

**EMEX AFFILIATE PROGRAM
TERMS AND CONDITIONS**

EMEX, LLC, a Texas limited liability company, doing business as EMEX, ENERGY MARKET EXCHANGE and EMEX POWER (“EMEX”), desires to secure the services of independent contractors to sell electricity and/or natural gas products (collectively “Energy Products”) to commercial and industrial customers in deregulated markets in the United States through EMEX’s website (the “Site”). Independent contractors that are approved by EMEX to participate in its Affiliate Program shall be referred to herein as an “Affiliate”.

TO BECOME AN AFFILIATE AND USE THE SITE, YOU MUST READ, AGREE WITH AND ACCEPT THESE LEGALLY BINDING TERMS AND CONDITIONS. IF YOU DO NOT AGREE WITH ANY OF THE TERMS AND CONDITIONS SET FORTH HEREIN, YOU ARE NOT PERMITTED TO USE THE SITE.

These Terms and Conditions become effective immediately upon you being approved as an Affiliate and will remain in effect until modified by EMEX pursuant to Section 8 or until terminated by either you or EMEX pursuant to Section 18. Please read these Terms and Conditions carefully.

1. Affiliate. The only individuals authorized to use the Site are U.S. Citizens or U.S. Residents in good standing who are at least 21 years of age, reside in the United States, have submitted an application with and been approved by EMEX as an Affiliate. By signing these Terms and Conditions, you agree to the following:

a. Independent Contractor. The services rendered by you as an Affiliate in the fulfillment of these Terms and Conditions shall be as an independent contractor and not as an employee, partner, or joint venture of EMEX. You are not entitled to the benefits provided by EMEX to its employees including, but not limited to, group insurance and participation in EMEX’s employee benefit and pension plans. You shall not represent yourself to third persons to be anything other than an independent contractor of EMEX.

b. Taxes. It is your responsibility to determine what taxes apply to you as an Affiliate. You shall be responsible for payment of all taxes arising out of your activities as an Affiliate, including by way of illustration, but not limitation, personal income taxes, social security taxes, unemployment insurance taxes and any other taxes or business license fees as required by applicable law.

2. Application:

a. To be considered for the Affiliate Program, you must complete the online application form, including by providing your full name, address, valid phone number(s) and email address. You must return a completed and signed W9 Form, an initialed and signed copy of these Terms and Conditions, a copy of your driver’s license, a Direct Deposit Form and a copy of a voided check or bank letter by fax to the EMEX Corporate Office at 1-877-734-2660 or by email to support@emexllc.com. Applicant paperwork should not be sent to anyone except the EMEX Corporate Office and must be sent to EMEX by the actual applicant. **You understand and agree that you will forfeit any commissions otherwise earned in accordance with Sections 6 and 7 of these Terms and Conditions during any period in which EMEX does not have current documents required by this Section 2.a.** Digital signatures may be accepted in EMEX’s sole discretion. Once approved, you will receive a confirmation of your account and your free personal website. EMEX has the right, in its sole discretion, to approve or reject any application for any reason.

b. Business Entities. A corporation, LLC, or partnership must submit the W9 Form identifying its Federal Tax ID number and its business name and address as filed with the Secretary of State.

c. Enrolling Affiliates. Once your account has been approved and your website activated, you may refer other Affiliates to apply underneath your Affiliate Structure.

3. Account:

a. Accounts. Only one account is allowed per Affiliate. Once your account has been established, no changes will be permitted.

All accounts require a valid email address and phone number.

EMEX has the right, in its sole discretion, to re-assign or re-designate your account to another Referral Fee structure if EMEX determines there is an attempt to circumvent the Referral Fee structure.

b. Structure. Family members or an Affiliate occupying the same household or with the same address are ineligible to be included under the same Referral Fee structure. They can, however, establish their own account.

c. Changes to Personal Information. It is your responsibility to notify EMEX in the event of a change in your personal information, including but not limited to your email account, address, telephone number and banking information for purposes of receiving correspondence, notifications and payment from EMEX.

d. Privacy Statement. The information you submit to EMEX will only be used for EMEX business purposes. EMEX will not sell or otherwise disburse your personal information to third parties for marketing purposes. Your information will be kept confidential, and EMEX will not disclose any information you provide to EMEX other than your affiliate referrer being provided with your name on his/her Affiliate Tracker application.

