

**RESOLUTION 138-14**

**RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT  
BETWEEN THE BOROUGH OF CLAYTON, JERSEY ENERGY GROUP  
LLC AND ATLANTIC CITY ELECTRIC COMPANY**

*WHEREAS*, the Borough of Clayton and Jersey Energy Group LLC have agreed to enter into an Agreement with Atlantic City Electric Company; and

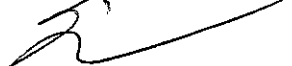
*NOW, THEREFORE, BE IT RESOLVED*, by the Mayor and Council of the Borough of Clayton, County of Gloucester, and State of New Jersey as follows:

1. That the governing body does hereby approve the attached Agreement between the Borough of Clayton, Jersey Energy Group, LLC and Atlantic City Electric Company.

2. That the Mayor be and is hereby authorized to execute said Agreement on behalf of the Borough of Clayton.

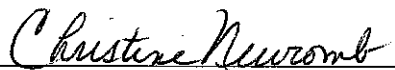
*ADOPTED*, at a regular meeting of the Mayor and Council of the Borough of Clayton held on July 10, 2014.

BOROUGH OF CLAYTON



\_\_\_\_\_  
THOMAS BIANCO, Mayor

Attest:



\_\_\_\_\_  
CHRISTINE NEWCOMB, Borough Clerk

**CERTIFICATION**

I, Christine Newcomb, Borough Clerk, of the Borough of Clayton, do hereby certify that the foregoing Resolution was presented and duly adopted by the Borough Council at a meeting of the Borough of Clayton, held on Thursday, July 10, 2014.

  
CHRISTINE NEWCOMB, Borough Clerk

## ELECTRIC DISTRIBUTION COMPANY AGGREGATION AGREEMENT

**THIS ELECTRIC DISTRIBUTION COMPANY AGGREGATION AGREEMENT** (this "Agreement"), is made and entered into this 10<sup>th</sup> day of July, 2014, between **Atlantic City Electric Company** a corporation and a public utility organized and existing under the laws of the State of New Jersey (the "**Company**"), \_\_\_\_\_, a municipality of the State of New Jersey (the "**Aggregator**") and **Jersey Energy Group**, a corporation of the State of New Jersey ("**JEG**"). Company, Aggregator and JEG are hereinafter sometimes referred to collectively as the "**Parties**", or individually as a "**Party**".

### WITNESSETH:

**WHEREAS**, the Company is a public utility engaged, inter alia, in the transmission and distribution of electric energy within its Service Territory located in the State of New Jersey (as defined below); and

**WHEREAS**, pursuant to the Government Energy Aggregation Act, N.J.S.A. 48:3-93, *et seq.* (the "**Aggregation Act**") and regulations adopted pursuant thereto found at N.J.A.C. 14:4-6.1, *et seq.*, the Aggregator has determined to implement a Government Energy Aggregation Program for the provision of electricity (the "**Program**") within the Company's Service Territory;

**WHEREAS**, pursuant to the Aggregation Act and in accordance with the Applicable Legal Authorities, including the ordinance and/or resolution adopted by the Aggregator authorizing its participation in the Program, copies of which are attached hereto as Exhibit "A", the Aggregator has retained JEG to handle certain duties and responsibilities associated with the Program pursuant to N.J.A.C. 14:4-6.3(b) and the terms of an agreement attached hereto as Exhibit "B" (the "**Government Aggregation Agreement**"); and

**WHEREAS**, the Parties desire to enter into this Agreement setting forth their respective obligations concerning the Program.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises set forth herein and other good and valuable consideration, the Parties hereto, intending to be legally bound, hereby covenant, promise and agree as follows:

### ARTICLE 1: DEFINITIONS

Any capitalized or abbreviated term not elsewhere defined in this Agreement shall have the definition set forth in this Article.

**Affiliate** – with respect to Company, any other entity that controls, is under the control of or is under common control with the Company. The term "control" (including the terms "controls",

"under the control of" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and the policies of such entity, whether through ownership interest, by contract or otherwise.

**Appliance Repair Service** – the maintenance, repair or replacement of appliances, lighting, motors or other energy-consuming devices at the end user's premises.

**Applicable Legal Authorities** – generally, those New Jersey statutes, administrative rules and regulations that govern the electric utility industry, Government Aggregators and Government Energy Aggregation Programs in the State of New Jersey, including applicable local ordinances, rules and regulations.

