA:

- Regulatory Transition Charge (RTC)
- Annually Adjusted Component of POLR Charge (AAC)
- Fuel and Purchase Power (FPP) – includes Emission Allowance Expense
- 50% of System Reliability Tracker (SRT)
- Infrastructure Maintenance Fund (IMF) Charge in excess of 4% of "Title g"
- Electric Choice Insufficient Return Notice Fee charged to customers, who have given notice of their return to CG&E standard tariff service on or before 12/30/2004 and are actively taking CG&E service no later than 01/31/2005.

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**EXHIBIT B:**  
**Customer Group: General Motors, Inc.**

**CRS Generation Rates for former Rate DS Standard Service Customers**

**Net Monthly Bill**

Computed in accordance with the following charges. (Kilowatt of demand is abbreviated as kW and kilowatt-hours are abbreviated as kWh):

**Generation Charges**

**(a) Demand Charge**

First 1,000 kilowatts ..... \$7.6574 per kW  
Additional kilowatts ..... \$6.0574 per kW

**(b) Energy Charge**

Billing Demand times 300 ..... \$4.019576 per kWh  
Additional kilowatt-hours ..... \$0.016266 per kWh

**Transmission Charges**

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer. Transmission charges to be paid include, but are not limited to the following PUCO approved charges:

- (1) Network Transmission Services
- (2) MISO Schedule Charges
- (3) Net Congestion Charges

**Rate Stabilization Charge**

Energy Retail Sales will reimburse the customer for any Rate Stabilization Charge (RSC) actually paid by the customer.

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**Exhibit C:**  
**Customer Group: General Motors, Inc.**  
**Customer Account List**

This agreement pertains to the following General Motors, Inc. accounts:

[REDACTED]

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OPTION AGREEMENT

BY AND BETWEEN

CINERGY RETAIL SALES, LLC

AND

AK STEEL CORPORATION

This Option Agreement (the "Agreement") is entered into as of this 2nd day of February, 2005 (the "Effective Date") by and between Cinergy Retail Sales, LLC ("CRS") a Delaware limited liability company, and AK Steel Corporation ("AK Steel"), a Delaware corporation (each individually a "Party" or collectively the "Parties").

RECITALS

WHEREAS, AK Steel operates steel manufacturing facilities in Middletown, Ohio and purchases electric power service from The Cincinnati Gas & Electric Company (CG&E) on metered accounts listed on Exhibit C.

WHEREAS, CRS has been certified by the Public Utilities Commission of Ohio as a Certified Retail Electric Supplier ("CRES") and has the authority to engage in the sale of electrical power at retail;

WHEREAS, CRS and AK Steel desire to establish terms and conditions for this option.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the Parties agree as follows:

ARTICLE I  
DEFINITIONS

The following definitions and any terms defined in this Agreement shall apply hereunder.

"Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect

Cinergy Corporate Records

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Document Code

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ownership of ten (10) percent or more.

"Base Contract Price" means the price in \$US as set forth in Exhibit B to be paid by AK Steel to CRS for the purchase of Generation and Transmission service under this Agreement.

"Business Day" means a day on which Federal Reserve member banks in Ohio are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. eastern prevailing time, unless otherwise agreed to by the Parties in writing.

"Maximum Demand" means AK Steel's combined maximum annual demands for all of AK Steel's accounts listed on Exhibit C with Cincinnati Gas & Electric ("CG&E") for the twelve months ending December 31, 2004.

"Capacity" has the meaning set forth in any Transmission Provider's tariff or MISO's transmission tariff, as amended from time to time, or as defined in any transmission tariff of a successor to MISO.

"Defaulting Party" shall have the meaning specified in Section 6.1.

"Energy" means electric energy of the character commonly known as three-phase, sixty hertz electric energy that is delivered at the nominal voltage of the Delivery Point, expressed in megawatt hours (MWh).

"Event of Default" shall have the meaning specified in Section 6.1.

"FERC" means the Federal Energy Regulatory Commission or any successor agency thereto.

"Firm" means that the only excuse for the failure to deliver Energy by CRS or the failure to receive Energy by AK Steel is Force Majeure or the other Party's failure to perform.

