Aggregation Program Agreement

This Aggregation Program Agreement is entered into as of this 24th day of February 2016 ("**Agreement**"), by and between **Village of Godfrey** ("**Aggregator**"), an Illinois municipal corporation, and **Illinois Power Marketing Company d/b/a Homefield Energy** ("**Supplier**"), an Illinois corporation with an office located at **1500 Eastport Plaza Drive, Collinsville, Illinois 62234**. Supplier and Aggregator are sometimes hereinafter referred to individually as a "Party" or collectively as the "Parties".

W I T N E S S E T H

WHEREAS, Section 1-92 of the Act authorizes the corporate authorities of a municipality, county or township to establish a program to aggregate electrical loads of residential and small commercial retail customers and to solicit bids and enter into service agreements to facilitate the sale and purchase of electricity and related services for those electrical loads; and

WHEREAS, pursuant to the Act, municipalities may, if authorized by referendum, operate an Electricity Aggregation Program as an "opt-out" program that applies to all residential and small commercial retail electrical customers who do not affirmatively choose not to participate; and

WHEREAS, Aggregator has received authorization through its referendum to proceed with an "opt-out" Aggregation Program pursuant to the Act; and

WHEREAS, Aggregator has issued a Request for Proposal on February 12, 2016; and

WHEREAS, Supplier is an ARES registered with and certified by the ICC; and

WHEREAS, Aggregator has selected Supplier as the supplier for the Aggregation Program; and

WHEREAS, Aggregator and Supplier desire to establish the rights and obligations of the Parties with respect to the Aggregation, including but not limited to determining a price and supplying the Aggregation and related services.

NOW, THEREFORE, the Parties, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree as follows:

ARTICLE 1: RECITALS

The foregoing recitals are, by this reference, fully incorporated into and made part of this Agreement for all purposes.

ARTICLE 2: DEFINITIONS

Whenever used in this Agreement, the following terms shall have the meanings defined below except where the context indicates otherwise:

A. **"Affiliate"** shall mean any person, firm, corporation (including, without limitation, service corporation and professional corporation), partnership (including, without limitation, general partnership, limited partnership and limited liability partnership), limited liability company, joint venture, business trust, association or other entity that now or in the future directly or indirectly controls, is controlled by, or is under common control with Supplier.

B. **"Act"** shall mean the Illinois Power Agency Act, 20 ILCS 3855/1-1 *et seq.*

C. **"Aggregation"** or **"Municipal Aggregation"** shall mean the pooling of residential and small commercial retail electrical loads located within the Aggregator's jurisdiction for the purpose of soliciting bids and entering into service agreements to facilitate for those loads the sale and purchase of electricity and related services, all in accordance with Section 1-92 of the Act.

D. **"Aggregation Consultant"** or **"Consultant"** shall refer to Good Energy, L.P.; the independent consultant with demonstrated expertise in electric supply contracting that has been retained by Aggregator to assist with the implementation of the Aggregation Program.

E. **"Aggregation Member"** or **"Member"** shall mean a residential or small commercial retail electric account enrolled in the Aggregation Program, and shall be consistent with the definition of "Eligible Retail Customer" as provided for herein.

F. **"Aggregation Program"** or **"Program"** shall mean the program adopted by Aggregator pursuant to Section 1-92 of the Act to facilitate for the applicable residential and small commercial customers the sale and purchase of electricity and related services.

G. **"Aggregator"** shall mean Municipality, County or Township acting by and through its corporate authorities, and authorized Aggregator employees.

H. **"Aggregator Designee"** shall mean the person (or persons) empowered by Aggregator through ordinance to authorize and execute a contract price lock for electricity supply on behalf of the Aggregator's governing authority or body.

I. **"Alternative Retail Electric Supplier"** or **"ARES"** shall mean an entity certified by the ICC to offer electric power or energy for sale, lease or in exchange for other value received to one or more retail customers, or that engages in the delivery or furnishing of electric power or energy to such retail customers, and shall include, without limitation, resellers, aggregators and power marketers but shall not include the Utility or the Aggregation Members. For purposes of this Agreement, the definition of Alternative Retail Electric Supplier is more completely set forth in 220 ILCS 5/16-102.

J. **"Ameren Illinois"** or **"Ameren"** or **"Utility"** shall mean the Ameren Illinois Utility Company, or its successor, as the entity that has a franchise, license, permit or right to distribute, furnish or sell electricity to retail customers within its service area and within the Aggregator's jurisdiction.

K. **Ancillary Services"** shall mean the necessary services that shall be provided in the generation and delivery of electricity. As defined by the Federal Energy Regulatory Commission, "Ancillary Services" include, without limitation: coordination and scheduling services (load following, energy imbalance service, control of transmission congestion); automatic generation control (load frequency control and the economic dispatch of plants); contractual agreements (loss compensation service); and support of system integrity and security (reactive power, or spinning and operating reserves).