4. License to Use:

a. Limited License. If you become an Affiliate, you will be granted a limited, nonexclusive, nontransferable license to access the Site and its content in accordance with these Terms and Conditions. Your limited license includes a revocable right to access and use certain trade secrets and confidential and proprietary business information, which you shall not infringe or divulge. The Site is hosted in the United States and contains information that is currently appropriate for use only within the deregulated regions served by EMEX as set forth on the Site (collectively the "Applicable Market"). The Applicable Market will be expanded from time to time and will be listed on the Site.

b. Disclaimer. EMEX makes no representation that any materials on the Site are appropriate for use outside of the Applicable Markets. Any references on the Site to specific products or services are applicable only to those available in the Applicable Market, and any product claims and comparisons to other products on the Site apply to the Applicable Market only. Any and all use of the Site is subject to these Terms and Conditions.

5. Marketing Guidelines: The Public Utilities Commissions and other governing authorities in the Applicable Markets have very strict marketing, advertising and licensing laws and regulations to ensure customer protection and regulate the sale of electricity and natural gas within such Applicable Markets. As an Affiliate, you are an independent contractor, in business for yourself and liable for any marketing guideline violations. As an Affiliate, you agree to comply with the following marketing guidelines:

a. You must not contact businesses that have been placed on a National, a state, or any other "Do Not Call List".

b. You must not claim to represent any Transmission and Distribution Service Provider ("TDSP"), Local Distribution Company ("LDC"), or local utility company (herein collectively known as a "Utility") or claim that switching is required to maintain service through any Utility.

c. You must not contact businesses using any methods considered "spamming." This includes the mass faxing, emailing, or automated phone calling of businesses or households for any reason.

d. **All Letters of Authorization ("LOAs") must be signed by the customer or you must have written authorization from the customer to sign an LOA on the customer's behalf. If requested by EMEX, you will provide a copy of such written authorization within 2 business days.**

e. **All online contracts must be signed by the customer, including renewals.**

f. You must not alter any EMEX or Retail Electric Provider ("REP") / Energy Service Company ("ESCO"), or other energy supplier (herein collectively referred to as an "Energy Supplier") documents.

g. A copy of the customer agreement by and between the customer and Energy Supplier must be provided to the customer.

h. You shall not engage in any fraudulent, unfair, misleading, deceptive, anticompetitive, false, unethical or unlawful acts, practices or conduct, including during the marketing, solicitation or sale of Energy Products.

i. You shall not make promises or use testimonials in a misleading, deceptive or false manner.

j. The offer of Energy products or services must be accurate and truthful as to price, grade, quality, value, availability and in all other respects.

k. You shall not make misleading comparisons of any products or services. You shall at all times truthfully identify the nature of EMEX's products and services, and the reason for the solicitation.

l. You shall not conduct your business in any manner that results in or may result in complaints, disputes, claims, penalties or liability to EMEX or any third party.

m. You shall take all appropriate steps to safeguard the protection of information provided by a customer, a prospective customer or any other Affiliate.

n. You shall not discriminate against any customer for any unlawful reason.

o. You shall not violate any applicable law, statute, ordinance or regulation in your performance as an Affiliate.

ALL OF YOUR MARKETING, ADVERTISING AND SELLING MATERIALS MUST BE APPROVED BY EMEX IN WRITING PRIOR TO USE. This includes but is not limited to websites, flyers, brochures, email campaigns, advertisements, training material, and business cards. Failure to obtain prior approval may result in immediate account termination without notice and loss of all commissions. You must identify yourself on all marketing material as an “Independent Consultant for EMEX.”

p. For pre-approvals of any of the above items, you must submit them to support@emexllc.com and allow up to five (5) business days to receive a response.

q. **No Affiliate or independently created websites, URL/domain names or email addresses may use the EMEX name or logo without EMEX’s prior written approval. All independently created websites made for the purpose of soliciting your EMEX business must state clearly on the Home Page “This site is hosted by an “Independent Consultant for EMEX.”**

r. **Email Signatures:** All email signatures must contain “Independent Consultant for EMEX” only.

s. **You shall not copy, reproduce, republish, download, post, display or distribute material from the Site without EMEX’s prior written approval.**

t. **Affiliates are allowed to use pay-per-click advertising methods (i.e. Google Ad-words). Affiliates may not use traffic exchanges or ad-referral services where the Affiliate receives payment or other incentives for advertising clicks.**

u. Your EMEX Affiliate website may not be used for any other purpose unrelated to offering electricity and /or natural gas or recruiting Affiliates for EMEX Power.

v. For information on state guidelines, please refer to Sections 20 through 23.