"Full Requirements Energy" means, except as provided herein, that AK Steel shall purchase all of its retail Energy requirements for its facility from CRS and that AK Steel shall not resell any of the Energy provided hereunder to any third party.

"Interest Rate" means, for any date the lesser of (a) two (2) percent over the per annum rate of interest equal to the prime lending rate ("Prime Rate") as may be published from time to time in the Federal Reserve Statistical Release H. 15; or (b) the maximum lawful interest rate.

"MW" means megawatt.

"Term" shall have the meaning specified in Article 4.1.

"Transmission Providers" means the entity or entities transmitting or transporting the Energy on behalf of CRS or AK Steel to the Delivery Point.

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ARTICLE II  
OPTION

- 2.1 AK Steel currently purchases its generation electric service from The Cincinnati Gas & Electric Company ("CG&E") pursuant to the applicable tariffs or will provide notice by December 30, 2004 that it will purchase generation electric service from CG&E starting no later than December 31, 2005 in accordance with applicable CG&E tariff requirements. AK Steel hereby grants to CRS the exclusive option, upon thirty (30) days notice, to provide generation electric service for all of AK Steel's accounts and load set forth in Exhibit C, including any increases in accordance with Section 3.1, as of December 31, 2004 ("Option"). In the event that an Electric Choice Insufficient Return Notice Fee is incurred by AK Steel due to switching back to CG&E standard tariffed service prior to January 31, 2005, an amount equivalent to said fee will be paid to AK Steel by CRS.
- 2.2 CRS shall have the right to exercise this Option at any time during the Term of this Agreement.
- 2.3 In exchange for AK Steel granting CRS this option, CRS agrees to pay AK Steel each calendar year quarter of the Term, until exercise of the Option, the amount set forth on Exhibit A ("Option Payment"). The Parties agree that if AK Steel defaults or is delinquent, after any applicable cure period, in any of its payments to any Cinergy affiliated company for any service provided to AK Steel, then CRS has the right to offset the Option Payment due hereunder with any amounts that are owed by AK Steel to the Cinergy affiliated company.
- 2.4 Because this is an exclusive Option, in the event AK Steel leaves its current electric service and receives electric service from any third party that is not CRS or an Affiliate of CRS, then CRS shall cease all Option Payments and this Agreement shall terminate and all obligations of the Parties hereunder shall terminate.
- 2.5 If CRS exercises its Option, the Parties shall enter into a power sale agreement, including the terms set forth in Article III.

ARTICLE III  
CRS POWER CONTRACT TERMS

- 3.1 In the event CRS exercises its option, a power sale agreement between CRS and AK Steel will be negotiated. The power sale agreement shall include generally accepted terms and conditions relating to the sale of competitive retail electric generation service, including, among others, the following terms:

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- a. Energy Quantity and Type. CRS shall provide AK Steel with Firm, Full Requirements Energy and Capacity up to 3 MWs greater than AK Steel's Maximum Demand ("Quantity"). If during the Term of this Agreement, AK Steel has additional load or accounts greater than 3MW, then such new load or account is not included within the terms of this Agreement and CRS shall have no obligation to provide Energy and Capacity to AK Steel above the Quantity set forth herein.
- b. Transmission Service and Charges. Transmission service will be provided in accordance with the open access transmission tariff of the Midwest Independent Transmission System Operator, Inc. or CG&E (or an affiliate on its behalf), whichever is applicable, as filed with the FERC and as it may be amended, from time to time, or any successor tariff.
- c. Base Contract Price. The Base Contract Price is set forth in Exhibit B.
- d. Change to Prices. As a retail sale, the power sale agreement is not subject to the jurisdiction of the FERC; nor shall either Party seek to have the FERC assert jurisdiction over the Agreement. However, to the extent that either the FERC or the Public Utilities Commission of Ohio asserts jurisdiction over the Agreement, the Parties agree that the Contract Price specified above is just and reasonable and consistent with the public interest. Neither CRS nor AK Steel shall seek to modify the Base Contract Price through the auspices of any regulatory body.
- e. Term. The term of the power sale agreement shall be through December 31, 2008.
- f. Credit. The power sale agreement will have terms and conditions as similar as possible to CG&E's existing unbundled tariffs. CRS will not require surety bonds, deposits or other corporate guarantees.
- g. Adjusted Base Contract Price. If CRS exercises this option, then the combined net generation cost paid to CRS and CG&E will be an amount equivalent to Big G, plus FPP (excluding emission allowances) plus IMF up to 4% of little g. In addition, there will be transmission charges to be paid to CRS as set forth in Exhibit B.