L. **"Customer Information"** shall mean information specific to individual Members, and/or Eligible Retail Customers, as applicable, including customer name, address, account number, and usage information.

M. **"Distribution Service Provider"** or **"DSP"** shall mean the entity responsible for providing local distribution service to Members.

N. **"Eligible Retail Customer"** shall mean a residential and small commercial retail customer of the Utility that is eligible for participation in the Aggregation Program pursuant to 220 ILCS 5/16-102, Section 1-92 of the Act, as well as applicable rules, regulations and utility service tariffs pertaining to retail electric supply, purchase of receivables, and consolidated billing.

O. **"Extended Term"** is defined in Section 3.A of this Agreement.

P. **"Force Majeure Event"** is defined in Section 6.C of this Agreement.

Q. **"ICC"** shall mean the Illinois Commerce Commission as described in 220 ILCS 5/2-101.

R. **"IPA"** shall mean the Illinois Power Agency as described in 220 ILCS 3855, Section 1-5.

S. **"Load"** shall mean the total demand for electric energy required to serve the Aggregation Members.

T. **"MISO"** shall mean Midcontinent Independent System Operator, Inc., a Regional Transmission Organization ("RTO") that coordinates the movement of wholesale electricity in all or parts of eleven states and the Province of Manitoba, including the Ameren Illinois service territory.

U. **"Opt-Out"** shall mean the process by which a Member who would be included in the Aggregation Program chooses not to participate in the Aggregation Program.

V. **"PIPP"** shall mean a Percentage of Income Payment Plan created by the Energy Assistance Act, 305 ILCS 20-18, to provide a bill payment assistance program for low-income residential customers.

W. **"Plan of Operation and Governance"** shall mean the Aggregation Plan of Operation and Governance adopted by Aggregator pursuant to the requirements set forth in Section 1-92 of the Act.

X. **"Point of Delivery"** shall be the interconnection between the RTO transmission's DSP's distribution system to which Supplier shall deliver the electricity under the Aggregation Program for delivery by the Utility to the Aggregation Members.

Y. **"REC"** shall mean Illinois Renewable Portfolio Standard eligible Renewable Energy Credits.

Z. **"Regulatory Event"** is defined in Section 6.B of this Agreement.

AA. **"Retail Power"** is defined in Section 5.D.

BB. **"Retail Power Price"** is defined in Section 5.D.

CC. **"Services"** is defined in Article 5 of this Agreement.

DD. **"Small Commercial Retail Customer"** shall mean those retail customers with an annual consumption of less than 15,000 kWh per 220 ILCS 5/16-102, provided, however, that the definition of Small Commercial Retail Customer will include such other definition or description as may become required by law or tariff.

EE. **"Term"** is defined in Section 3.A of this Agreement.

FF. **"Terms and Conditions"** is defined in Section 5.B of this Agreement.

ARTICLE 3: TERM

A. **Term of Agreement.** This Agreement commences on the date first written above, provided however, the supply service to Aggregation Members shall not commence until the Utility's confirmation of Member enrollment with Supplier and shall continue through the billing cycle of the last month of the Term, as elected by Aggregator and set forth in Exhibit A.

B. **Extension**. Aggregator and Supplier may extend the Term of this Agreement for additional periods of time by written mutual agreement approved and executed by each of them (each an "***Extended Term***"). Any such extension may, among other things, provide for an opportunity to refresh the price. Any price modification in an Extended Term shall require Supplier issuance of a new opt-out notice for the Extended Term to all

Aggregation Members. Nothing in this Article related to the Term, or the possibility of agreement to an Extended Term may be construed or applied in any manner to create any expectation that any right or authority related to this Agreement granted by Aggregator to Supplier shall continue beyond the Term or an approved Extended Term.

C. **Notification.** In the event Aggregator decides either (a) the Aggregation Program will terminate upon expiration, or (b) that that it would like to renew the Aggregation Program with an ARES other than Supplier, then Aggregator must provide notice to Supplier at least 90 days prior to the first expiration date (billing cycle) of any Aggregation Member in the last month of the Term, as elected by Aggregator and set forth in Exhibit A. In the event such notification is not received by Supplier by the applicable date, the Parties will in good faith negotiate an extension for a price no later than sixty (60) days prior to the first expiration date (billing cycle) of any Aggregation Member in the last month of the Term, as elected by Aggregator and set forth in Exhibit A. In the event no extension is agreed upon by the Parties, the Parties will have no obligation to each other to extend the Aggregation Program.

D. **Term of Enrollment.** Members shall remain enrolled in the Aggregation Program until the Member exercises the right to opt-out, or they otherwise terminate their participation in the Aggregation Program, their participation in the Aggregation is terminated by Aggregator, their participation in the Aggregation Program is terminated by Supplier or the Utility, or until this Aggregation Program is terminated, whichever occurs first.