**Billing Month** – Generally, that calendar month in which the majority of the Company's meters are read for the purpose of establishing the electric service usage of Customers for their prior 26 to 35 day period.

**BPU or "Board"** – the New Jersey Board of Public Utilities or its successor.

**Business Day** – any day on which the Company's corporate offices are open for business.

**Charge(s)** – any fee, charge or other amount that is billable by the Company to the Aggregator for services performed by the Company under this Agreement.

**Customer** – the person identified in the account records of a regulated entity as the person responsible for payment of the bill for utility service or another regulated service. A customer may or may not be an end user.

**Customer Information** – information specific to a particular customer, which a regulated entity has acquired or developed in the course of providing services. This term includes, but is not limited to, a customer's name, address, telephone number, usage habits or history, peak demand and payment history.

**Electric Related Service** – a service that is directly related to the consumption of electricity by an end user, including, but not limited to the installation of demand side management measures at the end user's premises; Appliance Repair Service; the provision of energy consumption measurement, analysis, and information management, and billing services, as authorized by the Board pursuant to N.J.S.A. 48:3-94(4) (b).

**General Customer Inquiry** – an inquiry from a customer regarding electric distribution-related services provided by the Company.

**Government Aggregator** – an entity that meets both of the following criteria: (1) the entity is subject to the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., the Public School Contracts Law, N.J.S.A. 18A:18A-1 et seq., the County College Contracts Law, N.J.S.A. 18A:64A-25.1 et seq., or is the New Jersey School Boards Association; and (2) the entity enters into a contract with another Government Aggregator, or with a Third Party Supplier, to purchase

electric generation service, electric related service, gas supply service, and/or gas related service for one or more of the following purposes: (a) to purchase for the Government Aggregator's own use; (b) to purchase for the use of other Government Aggregators; and/or (c) if the Government Aggregator is a municipality or county, to contract with a supplier for the terms and conditions that will be applicable to the purchase for use by Residential or Non-Residential Customers within its geographic boundaries.

**Government Energy Aggregation Program** – a program under which a Government Aggregator that is a municipality or county enters into a written contract for the provision of electric generation service or gas supply service on behalf of Residential or Non-Residential Customers within its geographic boundaries.

**LDC or Local Distribution Company** – an electric public utility or gas public utility.

**Non-Residential Customer** – a commercial, industrial or institutional energy customer that is not a government entity subject to the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq., the Public School Contracts Law, N.J.S.A. 18A:18A-1 et seq., or the County College Contracts Law, N.J.S.A. 18A:64A-25.1 et seq., which is located within the geographic boundaries of the Aggregator and the Company's Service Territory.

**Notice** – the form of notice provided by the Aggregator to Customers as required pursuant to N.J.A.C. 14:4-6.6 (q) through (s), (1) notifying them that the Aggregator is establishing a Government Energy Aggregation Program; (2) if the Program includes Appliance Repair Services, describing such services; (3) informing Residential Customers that they have the right to Opt-Out, but, if no Opt-Out is submitted, that the Residential Customer will be included in the Program; (4) if applicable, informing Non-Residential Customers that they have the right to Opt-In, but, if no Opt-In response is submitted, that the Non-Residential Customer will be excluded from the Program; (5) informing them that any Opt-Out must be submitted to the Option Administrator within 30 calendar days after the postmark on the Notice; (6) advising them of the specific cost of participation in the Program, and any other information necessary to enable customers to compare the Program to other alternatives; (7) notifying them of the approximate start date of the Program and the Program's duration; and (8) providing a contact name, phone number and e-mail address for Specific Customer Inquiries.

**Option Administrator** – means the Party responsible for receiving and recording customer submittals indicating that the Customer wishes to Opt-In or Opt-Out of the Government Energy Aggregation Program.

**Opt-In** – the process by which a Customer affirmatively indicates a choice to participate in a Government Energy Aggregation Program from which the Customer would otherwise be automatically excluded.

**Opt-Out** – the process by which a Customer affirmatively indicates a choice not to participate in a Government Energy Aggregation Program in which the Customer would otherwise be automatically included.

**Program Change Notice** – the form of notice provided by the Aggregator to Residential Customers participating in the Program as required pursuant to N.J.A.C. 14:4-6 et. seq. (1) notifying them that (a) there has been a change in Third Party Supplier to the Program or (b) there has been a change in pricing structure for the Program and (2) informing them of their right to decline to continue to participate in the Program.