6. **Commission and Referrals:** EMEX will pay a commission (each a “Commission”) to an approved Affiliate whose client enters into a customer agreement that has been registered through your EMEX website with an Energy Supplier (when fully executed and accepted, each a “Customer Agreement”).

a. **EMEX Power Commission:** EMEX shall pay you a Commission up to \$0.002 per kWh (2 mils) that is generated for each Customer Agreement which you originate.

b. **EMEX Natural Gas Commission:** EMEX shall pay you a Commission up to \$0.02 per therm for each Customer Agreement which you originate.

c. **Referral Fee.** EMEX will also pay you a referral fee based upon the following tier-based referral program (each a “Referral Fee”), as follows:

i. EMEX shall pay you a Referral Fee equal to 25% of the Commission that is generated from each Customer Agreement originated by your Tier 1 Referred Affiliate. A “Tier 1 Referred Affiliate” shall mean an approved Affiliate that is referred to EMEX through your website. The Referral Fee for a Customer Agreement originated by your Tier 1 Referred Affiliate may in no circumstance exceed \$.0005 per kWh or \$.005 per therm (as applicable).

ii. EMEX shall pay you a Referral Fee equal to 12% of the Commission from each Customer Agreement originated by your Tier 2 Referred Affiliate. A “Tier 2 Referred Affiliate” shall mean an approved Affiliate that is referred to EMEX through your Tier 1 Referred Affiliate’s website. The Referral Fee for a Customer Agreement originated by your Tier 2 Referred Affiliate may in no circumstance exceed \$.00024 per kWh or \$.0024 per therm (as applicable).

iii. EMEX shall pay you a Referral Fee equal to 9% of the Commission from each Customer Agreement originated by your Tier 3 Referred Affiliate. A “Tier 3 Referred Affiliate” shall mean an approved Affiliate that is referred to EMEX through your Tier 2 Referred Affiliate’s website. The Referral Fee for a Customer Agreement originated by your Tier 3 Referred Affiliate may in no circumstance exceed \$.00018 per kWh or \$.0018 per therm (as applicable).

iv. EMEX shall pay you a Referral Fee equal to 6% of the Commission from each Customer Agreement originated by your Tier 4 Referred Affiliate. A “Tier 4 Referred Affiliate” shall mean an approved Affiliate that is referred to EMEX through your Tier 3 Referred

Affiliate's website. The Referral Fee for a Customer Agreement originated by your Tier 4 Referred Affiliate may in no circumstance exceed \$.00012 per kWh or \$.0012 per therm (as applicable).

v. EMEX shall pay you a Referral Fee equal to 4.5% of the Commission from each Customer Agreement originated by your Tier 5 Referred Affiliate. A "Tier 5 Referred Affiliate" shall mean an approved Affiliate that is referred to EMEX through your Tier 4 Referred Affiliate's website. The Referral Fee for a Customer Agreement originated by your Tier 5 Referred Affiliate may in no circumstance exceed \$.00009 per kWh or \$.0009 per therm (as applicable).

vi. EMEX shall pay you a Referral Fee equal to 3% of the Commission from each Customer Agreement originated by your Tier 6 Referred Affiliate. A "Tier 6 Referred Affiliate" shall mean an approved Affiliate that is referred to EMEX through your Tier 5 Referred Affiliate's website. The Referral Fee for a Customer Agreement originated by your Tier 6 Referred Affiliate may in no circumstance exceed \$.00006 per kWh or \$.0006 per therm (as applicable).

vii. EMEX shall pay you a Referral Fee equal to 1.5% of the Commission from each Customer Agreement originated by your Tier 7 Referred Affiliate. A "Tier 7 Referred Affiliate" shall mean an approved Affiliate that is referred to EMEX through your Tier 6 Referred Affiliate's website. The Referral Fee for a Customer Agreement originated by your Tier 7 Referred Affiliate may in no circumstance exceed \$.00003 per kWh or \$.0003 per therm (as applicable).