E. **Interaction Between Termination Dates of this Agreement and Contracts with its Members.** Members initially enrolled in the Aggregation Program shall receive Electric Supply at the Retail Power Price set forth in this Agreement. If this Agreement is terminated prior to the end of the Term due to a Regulatory Event, then Electric Supply will terminate early and the Members will be switched to the Utility's BGS-1 or BGS-2 default rate, where applicable, provided by the Utility as required by 220 ILCS 5/16-103 and defined by its rates on file with the ICC pursuant to 200 ILCS 5/Art. IX. ("**Tariff Service**") in accord with the standard switching rules and applicable notices. If this Agreement is terminated pursuant to the terms of this Agreement, the Aggregation Program will terminate early and the Aggregation Member may choose another ARES or will be switched to Utility default service in accord with the standard switching rules and applicable notices. The Members are responsible for arranging for their supply of energy upon expiration or termination of this Agreement. If this Agreement is terminated prior to the end of the Term and a Member has not selected another supplier, such Member will be switched to Utility default service.

ARTICLE 4: PROGRAM RESPONSIBILITIES

A. Aggregator Responsibilities.

1. Program Responsibilities. Aggregator shall perform those duties related to the Aggregation Program as required by Section 1-92 of the Act, e.g. adopting an ordinance authorizing aggregation, submitting a referendum to its residents, abiding by notice and conduct requirements of general election law, developing a plan of operation and governance, holding public hearings, and informing residents of opt-out rights.

2. Customer Information. Aggregator Consultant or Aggregator Designee shall obtain the Customer Information from Aggregator or Utility directly, and provide the Customer Information to Supplier for use in the enrollment and opt-out process set forth in Article 5. Aggregator acknowledges that Supplier is not liable for the completeness or accuracy of the account information included on, or excluded from, the Customer Information data files provided for this purpose. Aggregator further acknowledges that Supplier is not liable for any incremental costs associated with performing additional services to correct errors or omissions resulting from Customer Information data provided by Aggregator or Ameren.

3. Notices from Utility. Aggregator shall promptly forward to Supplier any notices received by Aggregator from Ameren concerning the account(s) of Aggregation Member(s).

4. No Aggregator Obligations to Provide Services. The Parties acknowledge and agree that Aggregator is not responsible to provide, and this Agreement shall not be construed to create any responsibility for Aggregator to provide, the Services to any person or entity, including without limitation Supplier, Ameren, or any Aggregation Member.

5. No Aggregator Financial Responsibility. The Parties acknowledge and agree that this Agreement does not impose or create, and shall not be construed to create, any financial obligation of Aggregator to any other person or entity, including without limitation Supplier, Ameren, or any Aggregation Member.

6. Compliance with Applicable Law. Aggregator shall comply with all applicable laws in providing the Service pursuant to this Agreement.

B. Supplier Obligations.

1. Provision of Services. Supplier shall provide all of the Services described in Article 5 of this Agreement throughout the Term.

2. Compliance with Applicable Law. Supplier shall comply with all applicable requirements of Illinois state law, including the Act, rules and regulations of the ICC, tariffs applicable to the Utility and MISO, and all other applicable federal and state laws, orders, rules and regulations, including the terms and conditions for providing the Services pursuant to this Agreement.

ARTICLE 5: SUPPLIER SERVICES

Supplier shall supply all of the following services in support of the Program (collectively, the "***Services***"):

A. Electricity Supply.

1. Electricity Supply.

a. **Transmission.** Supplier will acquire and pay all necessary transmission services up to the Point of Delivery to deliver electricity supply to Members, including all electricity commodity costs, MISO charges, congestion charges, distribution and transmission losses, and capacity charges. Supplier does not have responsibility for any delivery of services supplied by the Utility or RTO, or for the consequences of the failure to provide such services. Supplier shall not be responsible to Member in the event the Utility or RTO disconnects, suspends, curtails or reduces services to Member for any reason.

b. **Billing.** To the extent allowed by law and the Ameren tariff, Supplier shall make all arrangements for Aggregation Members to receive a single monthly bill from Ameren during the Term. As part of such arrangement, it is expected that the following fees will continue to be collected and processed by Ameren: monthly payments, late payments, delivery charges, monthly service fee, and applicable taxes.

c. **Data.** Supplier shall maintain a confidential database recording historical account information for Member accounts that has been provided to Supplier by Ameren, Aggregator, and/or Consultant or Aggregator Designee. Supplier will provide to the Aggregator and/its Consultant the initial account list for all Eligible Retail Customers who have been enrolled in the program. Furthermore, Supplier will also provide a list of the Eligible Retail Customers who have initially opted-out of the program. Both lists will be transmitted together in a text-based, comma-delineated file (.csv). At a minimum, but not limited to, the files should contain: account number, account name, premise address Line 1, premise address Line 2, premise address Line 3, premise address City, premise address State, premise address Zip Code.

d. **Title.** Title to and risk of loss for the electricity sold and delivered to Members shall pass to the purchasing Member upon delivery at the Point of Delivery;

2. Supply Mix. Supplier shall be capable of providing the supply mix of traditional and renewable sources in Exhibit A, if applicable.