**Residential Customer** – a Customer who is being served under any one of the Company's Rate Schedules *RS, RT or RGT*, and is located within the geographic boundaries of the Aggregator and the Company's Service Territory.

**Service Territory** – the geographic areas of the State of New Jersey in which the Company serves electric Customers.

**Slamming** – switching a customer from one TPS or LDC (for electric generation) to another TPS without obtaining authorization from the customer as required by Applicable Legal Authorities.

**Specific Customer Inquiry** – an inquiry from a Customer regarding the Government Energy Aggregation Program.

**Third Party Supplier or "TPS"** – a person or entity that is duly licensed by the Board to offer and to assume the contractual and legal responsibility to provide electric generation service to retail customers located in the State of New Jersey pursuant to retail open access programs approved by the Board.

**Twelve-Month Historical Usage** – the amount of electricity used by a Customer or group of Customers during the most recent 12-month period for which data are available, including electric interval data, if available and requested.

## **ARTICLE 2: GENERAL TERMS AND CONDITIONS**

### **2.1 Parties' Obligations**

#### **(a) Obligations of Aggregator and/or JEG**

Aggregator and/or JEG hereby agree to meet the following obligations:

- (i) to have obtained all necessary approvals by way of a validly adopted ordinance and/or resolution, authorizing the establishment of a Government Energy Aggregation Program and authorizing Aggregator and/or JEG to implement and operate the Program, including the execution of this Agreement;
- (ii) to cooperate with and affirmatively support the Company in any regulatory compliance efforts that may be required to maintain the ongoing legitimacy and enforceability of the terms of this Agreement and to fulfill any regulatory and Company reporting

requirements associated with the Program, before the BPU, with a copy to the Company on a concurrent basis;

- (iii) following receipt of information from the Company regarding the name, address and account number of each Residential Customer not being served by a TPS, provide written notice to Residential Customers in accordance with *N.J.A.C. 14:4-6(r)* and (s), and, if the Program is open to Non-Residential Customers, issue a public notice advising Non-Residential Customers that they are eligible to participate in the Program if they submit an Opt-In response to the Option Administrator. For Non-Residential Customers, Aggregator will provide Company with signed authorization forms for each Non-Residential Customer who Opt-In to the Program;
- (iv) to keep a record of all of the Residential Customers who Opt-Out of the Program and provide same to the Company, and, if applicable, to keep a record of all of the Non-Residential Customers who Opt-In to the Program;
- (v) to pay to the Company any and all Charges imposed in connection with the Program;
- (vi) to respond to all Specific Customer Inquiries;
- (vii) to keep all Customer Information supplied by the Company confidential and exempt from public disclosure, as required by the Company's internal policies and Applicable Legal Authorities, unless otherwise required by court order or pursuant to an Open Public Records Act ("OPRA") request, and to limit any use or dissemination of Customer Information to facilitate the Program. Notwithstanding the foregoing, the Parties agree that if Aggregator and/or JEG receive a request pursuant to OPRA to disclose Customer Information, prior to responding to such request Aggregator and/or JEG shall provide a copy of such request to Company for its review and determination as to how to proceed. If Company determines not to disclose the requested information, then, in the absence of a court order requiring the production of Customer Information, neither Aggregator nor JEG shall disclose Customer Information without Company's consent, in which event, if there is a legal challenge to Company's decision not to disclose Customer Information, Company shall indemnify and hold harmless Aggregator and/or JEG for all reasonable fees and legal costs incurred in defending against such challenge;
- (viii) in selecting the TPS to supply electricity and/or electric related service to the Program, to require that the TPS uniquely code the accounts which will fall within the parameters of the Program, in a manner acceptable to the Company, in order to assist the Company in complying with the provisions of this Agreement;
- (ix) upon selecting a TPS(s), to supply electricity and/or electric related service to the Program, to promptly notify the Company, in writing, of the identity of the selected TPS(s);

- (x) to comply in a timely manner with any applicable rules in effect pursuant to the Applicable Legal Authorities and with all obligations under this Aggregation Agreement imposed upon the Aggregator and JEG;
- (xi) in contracting for services, Aggregator and/or JEG must comply with all applicable requirements of the Local Public Contracts Law, *N.J.S.A. 40A:11-1 et. seq.*, the County College Contracts Law, *N.J.S.A. 18A:64A-25.1, et. seq.* and *N.J.A.C. 14:4-6.3*, as well as any applicable provisions of the ordinance and/or resolution adopted by the Aggregator;
- (xii) begin operation of the Program promptly upon completion of the thirty (30) day response period for Residential Customer Opt-Outs; and
- (xiii) in the event of a change in TPS or pricing structure during operation of the Program, promptly notify Residential Customers in writing of their right to decline continued participation in the Program, as well as provide written certification to the Board that the required notice has been provided to Residential Customers pursuant to the provisions of *N.J.A.C. 14:4-6.11(b)*.