7. Payment: Pursuant to the terms of this Section 7, EMEX shall pay you any earned Commissions and Referral Fees in the calendar month following EMEX's receipt of payment from the Energy Supplier with respect to the applicable Customer Agreement as long as these Terms and Conditions have been met and all required documentation has been returned and accepted.

a. Uncollectible and Late Payment Accounts. If an account exceeds 60 days past due, EMEX reserves the right to withhold or offset from an Affiliate any earned Commissions or Referral Fees against such past due account.

b. Reconciliations. From time to time, an Energy Supplier will perform a reconciliation of a Customer Agreement to determine whether such customer used more or less of the electricity or natural gas estimated in such Customer Agreement. To the extent an Energy Supplier adjusts the commission paid to EMEX for your Customer Agreement, then EMEX shall have the right to make a proportionate adjustment

to the Commission previously paid to you with respect to such Customer Agreement and you shall pay EMEX such amount as provided in Section 7.e. By way of example, if as a result of a reconciliation, the commission paid by the Energy Supplier to EMEX with respect to your Customer Agreement is reduced by 20%, then you shall pay EMEX 20% of the Commission previously paid to you with respect to such Customer Agreement. To the extent a reconciliation results in an increased commission payment to EMEX, EMEX shall pay you your proportion of such increased commission in accordance with Section 7. If EMEX, in its sole discretion, disputes any reconciliation adjustments by the REP and it is subsequently reimbursed for any commission amounts that were incorrectly "charged back" by the Energy Supplier, then EMEX shall pay you your proportionate share of such returned commission in accordance with Section 7.

c. Cancelled Customer Agreements. From time to time, certain Customer Agreements may be cancelled or terminated prior to their stated expiration date. In such an event, and if the Energy Supplier seeks repayment of the commission paid to EMEX for the unused portion of your Customer Agreement's term, then you shall pay to EMEX such portion of the Commission previously paid to you for such cancelled or terminated Customer Agreement.

d. Other Adjustments. In addition to the foregoing, if from time to time an Energy Supplier adjusts any commissions paid to EMEX for your Customer Agreement, EMEX shall have the right to make a proportionate adjustment to the Commission paid by EMEX to you for such Customer Agreement. Furthermore, if you provide incorrect information for a Customer Agreement (e.g., the wrong start date, the wrong meter number, etc. with such information being known as "Registration Information"), EMEX shall have the right to claw back from you any commissions needed in order to put the customer in the position they would have been had the Registration Information been correct.

e. Payments to EMEX and Right of Offset. If as a result of the adjustments provided in Sections 7.a.-d., you owe EMEX money, you shall pay such amount to EMEX within ten (10) days after receipt of notice thereof. Notwithstanding anything to the contrary contained herein, EMEX has the right to offset any amounts owed by you to EMEX as a result of Sections 7.a.-d. from any Commissions or Referral Fees owed to you.

The provisions of this Section 7 shall survive the termination of your status as an Affiliate, except as otherwise provided in Section 17.

8. Amendment of Terms and Conditions: EMEX may amend these Terms and Condition at any time by posting them on the Site, in which case the amended Terms and Conditions will supersede and replace any previous terms. You will be deemed to have read and agreed to the amended terms and conditions when posted to the Site.

9. Improvements and Access: EMEX has the right at any time to change, modify, correct or discontinue any content, features or services related to the Site, without notice, in its sole discretion, and to suspend or deny access thereto to you or any other person for any reason whatsoever at any time without notice.