3. Delivery Specifications

a. **Quality and Measurement.** Supplier agrees that all electricity sold pursuant to this Agreement shall be delivered in accordance with applicable MISO and Ameren rules and tariffs and suitable for delivery to Members.

b. **Title.** Supplier warrants that it possesses or will possess good marketable title to all electricity sold pursuant to this Agreement, and that such electricity will be free from all liens and adverse claims when delivered to the Point of Delivery.

c. **Delivery.** Supplier shall deliver all electricity sold pursuant to this Agreement at the Point of Delivery to be delivered to the Aggregation Members.

B. Program Implementation.

1. Member Service. Supplier shall maintain certain minimum levels of customer service including:

a. **Program Management and Documentation**. Supplier program management and documentation shall be in accordance with this Agreement and Supplier's response to Aggregator's Request for Proposals.

b. **Confidentiality.** Supplier and Aggregator shall maintain the confidentiality of customer information pursuant to Article 10 of this Agreement and as required by law.

c. **Customer Service.** Supplier shall assist Aggregation Members with their inquiries. Concerns regarding service reliability should be directed to Ameren, billing questions should be directed to Ameren or Supplier, as applicable, and any unresolved disputes should be directed to the ICC. Inquiries from Aggregation Members should be managed within the following performance parameters:

i. **Telephone Inquiries**. Supplier shall maintain a toll-free telephone access line which shall be available to Aggregation Members 24 hours a day, seven days a week. Trained company

representatives shall be available to respond to customer telephone inquiries during normal business hours. After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours shall be responded to by a trained company representative within two business days.

ii. **Internet and Electronic Mail.** Supplier shall establish and maintain a web page providing information to the Aggregation Members. The website shall provide basic information concerning the Aggregation Program and facilitate customer inquiries by providing contact information for questions.

iii. **Multi-Lingual Services**. Supplier shall provide reasonable customer service for Members requiring verbal and/or written assistance in Spanish.

iv. **Hearing Impaired.** Supplier shall provide reasonable customer service for hearing impaired Members.

2. **Enrollments**. Supplier shall perform the following Aggregation account enrollment tasks:

a. **Opt-Out Period.** Supplier shall conduct an initial Opt-Out Period, which shall be a twenty-one (21) calendar day period, from the date of postmark, during which eligible residents and small commercial retail customers may opt-out of the Aggregation Program prior to enrollment.

After the initial Opt-Out Process is completed, the Aggregator and Supplier may establish protocols and procedures to hold additional Opt-Out Periods for Eligible Retail Customers that were not mailed Opt-Out notices in earlier Opt-Out Periods within the term of the ongoing aggregation. Any new Eligible Retail Customers shall be able to enroll in the Aggregation Program under the same terms, conditions, and pricing as accounts that were initially enrolled during prior Opt-Out Periods. However, newly enrolled Eligible Retail Customers will only have the ability to participate in the Aggregation Program for the time remaining in the term of this Agreement. Costs (for example for printing and mailing) associated with subsequent Opt-Out Periods will be paid in the same manner as for the initial Opt-Out Period.

b. **Opt-Out Notifications**. Supplier shall manage the Opt-Out Period Notification process in cooperation with Aggregator and the Consultant or Aggregator Designee.

c. **New Accounts.** Supplier shall facilitate the addition of new customer accounts to the Aggregation Program during the Term of this Agreement. Members wishing to opt-in to the Aggregation Program may contact Supplier to obtain enrollment information. Supplier will make every effort to provide new customers with the same pricing available to initial enrollees; however, such pricing cannot be guaranteed. Supplier shall clearly state the rate to be charged for new accounts prior to enrollment.

d. **Moving Within the Aggregator's Jurisdiction.** Supplier shall continue service at the same rate and under the same terms and conditions for any Member who relocates within the Aggregator's jurisdiction prior to the expiration of the Term of this Agreement, providing that the Member notifies Supplier of its desire to do so with 30 days' notice.

e. **Credit/Deposit Requirements.** Collection and credit procedures are to be the responsibility of Ameren and the individual Member. Members will be required to comply with the payment terms of Ameren. Aggregator is not responsible for late payment or non-payment of any Member account. Neither Aggregator nor Supplier shall have a separate credit or deposit policy concerning Member accounts.