**(b) Obligations of the Company**

The Company hereby agrees as follows:

- (i) within ten (10) calendar days after the later of the Effective Date of this Agreement or the satisfaction by the Aggregator and/or JEG of all conditions precedent including payment of all applicable Charges (as provided for in Article 6 of this Agreement) and the provision of the names and account numbers of those Non-Residential Customers who have submitted an Opt-In response to the Option Administrator, the Company will use reasonable care to prepare and will provide to the Aggregator and/or JEG the following:
  - (1) the number of Residential Customers, by rate class, who are located within the Aggregator's geographic boundaries and are not already being served by a TPS; and (2) Twelve-Month Historical Usage for each Non-Residential Customer, if applicable, that the Aggregator and/or JEG has indicated has submitted an Opt-In response. The Company will exercise reasonable care in the disclosure of Customer Information to the Aggregator and/or JEG, but shall not be responsible for errors or omissions in the preparation or the content of the Customer Information.
- (ii) within ten (10) calendar days after the postmark on the written notice of selection of a TPS (as required by Section 2.1(a)(ix) of this Agreement) the Company will use reasonable care to prepare and will provide to the Aggregator and/or JEG, Customer Information for Residential Customers who are located within the geographic boundaries of the Aggregator and are not already being served by a TPS; pursuant to *N.J.S.A. 48:3-92.3*, the Company will exercise reasonable care in the disclosure of Customer Information to the Aggregator and/or JEG, but shall not be responsible for errors or omissions in the preparation or the content of the Customer Information.



- (iii) to comply in a timely manner with any applicable rules in effect pursuant to the Applicable Legal Authorities and with all obligations under this Aggregation Agreement imposed upon the Company;
- (iv) to respond to all General Customer Inquiries;
- (v) to direct all Customers to the Aggregator and/or JEG for the answers to any Specific Customer Inquiries; and
- (vi) to calculate the benchmark price for each rate class, not to exceed, for electricity generation, the amount specified in *N.J.A.C. 14:4-6.9(e)*.

## **2.2 Communications and Data Exchange**

Aggregator, JEG and the Company will supply to each other all data, materials or other information that is specified in this Agreement, or that may otherwise reasonably be required by the Aggregator or by the Company in connection with the Program in a timely manner. The Parties shall agree upon the methods to be used to transfer such Customer Information, including the formatting of same and the manner in which the Customer Information shall be stored and accessed to ensure its confidentiality.

## **2.3 Record Retention**

The Aggregator and/or JEG shall retain, for a period of three (3) years following the expiration or sooner termination of the Agreement, all records pertaining to the operation and implementation of the Program so as to permit the Company to confirm the participation of Customers in the Program.

## **2.4 Customers**

- (a) All Residential Customers will automatically be included in the Program, unless:
  - (i) the customer indicates a desire not to participate by submitting an Opt-Out response in accordance with the provisions of *N.J.A.C. 14:4-6.6*; or
  - (ii) the customer has contracted for service with a TPS prior to the establishment and implementation of the Program.

Failure to submit an Opt-Out response to the Option Administrator within thirty (30) calendar days after the postmarked date on the Notice means that the Residential Customer will be included in the Program.

- (b) Residential Customers have the right to decline further participation in the Program if there is a change in TPS or in the pricing structure during the operation of the Program.
- (c) Notwithstanding the provisions of Subsections (a) and (b) of this Section 2.4, once the Program is in place, Residential Customers will continue to have the right to terminate their

participation in the Program subject to providing the required notice thereof and such termination shall be without penalty.

- (d) Non-Residential Customers, if applicable, shall be included in the Program only if they Opt-In pursuant to the provisions of *N.J.A.C. 14:4-6.6*.