10. Confidentiality of EMEX's Business:

a. Confidential Information. You acknowledge that EMEX's business is highly competitive and its books, records and documents, strategy, technical and commercial information concerning its projects, products, equipment, services and processes, procurement procedures and pricing techniques, and the names of and other information (such as credit and financial data) concerning its customers and business affiliates all comprise confidential business information and trade secrets of EMEX (collectively "Confidential Information") which are valuable, special and unique proprietary assets of EMEX. You further acknowledge that protection of the Confidential Information against unauthorized disclosure and use is of critical importance to EMEX in maintaining its competitive position. Accordingly, you hereby agree that you will not, at any time, make any disclosure of any Confidential Information, or make any use thereof, except for the benefit of, and on behalf of, EMEX and only with EMEX's prior written consent. Violation of this Section 10.a. shall result in the immediate termination of your status as an Affiliate and forfeiture of all of your future Commissions or Referral Fees. However, your obligation under this Section 10.a. shall not extend to information which is or becomes part of the public domain or is available to the public by publication or otherwise, other than through any Affiliate or their agents or any other third party that breaches any confidentiality obligations it may have to EMEX or its Affiliates. You acknowledge and agree that any disclosure of EMEX's Confidential Information shall cause irreparable harm to EMEX.

b. Terms Survive Termination. The provisions of this Section 10 shall survive for a period of two (2) years after termination of your status as an Affiliate. Money damages would not be sufficient remedy for any breach of this Section 10 by you, and EMEX shall be entitled to specific performance and injunctive relief as remedies for such breach or any threatened breach.

Such remedies shall not be deemed the exclusive remedies for a breach of this Section 10, but shall be in addition to all remedies available at law or in equity to EMEX including the recovery of damages from you.

11. EMEX Intellectual Property:

a. EMEX Trade Marks. EMEX's company names, logos, websites, URL's and all other trademarks and service marks, unless otherwise noted, are unregistered or registered trademarks and trade dress of EMEX and its affiliated entities (collectively "Trade Marks"). All of the Site's page headers, custom graphics, button icons, and scripts are services marks, trademarks, and/or trade dress of EMEX.

b. Copyright Components. The Site and its design, content, selection and arrangement of elements, organization, graphics, compilation and all other components related to the Site (collectively "Copyrighted Components") are protected under applicable copyright laws. EMEX's subsequent modification in any way of the Site shall not be construed as a waiver of EMEX's copyrights in any component or element of the Site as it exists now or after modification.

c. Site. **You are prohibited from using, copying, reproducing, downloading, posting, displaying, transmitting, distributing, altering or changing any of the Trade Marks or Copyrighted Components from the Site or other materials unless expressly permitted by EMEX. Unauthorized use of materials contained on any EMEX or Energy Market Exchange website is expressly prohibited by law, and may result in civil or criminal penalties.** You are also prohibited from using the Trade Marks or Copyrighted Components in a manner that is disparaging to EMEX or displaying them in a way that implies EMEX's sponsorship or endorsement without EMEX's prior written consent. All right, title and interest in and to the Site and any content thereon is the exclusive property of EMEX. The provisions of this Section 11.c. survive the termination of your status as an Affiliate.

d. Independently Created Websites. You may create your own independent website to market your EMEX business. The content and URL/domain is subject to EMEX's prior written approval, and may not contain the use of the name "EMEX," "Energy Market Exchange," or "EMEX Power" and must **state clearly on the Home Page "This site is hosted by an "Independent Consultant for EMEX."**

12. Disclaimer of Warranties: TO THE EXTENT LEGALLY PERMITTED, EMEX EXPRESSLY DISCLAIMS ALL WARRANTIES,

REPRESENTATIONS AND CONDITIONS, EXPRESS OR IMPLIED, WHETHER ARISING FROM STATUTE OR OTHERWISE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER REGARDING THE COMPLETENESS, ACCURACY, CORRECTNESS, RELIABILITY, FUNCTIONALITY, AVAILABILITY, OR OPERATION OF THE SITE OR ITS CONTENT AND SERVICES, OR THAT USE OF THE SITE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT IT IS FREE FROM VIRUSES AND OTHER HARMFUL COMPONENTS TO EQUIPMENT OR SOFTWARE. EMEX IS NOT RESPONSIBLE FOR ANY LOSS YOU MAY INCUR RELATED TO USE OF THE SITE OR AS AN AFFILIATE (OTHER THAN DIRECT DAMAGES CAUSED BY EMEX) INCLUDING ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF YOUR USE OF THE SITE OR YOUR ACTIVITIES AS AN AFFILIATE EVEN IF YOU ADVISE EMEX SO THAT IT COULD REASONABLY FORESEE THE POSSIBILITY OF ANY SUCH DAMAGE OCCURRING.

