**Sample**

**Pre-Bid Security - Letter of Credit**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Date]

Letter of Credit No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

To: Duke Energy Ohio, Inc. ("Duke Energy Ohio”)

1. We hereby establish in your favor this irrevocable Letter of Credit (this “Letter of Credit”) for the account of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(“the Bidder”), in the amount of U.S.$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, effective immediately and available to you at sight upon demand at our counters at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[location] and expiring on \_\_\_\_\_\_\_\_\_\_\_[date] which is 60 calendar days from date of issuance, unless terminated earlier in accordance with the provisions hereof or otherwise extended.
2. This Letter of Credit is issued at the request of the Bidder, and we hereby irrevocably authorize you to draw on us, in accordance with the terms and conditions hereof, up to the maximum amount of this Letter of Credit, subject to reduction as provided in Paragraph 11 hereof. This Letter of Credit may be drawn by presenting a certificate from you stating that the Bidder:
3. “has made a material omission or misrepresentation in the Part 1 Application or the Part 2 Application submitted by the Bidder to participate in Duke Energy Ohio’s Competitive Bidding Process for purposes of procuring supply under the Master Standard Service Offer Supply Agreement”; or
4. “has violated the bidding rules for Duke Energy Ohio’s Competitive Bidding Process for purposes of procuring supply under the Master Standard Service Offer Supply Agreement”; or
5. “has a winning bid in Duke Energy Ohio’s Competitive Bidding Process for purposes of procuring supply under the Master Standard Service Offer Supply Agreement and has failed to execute the Master Standard Service Offer Supply Agreement within three (3) business days of the closing of the Solicitation (as defined in the Master Standard Service Offer Supply Agreement)”; or
6. “has a winning bid in Duke Energy Ohio’s Competitive Bidding Process for purposes of procuring supply under the Master Standard Service Offer Supply Agreement and has failed to meet the creditworthiness requirements of the Master Standard Service Offer Supply Agreement within three (3) business days of the closing of the Solicitation (as defined in the Master Standard Service Offer Supply Agreement)”.
7. A partial or full drawing hereunder may be made by you on any Business Day on or prior to the expiration of this Letter of Credit by delivering, by no later than 11:00 A.M. (prevailing Eastern Time[[1]](#footnote-1)) on such Business Day to \_\_\_\_\_\_\_\_\_\_\_\_\_\_ [bank], \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [address], (i) a notice in the form of Annex 1 hereto, appropriately completed and duly signed by an Authorized Signatory of Duke Energy Ohio and (ii) your draft in the form of Annex 2 hereto, appropriately completed and duly signed by an Authorized Signatory of Duke Energy Ohio.
8. We hereby agree to honor a drawing hereunder made in compliance with the terms and conditions of this Letter of Credit by transferring in immediately available funds the amount specified in the draft delivered to us in connection with such drawing to such accounts at such banks in the United States as you may specify in your draft delivered to us pursuant to Paragraph 3 hereof, by 3:00 PM (prevailing Eastern Time) on the date of such drawing if delivery of this requisite document is made prior to 11:00 AM (prevailing Eastern Time) on a Business Day pursuant to Paragraph 3 hereof, but at the opening of business on the first Business Day next succeeding the date of such drawing if delivery of the requisite document is made on or after 11:00 AM (prevailing Eastern Time) on any Business Day pursuant to Paragraph 3 hereof.
9. If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you prompt notice (not later than three (3) Business Days following the date of receipt of the documents) that the demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefore and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effected in conformity with this Letter of Credit, you may attempt to correct any such non-conforming demand for payment to the extent that you are entitled to do so, provided, however, in such event a conforming demand for payment must be timely made in accordance with the terms of this Letter of Credit.
10. This Letter of Credit shall automatically terminate and be delivered to us for cancellation on the earliest of (i) the making by you and payment by us of the drawings in an amount equal to the maximum amount available to be made hereunder, (ii) the date we receive from you a Certificate of Expiration in the form of Annex 3 hereto, or (iii) the above-stated expiration date hereof.
11. As used herein:

“Authorized Signatory” means President, Treasurer, any Vice President or any Assistant Treasurer or any other person duly authorized.

“Business Day”means any day on which commercial banks are not authorized or required to close in New York, NY and any day on which payments can be effected on the Fed wire system.