f. **Reliability of Power Supply.** The Parties acknowledge that the Aggregation Program only affects pricing for the electricity sold pursuant to this Agreement up to the Point of Delivery and further acknowledge Ameren will continue to deliver power through its transmission and distribution systems. Responsibility for maintaining system reliability continues to rest with Ameren. If Members have service reliability problems, they should contact Ameren for repairs. The ICC has established "Minimum Reliability Standards" for all utilities operating distribution systems in Illinois. Member outages, duration of outages, interruptions, etc., are monitored to ensure reliability remains at satisfactory levels. In addition to maintaining the "wires" system, Ameren is required to be the "Provider of Last Resort," meaning that should Supplier fail for any reason to deliver any or all of the electricity needed to serve the Members' needs, Ameren will immediately provide any supplemental electricity to the Members as may be required. Ameren would then bill Supplier for the power provided on Supplier's behalf, and the Members would incur no additional cost therefor over and above that which the Member would have paid had Supplier delivered the power.

g. **Fees Imposition.** Neither Aggregator nor Supplier shall impose any conditions, terms, fees, or charges on any Member served by the Program unless the particular term, condition, fee, or charge, or the possibility of a change in the same, is clearly disclosed.

h. **Enrollment and Disenrollment Charges.** Supplier shall not assess any enrollment, switching, or relocation fees on Aggregation Members. Customers may terminate services from Supplier without penalty if they relocate outside of the Aggregator's governmental boundary. Members who did not opt-out of the Aggregation Program during the opt-out period and who later leave the Aggregation Program for other reasons may be assessed an early termination fee of $0.00.

i. **Enrollment in Supplier Programs.** Supplier agrees not to solicit or contract with Aggregation Program

Members outside the Aggregation Program and agrees not to use Aggregation Program Member data and information for any other marketing purposes without written consent from the Aggregator. Nothing herein shall prevent Supplier from soliciting and entering into agreements with retail customers for the supply and delivery of electricity who have not enrolled in the Aggregation Program or who have opted-out. Aggregator recognizes Supplier may have affinity programs or other opportunities to sell and deliver to retail customers located in Aggregator's jurisdiction, and this Agreement does not bar such actions by Supplier.

C. Cooperation at the Conclusion of the Aggregation. Aggregator shall request and Supplier may provide, if legally permissible, from the Utility, those account numbers, names, and addresses of residential and small commercial retail customers in the aggregate area that are reflected in the Utility's records that may be needed to continue the Program with another ARES. Supplier has no obligation to request such information on behalf of Aggregator or another Alternative Retail Electric Supplier.

D. Retail Power Price. The Retail Power Price is set forth in Exhibit A. The Retail Power Price is based on Aggregation Members' historical or projected load data which is considered representative of the combined electricity requirements ("Retail Power") for the proposed Term. The Retail Power Price applies to all Retail Power covered under this Agreement. Retail Power Price also includes charges for distribution energy losses, capacity, MISO transmission charges, and energy, including scheduling and load forecasting associated with the delivery of the Retail Power. The Retail Power Price does not include any charges by the DSP, which are the responsibility of the Member, including but not limited to charges for services under the applicable delivery service tariffs and riders, such as delivery service charge, facilities charges, taxes (either billed for by the Utility or Member self-assessed), environmental, public purpose program, or switching charges as may be applicable from time to time.

ARTICLE 6: REMEDIES AND TERMINATION

A. Remedies. In addition to every other right or remedy provided to a Party under this Agreement, if the other Party fails to comply with any of the provisions of this Agreement (for reason other than an order, rule, or regulations of a governmental agency or court having jurisdiction over the defaulting Party), then the non-defaulting Party may give notice to the defaulting Party specifying that failure.

1. **Cure Period.** The defaulting Party will have 15 business days after the date of that notice to take all necessary steps to comply fully with this Agreement, unless (a) this Agreement specifically provides for a shorter cure period or (b) an imminent threat to the public health, safety, or welfare arises that requires a shorter cure period, in which case the notice must specify the cure period, or (c) compliance cannot reasonably be achieved within 15 business days but the defaulting party promptly commences a cure and diligently pursues the cure to completion.
2. **Failure to Cure.** If the defaulting Party fails to comply within that 15-day period, or the shorter period if an imminent threat, or if the defaulting Party fails to promptly commence a cure and diligently pursue the cure to completion, then the non-defaulting Party, subject to the limits of applicable federal or State of Illinois law, may take any one or more of the following actions:
   a. Seek specific performance of any provision of this Agreement or seek other equitable relief, and institute a lawsuit against the defaulting Party for those purposes.
   b. Institute a lawsuit against the defaulting Party for breach of this Agreement and seek remedies and damages as the court may award.
   c. Terminate this Agreement as provided in Section B below.

B. Circumstance Leading to Termination. This Agreement may be terminated early in the following circumstances:

1. **Non-Compliance.** By the non-defaulting Party if the defaulting Party fails to comply with any material term or condition of this Agreement, provided the failure continues beyond the Cure Period and written Notice of such failure is provided to the defaulting Party.