EMEX, LLC
11011 Richmond Ave. Suite 500
Houston, Texas 77042

13. Dispute Resolution:

a. Governing Law. These Terms and Conditions are governed by the laws of Texas.

b. Arbitration. In the event a dispute or claim, you agree to submit the dispute or claim to binding arbitration conducted before a neutral arbitrator in Houston, Harris County, Texas for resolution in accordance with the American Arbitration Association rules of arbitration, the cost of which shall be born equally by both parties.

14. Release: In the event you have a dispute with another Affiliate, you hereby release EMEX and its officers, members, managers, agents, subsidiaries, joint ventures and employees from any and all claims, demands and damages (actual and consequential) of every kind and nature arising out of or in any way connected with any such dispute.

15. Indemnification: In the event of any claim or demand against EMEX (including from any third party), which arises out of your breach of these Terms and Conditions, or your violation of any law or the rights of a third party, then you agree to indemnify and hold EMEX harmless from any claim or demand against EMEX and its officers, members, managers, agents and employees.

16. Notices: All notices required or permitted by the terms hereof shall be sent by certified mail to the following address:

17. Violation of these Terms and Conditions: If you engage in behavior in breach or violation of these Terms and Conditions or fail to perform any one or more of your duties and responsibilities under these Terms and Conditions, EMEX may immediately AND permanently terminate your status as an Affiliate without notice, revoke your limited license to use the Site, and prohibit you from further use of the Site.

18. Termination:

a. Your Right. You may terminate your status as an Affiliate for any reason at any time by giving written notice to EMEX.

b. Inactivity. EMEX reserves the right to deactivate your status as an EMEX Affiliate and deactivate your EMEX website if you do not close a minimum in the aggregate of 100,000 Kwh annualized or 25,000 therms annualized over any six (6) month period.

c. **Circumvention. Attempted or actual circumvention or violation of EMEX Terms and Conditions and policies will result in EMEX Affiliate Account being immediately and permanently terminated without notice and all commissions will be forfeited.**

d. Standard of Performance. If you commit an act of fraud, intentional misrepresentation, criminal act (other than a minor traffic violation), or any event of misconduct such that EMEX, in its sole discretion, determines that your credibility and reputation no longer conform to the standard of an Affiliate, EMEX may terminate your status as an Affiliate at any time without any notice. Falsification of Affiliate or customer information will be deemed a breach of EMEX Terms and Conditions and will result in account denial or cancellation.

e. Payment after Termination. If your status as an Affiliate is terminated in accordance with either Sections 18.a. or b., EMEX shall pay you any earned Commissions for your own direct sales. In such event, you will no longer receive referral fee commissions. If your status as an Affiliate is terminated under any other provision of these Terms and Conditions, EMEX may discontinue payments for any and all earned commissions and/or referral fees.

19. Brokers: When offering electricity and/or natural gas service for a customer through EMEX, you may

not offer electricity and/or natural gas service for the same customer through any other channel.

20. Illinois Marketing Guidelines: If you are offering services in Illinois, in addition to the marketing guidelines set forth in Section 5 you must comply with these additional marketing guidelines:

a. Ensure that each customer receives and signs the EMEX “Disclosure Statement Pursuant to Section 454.90 of the Illinois Administrative Code” prior to entering into the contract.

b. Not hold yourself out as affiliated with any retail electricity supplier or use words calculated to give that impression.

c. Not utilize false, misleading, materially inaccurate, defamatory or otherwise deceptive language or materials in the soliciting or providing of your services.

d. Maintain copies of all marketing materials disseminated to third parties for a period of not less than three (3) years.

e. Not present electricity and/or natural gas pricing information in a manner that favors one supplier over another, unless a valid pricing comparison is made utilizing all relevant costs and terms.

f. Comply with the requirements of Sections 2EE, 2FF, 2GG and 2HH of the Consumer Fraud and Deceptive Business Practices Act, which protects customers, including customers over 60 years of age and disabled customers, and requires that any advertisement for electric and/or natural gas service that lists rates clearly and conspicuously discloses all associated costs for such service including, but not limited to, access fees and services fees.

g. Preserve the confidentiality of your customer’s data.