### **ARTICLE 3: REPRESENTATIONS AND WARRANTIES**

#### **3.1 Aggregator's Representations and Warranties**

The Aggregator hereby represents, warrants and covenants as follows:

- a) it is a municipal corporation of the State of New Jersey;
- b) it is authorized pursuant to ordinance and/or resolution to carry out the provisions of the Program and the responsibilities of the Local Government under the Program pursuant to Applicable Law;
- c) it has all requisite power and authority to execute and deliver this Agreement and to carry on the business to be conducted by it under this Agreement and to enter into and perform its obligations hereunder;
- d) the execution and delivery of this Agreement and the performance of the Aggregator's obligations hereunder have been duly authorized by ordinance or resolution, as applicable, and any or all other approvals as may be necessary have been obtained;
- e) all necessary and appropriate action that is required on the Aggregator's part to execute this Agreement has been completed; and
- f) this Agreement is the legal, valid and binding obligation of the Aggregator, enforceable in accordance with its terms.

#### **3.2 JEG's Representations and Warranties**

JEG hereby represents, warrants and covenants as follows:

- a) it is a corporation in good standing and authorized to carry out its operations in the State of New Jersey;
- b) it is authorized pursuant to the Government Aggregation Agreement to carry out the provisions of the Program and the responsibilities of the Aggregator under the Program pursuant to Applicable Law;

- c) it has all requisite power and authority to execute and deliver this Agreement and to carry on the business to be conducted by it under this Agreement and to enter into and perform its obligations hereunder;
- d) the execution and delivery of this Agreement and the performance of JEG's obligations hereunder and on behalf of the Aggregator have been duly authorized by ordinance or resolution, as applicable, and any or all other approvals as may be necessary have been obtained;
- e) all necessary and appropriate action that is required on JEG's part to execute this Agreement has been completed; and
- f) this Agreement is the legal, valid and binding obligation of CU, enforceable in accordance with its terms.

### **3.3 Company's Representations and Warranties**

The Company hereby represents warrants and covenants as follows:

- a) the Company is an electric public utility corporation duly organized, validly existing and in good standing under the laws of the State of New Jersey;
- b) the Company has all requisite power and authority to carry on the business to be conducted by it under this Agreement and to enter into and perform its obligations hereunder;
- c) the execution and delivery of this Agreement and the performance of the Company's obligations hereunder have been duly authorized by all necessary action on the part of the Company;
- d) all necessary and appropriate action that is required on the Company's part to execute this Agreement has been completed; and
- e) this Agreement is the legal, valid and binding obligation of the Company, enforceable in accordance with its terms.

### **3.4 Survival of Obligations**

All representations and warranties contained in this Agreement are of a continuing nature and shall be maintained during the term of this Agreement. If a Party learns that any of the representations, warranties, or covenants in this Agreement are no longer true during the term of this Agreement, the Party shall notify the other Parties within three (3) Business Days, via facsimile, with a hard copy of the notice delivered by overnight mail.

## **ARTICLE 4: COMMENCEMENT AND TERMINATION OF AGREEMENT**

The term of this Agreement shall commence upon the date first written above (the "Effective Date") and terminate with the satisfaction of each of the Parties' obligations under this

Agreement, and, in no event, will the term of the Agreement extend more than thirty (30) calendar days beyond the Program's termination. Operation of the Program hereunder shall begin promptly upon completion of the thirty (30) day response period for Residential Customer Opt-Outs.

## ARTICLE 5: BREACH AND DEFAULT

### 5.1 Events of Default

An Event of Default under this Agreement shall be deemed to occur if:

- (i) If Charges are implemented pursuant to Article 6 of this Agreement, Aggregator and/or JEG fails to pay Company when payment is due, which failure continues for a period of thirty (30) days after notice of such non-payment; or
- (ii) Either Party violates any federal, state or local code, regulation or statute applicable to Government Energy Aggregation Programs including, in the case of the Aggregator, by failing to obtain or maintain any governmental approvals required to implement a Government Energy Aggregation Program, and such violation is not remedied within thirty (30) days after receipt of written notice thereof from the non-defaulting Party; or
- (iii) Any Party fails to substantially comply with any other material provisions of this Agreement, which failure continues for a period of thirty (30) days after notice of such non-performance; or
- (iii) By order of a court of competent jurisdiction, a receiver or liquidator or trustee of any Party or of a substantial part of the assets of any Party shall be appointed, and such receiver or liquidator or trustee shall not have been discharged within a period of one hundred twenty (120) days; or if by decree of such a court, a Party shall be adjudicated bankrupt or insolvent or a substantial part of the assets of such Party shall have been sequestered, and such decree shall have continued undischarged and unstayed for a period of one hundred twenty (120) days after the entry thereof; or if a petition to declare bankruptcy or to reorganize a Party pursuant to any of the provisions of the Federal Bankruptcy Act, as it now exists or as it may hereafter be amended, or pursuant to any other similar state statute applicable to such Party, as now or hereafter in effect, shall be filed against such Party and shall not be dismissed or stayed within one hundred twenty (120) days after such filing; or
- (iv) Any Party shall file a voluntary petition in bankruptcy law or shall consent to the filing of any bankruptcy or reorganization petition against it under any similar law; or without limitation of the generality of the foregoing, if a Party shall file a petition or answer or consent seeking relief or assisting in seeking relief in a proceeding under any of the provisions of the Federal Bankruptcy Act, as it now exists or as it may hereafter be amended, or pursuant to any other similar state statute applicable to such party, as now or hereafter in effect, or an answer admitting the material allegations of a petition filed against it in such a proceeding; or if a Party shall make an assignment of a substantial part of its assets for the benefit of its creditors, or if a Party shall become unable to pay its debts generally as they become due; or if a party shall consent to the

appointment of a receiver or receivers or trustees or liquidator or liquidators of it or of all or a substantial part of its assets.

## **5.2 Rights Upon Default**

Upon and during the continuation of an Event of Default, the non-defaulting Party shall be entitled to:

- (i) pursue any and all available legal and equitable remedies available to it; and
- (ii) terminate this Agreement with respect to the obligations of the defaulting Party without any liability or responsibility whatsoever except for obligations arising prior to the date of termination, by providing written notice thereof to the defaulting Party in accordance with the provisions of this Agreement.

## **ARTICLE 6: BILLING AND PAYMENT**

(a) Initially, Company does not intend to impose charges for any incremental costs associated with the implementation and operation of the Program ("Charges") as such Charges appear to be minimal. However, Company reserves the right, in its sole and absolute discretion, at any time during the term of this Agreement, to implement Charges in connection with the services provided by it to Aggregator and/or JEG under this Agreement, such Charges to be assessed to JEG only, and to be limited to the actual costs incurred by Company to meet its obligations under this Agreement.

(b) In the event that Company determines to implement Charges hereunder, it shall provide JEG with fifteen (15) days' notice thereof and the Parties shall proceed to amend the Agreement in order to specify and implement the Charges.

## **ARTICLE 7: INDEMNIFICATION AND WAIVER**

**7.1 Indemnification.** With respect to claims and/or liabilities related to the provision, use, misuse or unauthorized disclosure of Customer Information by the Aggregator and/or JEG or their respective agents, or by third parties subsequent to the provision of such Customer Information by the Company to the Aggregator and/or JEG pursuant to this Agreement, or with respect to claims and/or liabilities associated with Slamming, or claims and/or liabilities of third parties for failure of Aggregator and/or JEG to carry out their duties and responsibilities under this Agreement, the Aggregator and/or JEG shall defend, indemnify and hold harmless the Company, its Affiliates and their shareholders, board members, directors, officers, agents and employees, from and against any and all such claims and/or liabilities for losses, penalties, costs, expenses (including reasonable attorneys fees), or damages of any kind including but not limited to damage to property, injury to or death of any person including a Party's employees or any third parties except to the extent that a court of competent jurisdiction determines that the losses, penalties, expenses or damages were caused wholly or in part by the gross negligence or willful misconduct of the Company.

**7.2 Waiver.** The Company will exercise reasonable care in the disclosure of Customer Information to the Aggregator and/or JEG, but shall not be responsible for errors or omissions in the preparation or the content of the Customer Information being provided to the Aggregator or JEG, and Aggregator and JEG waive any right they each may have, in law or equity, to pursue any action against Company pertaining to any such errors or omissions.

## **ARTICLE 8: MISCELLANEOUS**

### **8.1 Use of the Word "Including"**

The word "including", when following any general statement or term, is not to be construed as limiting the general statement or term to the specific items or matters set forth or to similar items or matters, but rather as permitting the general statement or term to refer to all other items or matters that could reasonably fall within its broadest possible scope.

### **8.2 Binding Terms**

This Agreement and the Charges, terms and conditions contained herein shall remain in effect for the entire term hereof and shall be binding upon the parties hereto.