   Material terms and conditions include but are not limited to:

   a. A breach of the confidentiality provisions in Article 10 of this Agreement;
   b. Supplier's disqualification as an ARES due to a lapse or revocation of any license or certification required to perform the obligations set forth herein; or
   c. Any act or omission that constitutes a willful or wanton deception by affirmative statement or practice, or by omission, fraud, misrepresentation, or a bad faith practice.
2. **Regulatory Event.** The following shall constitute a "Regulatory Event":
   a. **Illegality.** It becomes unlawful for a Party to perform any obligation under this Agreement due to the

adoption of, change in, or change in the interpretation of any applicable law by any judicial or government authority with competent jurisdiction.

b. **Adverse Government Action.** A regulatory, legislative or judicial body (A) requires a material change to the terms of this Agreement that materially or adversely affects a Party or (B) takes action that adversely and materially impacts a Party's ability to perform, or requires a delay in the performance of this Agreement that either Party determined to be unreasonable or (C) orders a change or modification that affects the Program such that either Party's obligations hereunder are materially changed, and the charge is not deemed a Force Majeure Event.

c. **Occurrence of Regulatory Event.** Upon the occurrence of a Regulatory Event, the adversely affected Party shall give notice to the other Party that such event has occurred. Within thirty (30) days, or such other period as the Parties may agree in writing, the Parties shall enter into good faith negotiations to amend or replace this Agreement so that the adversely affected Party is restored as nearly as possible to the economic position it would have been in but for the occurrence of the Regulatory Event. If the Parties are unable to agree upon an amendment to this Agreement, within the prescribed time after entering negotiations, the adversely affected Party shall have the right, upon ten (10) days prior written notice, to terminate this Agreement. Upon termination of this Agreement as a result of a Regulatory Event, the obligations of Supplier and each Aggregation Member set forth in the Terms and Conditions shall survive termination.

3. **Failure to Schedule and Deliver.** The failure of Supplier to schedule electricity supply to Ameren for the Aggregation Members, except as permitted under Force Majeure Events.

C. Termination Procedure. Aggregator will give written notice to Supplier of Aggregator's intent to terminate this Agreement pursuant to the provisions of this Agreement (**"Termination Notice"**). The Termination Notice will set forth with specificity the nature of the noncompliance. Supplier will have 30 calendar days after receipt of the notice to object in writing to termination, to state its reasons for such objection, and to propose a remedy for the circumstances. If Aggregator has not received a response from Supplier, or if Aggregator does not agree with Supplier's response or any remedy proposed by Supplier, then Aggregator will conduct a hearing on the proposed termination. Aggregator will serve notice of that hearing on Supplier at least 10 business days prior to the hearing, specifying the time and place of the hearing and stating Aggregator's intent to terminate this Agreement.

1. **Hearing.** At the hearing, Supplier will have the opportunity to state its position on the matter, present evidence, and question witnesses. Thereafter, Aggregator will determine whether or not this Agreement will be terminated. The hearing must be public and held on record.

2. **Reimbursement.** The decision of Aggregator must be in writing and delivered to Supplier by certified mail. If the rights and privileges granted to Supplier under this Agreement are terminated, then Supplier, within 14 calendar days after Aggregator's demand, must reimburse Aggregator for all costs and expenses incurred by Aggregator, including, without limitation, reasonable attorneys' fees, in connection with that termination of rights or with any other enforcement action undertaken by Aggregator.

D. Force Majeure Events. Supplier shall not be held in default under, or in noncompliance with, the provisions of this Agreement, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Program), where such noncompliance or alleged defaults occurred or were caused by a "***Force Majeure Event***," defined as a strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, governmental, administrative or judicial order or regulation or other event that is reasonably beyond Supplier's ability to anticipate or control.

ARTICLE 7: INDEMNIFICATION, INSURANCE, DISCLAIMER, AND LIMITATION OF LIABILITY

A. Indemnification. Supplier shall indemnify and hold harmless the Aggregator, its officers, employees, agents, and attorneys, from and against any third party injuries, claims, demands, judgments, damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, arising from Supplier's provision of the Services, except to the extent caused by the sole negligence of the Aggregator. Nothing herein shall be construed to limit Supplier's duty to indemnify the Aggregator by reference to the limits of insurance coverage described in this Agreement.

B. Insurance. Supplier shall provide certificates of its current insurance upon request.

C. Limitation of Liability. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY UNDER THIS CONTRACT FOR INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES IRRESPECTIVE OF WHETHER SUCH CLAIMS ARE BASED UPON BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE OF ANY DEGREE), STRICT LIABILITY, CONTRACT, OPERATION OF LAW OR OTHERWISE.