ARTICLE IV  
TERM OF AGREEMENT

- 4.1 Agreement Term and Effective Date. This Agreement shall become effective upon execution by the Parties. This Agreement shall extend from January 1, 2005 through and

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including December 31, 2008, unless terminated earlier in accordance with the terms of this Agreement ("Term").

- 4.2 Agreement Termination. This Agreement terminates if the Commission in the ongoing CG&E fuel cost recovery cases, fails to approve as part of the capped Provider of Last Resort Charge, a fuel cost recovery mechanism such that fuel costs equal the average embedded fuel costs for all consumers in CG&E's service territory served by any Cinergy company. This Agreement shall also terminate if a court or administrative agency of competent jurisdiction issues an order depriving the Parties of the benefits of this Agreement or otherwise voiding this Agreement. Before termination of this Agreement, the Parties agree to use best efforts to fulfill the intent of this Agreement by negotiating amendments to this Agreement that put the Parties in substantially the same overall economic positions as created under the PUCO's Order dated November 23, 2004 in Case No. 03-93-EL-ATA and this Agreement.
- 4.3 After Termination. The applicable provisions of this Agreement shall continue in effect after termination thereof to the extent necessary to provide for final billing, billing adjustments and payments.

#### ARTICLE V BILLING

- 5.1 Payment. CRS shall submit the Option Payment to AK Steel by check or wire transfer within forty-five (45) days after the end of each calendar year quarter. The payment shall be submitted to an account or address designated by AK Steel:

#### ARTICLE VI DEFAULTS AND REMEDIES

- 6.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:
- 6.1.1 any representation or warranty made by the Defaulting Party herein shall at any time prove to be false or misleading in any respect material to this Agreement;
  - 6.1.2 the failure of the Defaulting Party to materially perform any covenant set forth in this Agreement (except to the extent constituting a separate Event of Default,) and such failure is not cured within five (5) Business Days after written notice thereof to the Defaulting Party;
  - 6.1.3 the Defaulting Party consolidates or amalgamates with, merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting surviving or

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transferee entity fails to assume all of the obligations of such Party under this Agreement;

6.1.4 the failure to make when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written notice of such failure is given by the other Party; or

6.1.5 the Defaulting Party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is unable to pay its debts as they fall due.

6.2 Remedies upon an Event of Default. Upon the occurrence (and continuation beyond the applicable cure period) of an Event of Default with respect to a Defaulting Party, the Non-Defaulting Party shall have the right to terminate this Agreement and exercise all rights and remedies available to it in law or in equity.

ARTICLE VII  
DUTY TO MITIGATE

7.1 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 any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

ARTICLE VIII  
GOVERNING LAW - DISPUTE RESOLUTION

8.1 Governing Law and Jurisdiction. 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.

8.2 Dispute Resolution. Any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, shall be resolved fully and finally by binding arbitration under the Commercial Rules, but not the administration, of the American Arbitration Association, except to the extent that the Commercial Rules conflict with this provision, in which event, this Agreement shall control. This arbitration provision shall not limit the