### **8.3 Amendment**

This Agreement may not be modified, altered or amended without the approval of the Parties and requests for such approval by one Party may be initiated only upon written notice to and approval by the other Parties, except that the Company may amend the Charges upon thirty (30) days prior written notice to the Aggregator and JEG.

### **8.4 Counterparts**

This Agreement or any supplement, modification, amendment or restatement hereof may be executed in two or more counterparts, each of which may be executed by the signatories thereto and delivered by mail, courier, facsimile or other electronic means, but all of which taken together shall constitute a single agreement.

### **8.5 Notices**

Unless otherwise stated herein, all notices, demands or requests required or permitted under this Agreement shall be in writing and shall be deemed effectively given (a) upon personal delivery to the Party to be notified; (b) when received when sent by electronic mail or facsimile by the Party to be notified, provided, however, that notices given by electronic mail or facsimile shall not be effective unless either (i) a duplicate copy of such electronic mail or facsimile is promptly given by one of the other methods described in this section, or (ii) the receiving party delivers a written confirmation of receipt of such notice either by electronic mail, facsimile or any other method described in this section; (c) one (1) business day after deposit with a reputable overnight courier, prepaid for overnight delivery and addressed as set forth in (d), provided that the sending

party receives a confirmation of delivery from the overnight courier service; or (d) three (3) business days after deposit with the U.S. Postal Service, postage prepaid, certified with return receipt requested and addressed to the Party to be notified at the address indicated for such party below, or at such other address as such party may designate by ten (10) days' advance written notice to the other parties given in the foregoing manner:

If to the Company: Atlantic City Electric Company 5  
Collins Drive  
Mailstop 84CP22  
Carneys Point, NJ 08069-3628  
Attn.: Ms. Susan Coan, VP, Atlantic Region

#### **8.6 Regulatory Changes**

If the Applicable Legal Authorities in effect as of the date hereof governing this Agreement and the Program, are amended or suspended or are otherwise no longer in force and effect (collectively, a "Change" in the Applicable Legal Authorities), such that the obligations of Company are substantially increased and it does not make economic sense for Company to proceed under the Program as determined by Company, Company shall have the right, upon thirty (30) days prior written notice to Aggregator and JEG, to terminate this Agreement and no party shall have any further liability or obligation hereunder except with respect to any amounts due prior to the date of such termination.

**8.7 Waiver.** The failure of any Party to require performance of any provision hereof shall in no manner affect the right at a later time to enforce the same. No waiver by any party of any condition or of any breach of any term of the Agreement shall be construed as a further or continuing waiver of any such condition or breach or as a waiver of any other condition or any breach of any other term.

**8.8 Entire Agreement.** This Agreement represents the entire agreement amongst the parties hereto with respect to the subject matter hereof and all prior agreement with respect thereto are superseded hereby. Each party confirms that it is not relying on any oral representations or warranties of the other party except as specifically set forth herein.

**8.9 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey (without giving effect to principles of conflicts of law).

**8.10 Severability.** If any provision of this Agreement or the application thereof is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof, or the application of such provision to the parties hereto or circumstances other than those as to which it has been held invalid or unenforceable shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party.

**8.11 Assignment.** No Party shall assign its rights or delegate its performance under this Agreement without the prior written consent of the other Parties, and any attempted assignment or delegation without such consent shall be void.

**8.12 Captions.** The headings and captions in this Agreement are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this Agreement or any of its provisions.

**8.13 Binding Effect.** This Agreement, as it may be amended from time to time pursuant to the provisions hereto, shall be binding upon and inure to the benefit of the Parties and their respective successors in interest, legal representatives and permitted assigns.

**8.14 Further Assurances.** From time to time after the Effective Date and without further consideration, the Parties shall take such other actions, and execute such other documents and instruments as any Party may reasonably request to more effectively carry out the transactions contemplated by this Agreement.

*{Signatures appear on the following page}*



IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first set forth above.

ATLANTIC CITY ELECTRIC  
COMPANY

By: \_\_\_\_\_  
Name:  
Title:

AGGREGATOR :

Borough of Clayton

By: \_\_\_\_\_  
Name: *Thomas Bianco*  
Title: *Mayor*

Attest: *Christine Newcomb*  
Name: *Christine Newcomb*  
Title: *Clerk*

JERSEY ENERGY GROUP, LLC

By: \_\_\_\_\_  
Name:  
Title:

Attest: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT "A"**

Copies of Authorizing Ordinance/Resolution

**EXHIBIT "B"**

Executed Agreement between Aggregator and JEG