**MASTER** **SERVICES AGREEMENT**

THIS MASTER SERVICES AGREEMENT (“Agreement”) made and entered into this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, 2016 by and between the Kentucky Municipal Energy Agency, a public agency located in Louisville, Kentucky, doing business as KyMEA ("KyMEA") and Kentucky Municipal Power Agency, a public agency located in Paducah, Kentucky doing business as KMPA ("KMPA"). KyMEA and KMPA may hereinafter be referred to individually as a "Party" and collectively as the "Parties."

In consideration of the premises and mutual covenants contained in this Agreement, KyMEA and KMPA agree as follows:

**ARTICLE 1 – GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky, without regard to its conflict of laws provisions.

**ARTICLE 2 - SERVICES**

(a) KMPA shall perform consulting services (“Services”) as requested from time to time by KyMEA. A general outline of the Services which may be performed pursuant to this Agreement is set forth in Appendix A attached hereto. The Parties acknowledge and agree, however, that the particular Services to be provided by KMPA pursuant to this Agreement shall be agreed to by the Parties and authorized in a Task Authorization in the form set forth in Appendix C attached hereto. The Task Authorization shall set forth the scope of services, including the intended purpose of the services, schedule for completion, budget, payment terms and any other special provisions agreed to by the Parties. All Task Authorizations shall be incorporated into this Agreement and subject to the terms and conditions hereof.

(b) KyMEA acknowledges and agrees that KMPA shall only be required to perform Services which are specifically requested by KyMEA and agreed to by KMPA in a Task Authorization. KMPA shall have no obligation or responsibility to render any advice, recommendation or direction to KyMEA with respect to the scope or particular type of services which may be required for the prudent and efficient operation of KyMEA.

(c) KyMEA acknowledges and agrees that notwithstanding the execution of this Agreement and any Task Authorization, the principal obligation of KMPA staff shall be the performance of tasks and duties pertaining to the operations and business of KMPA. KMPA shall perform the Services as time and resources allow and nothing contained herein shall be construed to require KMPA to hire any additional staff or engage any independent contractors to perform any Services.

(d) KMPA shall supply, at KMPA’s sole expense, all equipment, materials, and/or supplies to accomplish the services agreed to be performed including but not limited to KMPA’s office and computing facilities; provided, however, that the cost and expenses of any specialized software or computing services required for the performance of any Service shall be the responsibility of KyMEA.

**ARTICLE 3 – RELATIONSHIP OF THE PARTIES**

(a) Notwithstanding any provision hereof, for all purposes of this Agreement KMPA shall be and act as an independent contractor and neither Party shall bind nor attempt to bind the other to any contract or agreement. KMPA is an independent contractor and is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort, including, but not limited to, Worker’s Compensation Insurance. No Federal, State or local income tax or payroll tax of any kind shall be withheld or paid by KyMEA on behalf of KMPA or the employees of KyMEA. With respect to the services performed hereunder, KMPA will not be treated as an employee for Federal or State tax purposes. KMPA must be in compliance with all Federal, State and local laws regarding business permits and licenses that may be required to carry out the work to be performed under this Agreement. Because KMPA is engaged in KMPA’s own independent business, KMPA is not eligible for and shall not participate in any employer pension, health or other fringe benefit plan of the KyMEA. Normal work tasks will be carried out at KMPA’s office unless otherwise indicated in the applicable Task Authorization. KyMEA also recognizes that KMPA may work for other clients and its services are available to the general public.

(b) KyMEA recognizes and acknowledges that KMPA is engaged in a business and operations which are similar to the business and operations of KyMEA. KyMEA agrees that KMPA shall have no fiduciary duties to KyMEA of any kind or nature as the result of this Agreement, any Task Authorization or any dealings between the Parties.

## ARTICLE 4 - STANDARD OF CARE

KMPA shall exercise independent control and shall act with the same degree of care, skill, and diligence in the performance of the Services as is ordinarily possessed and exer­cised by a professional consultant with similar experience and resources under similar circumstances. Work that is deemed to not meet this standard shall be re-performed by KMPA at no additional cost and the re-performance of such work shall be the sole remedy available to KyMEA. ***NO OTHER WARRANTY, EXPRESSED OR IMPLIED, IS INCLUDED IN THIS AGREEMENT****.*

**ARTICLE 5 - LIMITATION OF LIABILITY**

To the fullest extent permitted by law, KMPA's (including any of its related or affiliated companies) total liability to KyMEA for all claims, losses, damages, and expenses, whether arising under breach of contract or warranty, tort (including negligence), strict liability or any other basis of legal liability, resulting in any way from the performance or non-performance of the Services shall not exceed the total compensation actually received by KMPA under the applicable Task Authorization.