D. Disclaimer. SUPPLIER DOES NOT WARRANT OR GUARANTEE THE UNINTERRUPTED DELIVERY OF RETAIL POWER TO AGGREGATION PROGRAM MEMBERS DURING FORCE MAJEURE EVENTS. SUPPLIER WILL HAVE NO LIABILITY OR RESPONSIBILITY FOR THE OPERATIONS OF THE UTILITY, INCLUDING BUT NOT LIMITED TO, THE INTERRUPTION, TERMINATION, FAILURE TO DELIVER, OR DETERIORATION OF UTILITY'S TRANSMISSION OR DISTRIBUTION SERVICE. EXCEPT AS MAY BE SPECIFICALLY PROVIDED HEREIN, NO WARRANTIES OF ANY KIND, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE SHALL BE APPLICABLE TO THIS AGREEMENT.

ARTICLE 8: MISCELLANEOUS

A. Entire Agreement. This Agreement, including all Exhibits, constitutes the entire Agreement and understanding between the Parties with respect to the Services, which are included herein. All prior written and verbal agreements and representations with respect to these Services are merged into and superseded by this Agreement.

B. Amendment. All amendments or modifications to this Agreement shall be made in writing and signed by both Parties before they become effective.

C. Ownership of Data and Documents. All data and information, regardless of its format, developed or obtained under this Agreement ("***Data***"), other than Supplier's confidential information, will be and remain the sole properties of Aggregator. Supplier must promptly deliver all Data in Supplier's possession or control to Aggregator at Aggregator's request. Supplier is responsible for the care and protection of the Data in Supplier's possession or control until that delivery. Supplier may retain one copy of the Data for Supplier's records subject to Supplier's continued compliance with the provisions of this Agreement. Upon expiration of the Agreement, Supplier shall provide Aggregator with an electronic copy of data specified in Section 5.A.1.c at no cost to Aggregator.

D. Assignment. This Agreement shall not be transferred or assigned by either Party without prior written consent of the other Party, which shall not be unreasonably withheld, provided, however, that Supplier may 1) assign this Agreement to an Affiliate without the express authorization of Aggregator, or 2) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of Supplier, within any independent transmission system (e.g, MISO or PJM).

E. Notices. Any notices, requests or demands regarding the Services provided under this Agreement and the Attachments shall be deemed to be properly given or made (i) if by hand delivery, on the day and at the time on which delivered to the intended recipient at its address set forth in this Agreement; (ii) if sent by U.S. Postal Service mail certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient, from the date of postmark; or (iii) if by Federal Express or other reputable express mail service, on the next business day after delivery to such express service, addressed to the intended recipient at its address set forth in this Agreement. The address of a Party to which notices or other communications shall be mailed may be changed from time to time by giving written notice to the other Party of such change.

F. Waivers. The failure of either Party to insist upon strict performance of such requirements or provisions or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment of such requirements, provisions or rights. Nothing in this Agreement shall be construed as a waiver of any rights, substantive or procedural, that Aggregator may have under federal or state law unless such waiver is expressly stated herein.

G. Applicable Law and Choice of Venue. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Illinois, without regard to principles of conflict of laws. Except as to any matter within the jurisdiction of the ICC, all judicial actions relating to any interpretation, enforcement, dispute resolution or any other aspect of this Agreement shall be brought in a Circuit Court of the State of Illinois, or if brought pursuant to the jurisdiction of the federal courts, the United States District Court of the Central District of Illinois.

H. Exhibits. Exhibits attached to this Agreement are, by this reference, incorporated into and made part of this Agreement.

I. Controlling Provisions. In the event of any inconsistency between the text of this Agreement and the terms of the Exhibits hereto, the text of the Exhibits shall control.

J. Severability. Any provision in this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions or affecting the validity or enforceability of such provision in any other jurisdiction. The non-enforcement of any provision by either Party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or the remainder of this Agreement.

K. No Third-Party Beneficiaries. Nothing in this Agreement is intended to confer third-party beneficiary status on any person, individual, corporation or member of the public for any purpose.

L. Validity of Agreement. The Parties acknowledge and agree in good faith on the validity of the provisions, terms and conditions of this Agreement, in their entirety, and each Party expressly warrants that it has the power and authority to enter into the provisions, terms, and conditions of this Agreement.

M. Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, Aggregator and Supplier and their respective successors, grantees, lessees, and assigns throughout the Term of this Agreement.

N. Counterparts. The Parties agree that this Agreement may be executed in separate counterparts and delivered by facsimile, or as an attachment to an electronic message (such as a pdf, tif or other mutually acceptable type of file attachment), each of which when so executed and delivered shall constitute but one and the same original document.

O. Subcontractors. Supplier agrees to employ only those subcontractors that it determines are reasonably necessary. Subcontractors shall be held to the confidentiality standards applicable to Supplier pursuant to Article 10, and shall be required to otherwise comply with the requirements of this Agreement. The use of subcontractors shall not relieve Supplier from the duties, terms and conditions in this Agreement. For purposes of this Agreement, regional transmission organizations, independent system operators, local utilities, and renewable energy certificate counterparties are not considered subcontractors.