21. Pennsylvania Exclusivity: The Pennsylvania PUC only allows you to offer electricity under only one Brokerage firm or Retail Energy Supplier’s license. You cannot offer electricity service with any other entity, broker or Supplier unless you have your own license from the Pennsylvania PUC.

22. New Jersey Governmental Entities: New Jersey law prohibits any marketing to and/or communicating with any New Jersey governmental entity with respect to the purchase or sale of electricity unless specifically approved to do so as provided in such law. You are not

authorized and you are strictly prohibited from marketing and/or otherwise communicating (in any form) with any New Jersey governmental entity with respect to the purchase or sale of electricity, including through the use of EMEX and its services. Any marketing and/or communicating with any New Jersey governmental entity with respect to EMEX and/or its services by you is a violation of New Jersey law and EMEX’s policies and procedures. Any such action (on the very first offense) without notice or warning, is grounds for the immediate termination of your status as an affiliate with EMEX in accordance with the terms and conditions of EMEX’s Affiliate Program including, without limitation, forfeiture of any earned but unpaid commissions.

23. Governmental Entities in Other Applicable Markets: You may offer electricity and /or natural gas in all other Applicable Markets that EMEX services.

24. Waiver: Failure of EMEX at any time to require performance by you of any provision hereof shall in no way affect the right of EMEX hereafter to enforce the same. Nor shall any waiver by EMEX of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of this provision itself. You shall not plead or set up as a defense to enforcement of the Terms and Conditions latches or any statute of limitations.

25. Severability: It is the desire and intent of the parties that the terms, provisions and covenants contained in these Terms and Conditions shall be enforceable to the fullest extent permitted by law. If any such term, provision or covenant or the application thereof to any person or circumstances shall, to any extent, be construed to be invalid or unenforceable in whole or in part, then such term, provision or covenant shall be construed in a manner as to permit its enforceability under the applicable law to the fullest extent permitted by law. In any case, the remaining provisions of these Terms and Conditions or the application thereof to any person or circumstances, other than those to which they have been held invalid or unenforceable, shall remain in full force and effect.

26. Successors and Assigns: These Terms and Conditions shall be binding upon and shall inure to the benefit of any person, corporation or entity which may hereafter acquire or succeed to all or substantially all of the business or assets of EMEX by purchase, merger, consolidation or by any other means whatsoever, whether direct or indirect. These Terms and Conditions are personal to you and may not be assigned or otherwise transferred by you without the prior written consent of EMEX.

27. Non-disparagement. You agree that you will not at any time make, publish or communicate to any person or entity or in any public forum any defamatory or disparaging remarks, comments or statements concerning EMEX, EMEX Power or Energy Market Exchange or its employees, businesses, officers, existing and prospective customers, suppliers and other associated third parties. The provisions of this Section 27 shall survive the termination of your status as an Affiliate.

28. OFAC Representations. . You represent and warrant that: (1) you are in compliance with all federal anti-money laundering and anti-terrorist financing laws; including, but not limited to: (i) the USA PATRIOT Act, (ii) the Money Laundering Control Act of 1986, (iii) the Bank Secrecy Act, and (iv) any other state or federal criminal law against terrorism or money laundering; (2) you are not listed on the Specially Designated Nationals and Blocked Persons list maintained by the United States Office of Foreign Assets Control (“OFAC”) or any other governmental list of prohibited parties and are not an affiliate of a person or entity so listed; and (3) neither you nor any of your affiliated companies are (i) located in a country in which dealings are prohibited or restricted by U.S. law; (ii) dealing in a prohibited manner with a country or person or entity in a country with which such dealings are prohibited or restricted by U.S. law; or (iii) out of compliance with any law or regulation administered by OFAC.

29. Entire Agreement: These Terms and Conditions modify and supersede all other preceding agreements between you and EMEX and constitute your entire agreement with EMEX regarding your performance of services as an Affiliate for EMEX.

By agreeing to these Terms and Conditions, you agree to receive email communication from EMEX for transactional and training purposes. Opting out of any email communications could lead to termination of this Agreement.

ACKNOWLEDGED AND AGREED TO BY:

PRINTED NAME: _____

SIGNATURE: _____

DATE: _____