Notwithstanding any provision in this Agreement to the contrary, and to the fullest extent permitted by law, neither Party (including any of its related or affiliated companies) shall be liable to the other Party and each expressly waives all claims for loss of profits, revenue, use, opportunity, and goodwill; and for any special, indirect, incidental, consequential, punitive, or exemplary damages resulting in any way from the performance or non-performance of the Services whether arising under breach of contract or warranty, tort (including negligence), strict liability or other basis of legal liability.

## ARTICLE 6 – INSURANCE

## During the performance of Services under this Agreement, KMPA shall maintain auto insurance liability coverage in an amount not less than a $1,000,000 combined single limit. KMPA shall furnish a certificate of insurance to KyMEA at the inception of the Services and thereafter, upon request by KyMEA.

**ARTICLE 7 - TERMINATION**

This Agreement, or the performance of any Services, may be terminated by either party for any reason, and without cause, upon 10 days prior written notice to the other Party. If the termination or suspension is for KyMEA’s convenience, KyMEA shall pay KMPA any fees for Services performed and any expenses incurred before the notice of termination or suspension is given.

**ARTICLE 8 - COMMUNICATIONS**

Any notice required by this Agreement shall be made in writing by hand delivery or by a nationally recognized next day delivery service addressed as specified below:

If to KMPA:

Heather R. Overby

Chief Financial Officer

Kentucky Municipal Power Agency

1500 Broadway, Suite 100

Paducah, KY 42001

If to KyMEA:

Mr. Terrance Naulty

Treasurer

Kentucky Municipal Energy Agency

Owensboro Municipal Utilities

2070 Tamarack Rd.

Owensboro, KY 42302

**ARTICLE 9 – ENTIRE AGREEMENT**

This Agreement represents the entire agreement between KyMEA and KMPA and may only be supplemented, amended or revised by a writing signed by both Parties.

**ARTICLE 10 - DISPUTE RESOLUTION / WAIVER OF JURY TRIAL / VENUE**

(a) In the event any dispute or controversy arises between the Parties in connection with this Agreement, or any dispute or controversy which arises out of or relates to this Agreement or the relationship established by this Agreement, any provision hereof, the alleged breach hereof, or in any way relating to the subject matter of this Agreement, involving the Parties and/or their respective representatives (hereinafter “Disputes”), even though some or all of such Disputes allegedly are extra contractual in nature, whether based in contract, tort, or otherwise, at law or in equity, under state or federal law, whether provided by statute or the common law, involving damages or any other relief, the Parties shall endeavor in good faith to resolve any such Dispute through mediation conducted in accordance with the rules of the American Arbitration Association.

(b) In the event the Parties fail to resolve any Dispute through mediation pursuant to paragraph 10(a), each Party hereby knowingly, voluntarily and intentionally waives any rights it may have to a trial by jury in respect of any litigation arising out of, under, or in connection with any Dispute, any course of conduct, course of dealing, statements (whether oral or written) or actions of KMPA or KyMEA related hereto and expressly agree to have any such matter adjudicated by a judge sitting in the McCracken Circuit Court in Paducah, Kentucky, if such litigation is filed by KyMEA, or in the Jefferson Circuit Court in Louisville, Kentucky, if such litigation is filed by KMPA or in the United States District Court for the Western District of Kentucky.

**ARTICLE 11 - THIRD PARTY BENEFICIARIES**

This Agreement is intended solely for the benefit of the Parties hereto, and nothing herein will be construed to create any duty to, or standard of care with reference to, or any liability to, any person, entity or public agency not a Party hereto.

**ARTICLE 12 - NON-WAIVER**

The failure of either Party to insist in any instance upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights under this Agreement shall not be construed as a general waiver of any such provision or the relinquishment of any such right, except to the extent such waiver is in writing and signed by an authorized representative of the waiving Party.