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right of either Party prior to or during any such dispute to seek, use, and employ ancillary, or preliminary or permanent rights and/or remedies, judicial or otherwise, for the purposes maintaining the status quo until such time as the arbitration award is rendered or the dispute is otherwise resolved. The arbitration shall be conducted in Cincinnati, Ohio and the laws of Ohio shall govern the construction and interpretation of this Agreement, except to provisions related to conflict of laws. Within ten (10) Business Days of service of a Demand for Arbitration, the parties may agree upon a sole arbitrator, or if a sole arbitrator cannot be agreed upon, a panel of three arbitrators shall be named. One arbitrator shall be selected by CRS and one shall be selected by AK Steel. A knowledgeable, disinterested and impartial arbitrator shall be selected by the two arbitrators so appointed by the parties. If the arbitrators appointed by the parties cannot agree upon the third arbitrator within ten (10) Business Days, then either Party may apply to any judge in any court of competent jurisdiction for appointment of the third arbitrator. There shall be no discovery during the arbitration other than the exchange of information that is provided to the arbitrator(s) by the Parties. The arbitrator(s) shall have the authority only to award equitable relief and compensatory damages, and shall not have the authority to award punitive damages or other non-compensatory damages. The decision of the arbitrator(s) shall be rendered within ninety (90) Business Days after the date of the selection of the arbitrator(s) or within such period as the Parties may otherwise agree. Each Party shall be responsible for the fees, expenses and costs incurred by the arbitrator appointed by each Party, and the fees, expenses and costs of the third arbitrator (or single arbitrator) shall be borne equally by the Parties. The decision of the arbitrator(s) shall be final and binding and may not be appealed. Any Party may apply to any court having jurisdiction to enforce the decision of the arbitrator(s) and to obtain a judgment thereon.

Notwithstanding the foregoing, the Parties may cancel or terminate this Agreement in accordance with its terms and conditions without being required to follow the procedures set forth in this Article.

#### ARTICLE IX MISCELLANEOUS

- 9.1 Representations and Warranties. On the Effective Date and on the date of entering into this Agreement, each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in each jurisdiction; (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement; (c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision applicable to it; (d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in

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accordance with its terms; (e) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (f) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligation under this Agreement or any other document relating to this Agreement; (g) no Event of Default or event which, with the giving of notice or lapse of time, or both, would constitute an Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement or any Transaction; and (h) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether such Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement.

- 9.2 Assignment. This Agreement shall be assignable by CRS without the AK Steel's consent provided such assignment is to any other direct or indirect subsidiary of Cinergy Corp. provided that such direct or indirect subsidiary has an equivalent or higher credit rating than CRS. Any other assignment by either Party of this Agreement or any rights or obligation hereunder shall be made only with the written consent of the other Party, which consent shall not be unreasonably withheld.
- 9.3 Notices. All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice by regular mail shall be deemed to have been received three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight or courier shall be deemed to have been received two (2) Business Days after it has been sent. A Party may change its addresses by providing notice of the same in accordance with this Section 9.3.

To CRS:

James B. Gainer  
139 East Fourth Street  
Cincinnati, OH 45202

Phone - 513-287-2633  
Fax - 513-287-1902

To AK Steel:

David F. Boehm, Esq.



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Michael L. Kurtz, Esq.  
Boehm, Kurtz & Lowry  
36 E. Seventh Street, Suite 1510  
Cincinnati, Ohio 45202  
Ph: 513.421.2255 Fax: 513.421.2764

- 9.4 General. This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless set forth in writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights contained herein shall survive the termination or expiration of this Agreement for three (3) years.
- 9.5 Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement to a 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 in connection with any court or regulatory proceeding applicable to such Party; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.
- 9.6 Counterparts. This Agreement may be separately executed in counterparts each of which when so executed shall be deemed to constitute one and the same Agreement.
- 9.7 This Agreement supersedes and replaces the agreement between CRS and AK Steel dated November 22, 2004. During the term of this Agreement, it supersedes and replaces any other agreements between the Parties or their affiliates related to PUCO Case No. 99-1658-EL-ETP. Upon the termination of this Agreement, any other settlement agreements between the Parties or their affiliates related to PUCO Case No. 99-1658-EL-ETP shall be in full force and effect according to their original terms.

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The Parties have caused this Agreement to be executed by their duly authorized representatives in multiple counterparts as of the Effective Date.