1. This Letter of Credit is not transferable, and except as otherwise expressly stated herein, is subject to the International Standby Practices 1998, International Chamber Of Commerce Publication No. 590 (“ISP98”). All banking charges are for the account of the Bidder. This Letter of Credit shall, as to matters not governed by the ISP98, be governed and construed in accordance with New York law, without regard to principles of conflicts of law.
2. This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, changed, amplified or limited by reference to any document, instrument or agreement referred to herein, except for Annexes 1 through 3 hereto and the notices referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above.
3. We certify that as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[date] we \_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Bank] satisfy the minimum long-term senior unsecured debt rating of “A-” from Standard & Poor’s Rating Services or “A3” from Moody’s Investors Service, Inc.
4. The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid through us referencing this Letter of Credit No. \_\_\_. Partial drawings are permitted hereunder. Drafts showing amounts in excess of amounts available under this Letter of Credit are acceptable, however, in no event will payment exceed the amount available to be drawn under this Letter of Credit.
5. Faxed document(s) are acceptable. Presentation by fax must be made to fax number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and confirmed by telephone to our Standby Letter of Credit Unit at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
6. In the event of act of God, riot, civil commotion, insurrection, war, terrorism or any strikes or lock outs, or any cause beyond our control, that interrupts our business, and causes the place for presentation of this Letter of Credit to be closed for business on the last day of presentation, the expiration date of this Letter of Credit shall be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.
7. This original Letter of Credit has been sent to the Auction Manager for Duke Energy Ohio’s Competitive Bidding Process:

 Attn: Robert Lee, Vice President

CRA International, Inc.

200 Clarendon Street, T-9

Boston, MA 02116-5092

 Phone: 617-425-3365

 An E-mail transmission of this Letter of Credit from the Issuing Bank to Duke Energy Ohio at duke-energyauctionmanager@crai.com will serve as the operative instrument until the Issuing Bank delivers to Duke Energy Ohio the Letter of Credit in paper format and with original signatures, at which time the email transmitted form of this Letter of Credit shall have no further force and effect.

 We understand that the Auction Manager holds the Letter of Credit for the benefit of Duke Energy Ohio. The aggregate amount paid to Duke Energy Ohio during the validity of this Letter of Credit will not exceed the amount of this Letter of Credit. Any demands or communications in the form of the attached Annexes or other communications directed to us under this Letter of Credit must be signed by an Authorized Signatory of Duke Energy Ohio. Acceptance or rejection of any amendments to this Letter of Credit must be signed by an Authorized Signatory of Duke Energy Ohio.

 Very truly yours,

 [Bank]

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

 Name:

 Title:

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

 Name:

 Title:

Annex 1 to Letter of Credit

DRAWING UNDER LETTER OF CREDIT NO. \_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_

To: [Bank]

 [Address]

 Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

 The undersigned is making a drawing under the above-referenced Letter of Credit in the amount specified below and hereby certifies to you as follows:

1. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the Letter of Credit.

2. Pursuant to Paragraph 2 of the Letter of Credit No.\_\_\_\_\_\_\_\_\_\_\_\_\_, dated\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, the undersigned is entitled to make a drawing under the Letter of Credit in the aggregate amount of U.S.$\_\_\_\_\_\_\_, inasmuch as the Bidder has \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (state reason from conditions (a) – (d) of Paragraph 2).

1. The amount to be received by Duke Energy Ohio is U.S.$\_\_\_\_\_\_\_\_\_\_\_.

4. We acknowledge that, upon your honoring the drawing herein requested, the amount of the Letter of Credit available for drawing shall be automatically decreased by an amount equal to this drawing.

Very truly yours,

Duke Energy Ohio, Inc.

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

Title:

Date:

Annex 2 to Letter of Credit

DRAWING UNDER LETTER OF CREDIT NO. \_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_

ON [Business Day pursuant to Paragraph 4]

PAY TO: Duke Energy Ohio, Inc.

$ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

For credit to the account of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

FOR VALUE RECEIVED AND CHARGE TO ACCOUNT OF LETTER OF CREDIT NO. \_\_\_\_\_\_\_\_\_\_\_\_ OF

 [Bank]

 [Address]

Duke Energy Ohio, Inc.

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

Title:

Date:

Annex 3 to Letter of Credit

CERTIFICATE OF EXPIRATION

OF LETTER OF CREDIT NO. \_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_

To: [Bank]

 [Address]

 Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

 The undersigned hereby certifies to you that the above referenced Letter of Credit may be cancelled without payment. Attached hereto is said Letter of Credit, marked cancelled.

Duke Energy Ohio, Inc.

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

Title:

Date:

cc: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Bidder]

1. If the issuer of the Letter of Credit is located in an area that is not in the Eastern time zone, this time, all other times in this Letter of Credit, and the definition of a Business Day should be adjusted accordingly. [↑](#footnote-ref-1)