**ARTICLE 13 - INTERPRETATION AND CONSTRUCTION**

This Agreement was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this Agreement and none of the provisions hereof shall be construed against one Party on the ground that such Party drafted this Agreement or any part hereof.

**ARTICLE 14 – SEVERABILITY**

If any provision or provisions of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired thereby; and the Parties hereby agree to effect such modifications to this Agreement as shall be reasonably necessary in order to give effect to the original intention of the Parties.

**ARTICLE 15 – ASSIGNABILITY**

This Agreement may not be assigned, in whole or in part, by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

**ARTICLE 16 – TERM OF AGREEMENT**

This Agreement will terminate at 11:59 pm on December 31, 2018, unless earlier terminated pursuant to Article 7.

**ARTICLE 17 – CONFIDENTIALITY**

KMPA agrees to use its best efforts to prevent and protect all confidential information from disclosure to any person other than KMPA’s employees having a need for disclosure in connection with KMPA’s authorized use of the confidential information and agrees to take steps reasonably necessary to protect the secrecy of the confidential information. Any person receiving such information shall be required to agree to the same covenant of confidentiality. KyMEA shall be entitled to injunctive relief to enforce this provision of the Agreement. For purposes of this Agreement, "confidential information" shall only include information which is stamped by KyMEA as "CONFIDENTIAL" or with respect to which KyMEA specifically advises KMPA in writing that it intends for the information to be treated as confidential information.

**ARTICLE 18 – INVOICING AND PAYMENT TERMS**

KMPA shall submit monthly invoices to KyMEA which describe the work performed and the time expended. Invoices shall be submitted to KyMEA within twenty (20) working days of the end of each month. KyMEA shall pay KMPA according to the schedule of fees in Appendix B. KyMEA shall not be liable to KMPA for any expenses paid or incurred by KMPA, unless otherwise agreed in writing. KyMEA shall pay KMPA within ten (10) working days of receipt of invoice.

**ARTICLE 19 - HEADINGS**

Section headings used throughout this Agreement are for the convenience of the Parties only and are not to be construed as part of this Agreement.

**ARTICLE 20 - COUNTERPARTS**

This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

**IN WITNESS WHEREOF**, KyMEA and KMPA have executed this Agreement effective as of the date first written above.

KENTUCKY MUNICIPAL ENERGY AGENCY Kentucky Municipal Power Agency

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

Name: Ronald Herd Name: Gary Zheng

Title: Chairman Title: General Manager

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ATTEST: ATTEST:

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

Name: Vent Foster Name: Hardy Roberts

Title: Secretary Title: Chairman

APPENDIX A

SCOPE OF WORK

KMPA shall provide consulting services under the direction of the Chairman of KyMEA or his designee, to accomplish tasks associated with the formation, start-up and administration of KyMEA (sometimes referred to hereinafter as the "Agency") prior to staffing of the Agency. Initial efforts shall focus on establishing the financial and accounting process and procedures for the Agency and administering member allocations via invoices, accounts payable, accounts receivable, and budgeting. KMPA shall work collaboratively with the Executive Committee of KyMEA to prioritize the work to be accomplished. Projected tasks are specified below.

Task 1 - Administration

* Attend KyMEA Board meetings and as requested attend KyMEA Executive Committee meetings
* Develop administrative budgets, review with Executive Committee and upon approval, work with the Treasurer, or his designee to establish annual budget and invoicing schedule for members of the Agency.
* Working with the Agency Secretary, transition all meeting agendas and administration to KMPA including administration of the KSBA portal, taking minutes and publishing minutes for approval by the Board.

Task 2 - Accounting and Financial Systems

* Configure system to meet needs of agency including
  + settlements with PJM and MISO
  + member account management
  + integration with member SCADA and metering
  + Accounts payable and receivable
  + GASB compliance
* Working with the Agency Treasurer and his designees, configure the enterprise risk management software selected by the Board.
  + Configure system to meet needs of agency including
    - settlements with PJM and MISO
    - member account management
    - integration with member SCADA and metering
    - Accounts payable and receivable
    - GASB compliance
* Establish procedures with KyMEA members for allocation of administrative and power supply costs.
* Establish invoice development procedures and schedules to ensure adequate cash flow.
* Establish budget development process, review and approval process and schedules and budget reporting configurations.