CINERGY RETAIL SALES, LLC

AK STEEL CORPORATION

By: [Signature]

By: [Signature]

Title: VP & General Counsel

Title: Senior Vice President

Date: MAY 2, 2005

Date: 03/21/05

FORM APPROVED  
[Signature]  
ATTORNEY

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**EXHIBIT B:**

**Customer Group: AK Steel Corporation  
CRS Generation and Transmission Rates for Former Rate TS Standard Service  
Customers**

**Net Monthly Bill**

Computed in accordance with the following charges. (Kilovolt amperes are abbreviated as kVA and kilowatt-hours are abbreviated as kWh):

**Generation Charges**

**(b) Demand Charge**

First 50,000 KVA ..... \$8.3830 per kVA  
Additional KVA ..... \$6.0430 per kVA

**(b) Energy Charge**

Billing Demand times 300 ..... 50.01404 per kWh  
Additional kilowatt-hours ..... 50.016381 per kWh

**(d) Fuel Charge**

The Fuel Charge shall be equal to the Fuel and Purchase Power (PPP) charge excluding Emission Allowance Expense imposed by CG&E.

**Transmission Charges**

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer. Transmission charges to be paid include, but are not limited to the following PUCO approved charges:

- (4) Network Transmission Services
- (5) MISO Schedule Charges
- (6) Net Congestion Charges

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**Exhibit C:**  
**Customer Group: AK Steel Corporation**  
**Customer Account List**

This agreement pertains to the following AK Steel Corporation accounts:



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## Exhibit A:

### Customer Group: AK Steel Corporation Quarterly Option Payment Calculation

The CRS option payment made quarterly for the period January 1, 2005 through December 31, 2008 or the date upon which the option is exercised whichever comes first, will be equivalent to the following calculation:

The actual amount paid by AK Steel Corporation to The Cincinnati Gas and Electric Company during the applicable calendar quarter under its market-based standard service offer (MBSSO) generation rate approved by the Commission in Case No. 03-93-EL-ATA. The MBSSO generation rate includes all charges related to generation service, but excludes transmission and distribution.

Less the following amount:

The applicable tariffed unbundled generation rate approved by the Commission in Case No. 99-1658-EL-ETP and also known as "Big G" shown in the tariff schedule below:

Tariff Schedule	Demand Charge (\$ per kW)			Energy Charge (\$ per kWh)		
	First Step	Second Step	Additional	First Step	Second Step	Additional
DM <sup>1</sup>	N/A	N/A	N/A	\$0.070728	\$0.018173	\$0.009004
DP	\$6.9150	\$5.4450	N/A	\$0.028898	\$0.017782	N/A
DS	\$7.6374	\$6.0574	N/A	\$0.028568	\$0.016366	N/A
TS	\$8.3430	\$6.0430	N/A	\$0.019994	\$0.016481	N/A

<sup>1</sup> DM only shows summer seasonal rates.

Plus

Fuel and Purchase Power (FPP) - excluding Emission Allowance Expense

Plus

Infrastructure Maintenance Fund (IMF) up to an amount equal to 4% of "Big G"

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**EXHIBIT B:**  
**Customer Group: AK Steel Corporation**  
**CRS Generation Rates for Former Rate DP Standard Service Customers**

Net Monthly Generation And Transmission BID Will Be The Following Plus BMF Up To 4% Of Little g

Computed in accordance with the following charges. (Kilowatt of demand is abbreviated as kW and kilowatt-hours are abbreviated as kWh);

**Generation Charges**

**(a) Demand Charge**

First 1,000 kilowatts ..... \$6.9150 per kW  
Additional kilowatts ..... \$5.4450 per kW

**(b) Energy Charge**

Billing Demand times 300 ..... \$0.022048 per kWh  
Additional kilowatt-hours ..... \$0.017682 per kWh

**(c) Fuel Charge**

The Fuel Charge shall be equal to the Fuel and Purchase Power (FPP) charge excluding Emission Allowance Expense imposed by CG&E.

**Transmission Charges**

Customer will pay a transmission charge equivalent to the sum of all applicable transmission charges that they would pay to CG&E as a standard tariff customer. Transmission charges to be paid include, but are not limited to the following PUCO approved charges:

- (1) Network Transmission Services
- (2) MISO Schedule Charges
- (3) Net Congestion Charges

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