Task 3 - Policy Development –. Working collaboratively with the Executive Committee recommend policies for development and establish priority order for such development. After obtaining consensus of the Board of Directors of KyMEA of the policies to be developed, draft recommended policies. At a minimum policies to be developed shall include:

* Results Policies
  + Board/Management Roles
  + Controlling Authority
  + Delegation of Authority to President and Accountability
  + Monitoring Performance of President
* Management Policies
  + Succession of Leadership
  + Information and support to the Board
  + Strategic and business planning
  + Employee Policies
    - Drug and Alcohol
    - Workplace violence and criminal activity
    - Vacation and Holiday
    - Family and Medical Leave
    - Safety
    - Travel Expenses
    - Credit card policy
    - Company and personal vehicle policy
    - Compensation
    - Employee benefits (insurance, retirement, etc.)
    - Information technology use
* Financial Policies
  + Investments
  + Reserve Funds and Flow of Funds
  + Debt Issuance and Payments
  + Procurement
  + Real Property
  + Legal Action
  + Short term borrowing
  + Cost Allocation and Recovery
  + Protection of Assets
* Risk Management Policies
  + Trade execution and authorization
  + Energy Risk Management and Governance
* Cyber-security and Protection of Confidential Information
* Legislation and Regulation
* External Communication and Community Involvement
* Project Participation Policies (for power supply projects)

Task 4 - Third Party Service Provider Selection for Tagging/Scheduling/Energy Settlements

* Develop specifications for third party tagging, scheduling, settlements and risk monitoring services
* Coordinate with Agency consultants and Issue RFP
* Assist in negotiating service provider contract

Task 5 - Establish Credit Rating for Agency

* Working with the Agency’s financial consultant, establish requirements and coordinate all required information needed to obtain a credit rating from at least one rating agency.
* Integrate credit requirements into All Requirements Contracts and Service Contracts between the Agency and its members. .
* Contract with agencies for rating and host ratings visits or calls as required

Task 6 - Enabling Agreements, Broker Agreements and Exchange Agreements

* Evaluate the potential assignment of OMU Enabling Agreements to KyMEA to permit trade execution on day 1 of KyMEA operations conditioned upon KyMEA becoming responsible for OMU’s day-to-day scheduling, tagging and term hedging.
* Establish accounts with ICE and NYMEX for Agency
* Assist in negotiating energy broker agreements on behalf of Agency

Task7 - FERC and RTO/ITO Registration

* Register with MISO, PJM, and other entities as determined necessary as a market participant
* Establish required credit with RTOs to enable transactions
* Register with FERC as certificated marketer and/or other required licensing

APPENDIX B

SCHEDULE OF FEES

1. Senior KMPA - $\_\_\_\_\_\_/hour
2. Clerical - $\_\_\_\_\_\_/hour
3. Travel Expenses – at cost (KyMEA shall reimburse KMPA for any reasonable travel expenses required to perform the Services).

APPENDIX C

TASK AUTHORIZATION

Task Authorization Description:

Effective Date:

KMPA and KyMEA agree that this Task Authorization and the performance of all services and work pursuant hereto shall be governed by the terms and conditions of the Master Services Agreement dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, included any amendments thereto, unless specifically modified herein.

**SCOPE OF SERVICES**

*(Detailed tasks to be performed. Include any project locations, deliverables, quantities, assumptions, etc.)*

**SCHEDULE**

*(Provide timeframe for completion of services)*

**FEE FOR SERVICES**

*(Provide summary or task level detail of cost. Note if the cost is a maximum not-to-exceed.)*

Advance payment: None **OR** [KyMEA shall pay $\_\_\_\_\_\_\_\_\_\_\_\_ upon signing of this Task Authorization and prior to commencement of any services by KMPA as Advance Payment, which shall be held as progress payment security and shall be applied to the last invoice submitted by KMPA for services provided under this Task Authorization.]

**AMENDMENT TO TERMS OF MASTER SERVICES AGREEMENT**

*(Insert terms different than Master Services Agreement if applicable.)*

*(e.g., Note if compensation arrangements deviate from those specified in the Master Services Agreement.)*

IN WITNESS WHEREOF, the Parties have executed this Task Authorization as of the date first written above.

KENTUCKY MUNICIPAL ENERGY AGENCY Kentucky Municipal Power Agency

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

Printed Name: Ronald Herd Printed Name: Gary Zheng

Title: Chairman Title: General Manager

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_