P. Forward Contract. The Parties agree this Agreement is construed and understood to be a "forward contract" as defined by the U.S. Bankruptcy Code.

ARTICLE 9: REPRESENTATIONS AND WARRANTIES

A. Mutual Representations and Warranties. Each Party represents and warrants to the other Party, as of the date of this Agreement, that:

1. It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation, and if relevant under such laws, in good standing;
2. It has the corporate, governmental and/or other legal capacity, authority and power to execute, deliver and enter into this Agreement and any other related documents, and perform its obligations under this Agreement, and has taken all necessary actions and made all necessary determinations and findings to authorize such execution, delivery and performance;
3. The individual signing this Agreement on behalf of such Party is authorized to execute this Agreement in the name of such Party.
4. The execution, delivery and performance of this Agreement does not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
5. It has reviewed and understands this Agreement and has independently assessed the merits of this Agreement;
6. It shall comply with all federal, state, and local laws, regulations, licensing, and disclosure requirements; and
7. It shall maintain the confidentiality of Aggregation Members' account information, as required by 815 ILCS 505/2HH;

B. Additional Representation by Supplier. Supplier hereby further represents to Aggregator that, as of the date of this Agreement, Supplier shall maintain all of the qualifications, certifications, approvals, and other authorizations required by law to provide the Services pursuant to this Agreement.

ARTICLE 10: CONFIDENTIALITY

Supplier shall preserve the confidentiality of the account information it receives as a result of the performance of its obligations set forth herein.

A. Supplier and Aggregator shall not disclose, use, sell or provide customer account information to any person, firm or entity for a purpose outside of the operation of the Program. This provision shall survive the termination of this Agreement.

B. Notwithstanding the foregoing, Supplier and Aggregator may disclose confidential account information as required by law, and any such disclosure shall not be a violation of this Agreement. However, such disclosure shall not terminate the obligations of confidentiality with respect to that or any other information.

C. Each Party shall give the other Party prompt notice of any discovery request or order, subpoena, or other legal process requiring disclosure of any confidential account information or the confidential information of the other Party.

D. To the extent legally permissible and practicable, Supplier shall provide Aggregator and Aggregator shall provide Supplier with sufficient advance notice as to give the other Party an opportunity, at the other Party's discretion and sole cost, to seek to quash the subpoena, obtain a protective order or similar relief.

E. In response to an order, subpoena, or other legal process, Supplier and Aggregator shall furnish only that portion of the confidential account information that is required or necessary in the opinion of Supplier's legal counsel. In addition, Supplier and Aggregator shall use reasonable efforts to obtain reasonable assurances that any account information so disclosed will be treated as confidential.

F. Notwithstanding the foregoing, nothing herein shall prevent the use by Supplier or Aggregator of such customer account information for the purpose of communicating with its customers or former customers. In addition, nothing herein shall prevent Supplier or Aggregator from using information in the public domain now or in the future.

G. Supplier acknowledges Aggregator's obligation to provide certain information subject to Freedom of Information Act requests, provided that such requests are within the bounds of the applicable law(s). Supplier expressly reserves the right to protect the confidentiality of all proprietary, confidential, or commercially sensitive information that is not subject to Freedom of Information Act requests or which is exempt therefrom.

IN WITNESS WHEREOF, the Parties have duly executed this agreement to be effective on the date first written above.

Illinois Power Marketing Company
d/b/a Homefield Energy

Signed: _____

Name: **Mark Fanning**

Title: **Managing Director**

Date: **February 24, 2016**

Aggregator: Village of Godfrey

Signed: M J McCormick

Name: MICHAEL J. McCORMICK

Title: MAYOR

Date: 2/24/16

HOMEFIELD ENERGY A DYNEGY COMPANY

EXHIBIT A: PRICING CONFIRMATION

(50 % Renewable Power Option)

This Exhibit A applies to the fully executed Aggregation Program Agreement dated **2/24/2016** between **Illinois Power Marketing Company d/b/a Homefield Energy** and the **Village of Godfrey** and forms a part thereof.

Customer Initial ONE box below to Elect Term and Price

	Retail Power Price	**Delivery Term: 24 months**
	$_____/kwh*	June, 2016 meter read date through June, 2018 meter read date
MJM	**Retail Power Price**	**Delivery Term: 36 months**
	$.05874/kwh*	June, 2016 meter read date through June, 2019 meter read date
	Retail Power Price	**Delivery Term: 42 months**
	$_____/kwh*	June, 2016 meter read date through December, 2019 meter read date

*In addition to the provisions in Section 5.D, the Retail Power Price shall be associated with the generation of electricity from a renewable energy resource, through purchases of RECs on Aggregation Members' behalf, such that the percentage shall equal 50 %. The Retail Power Price indicated above reflects energy that is procured from 50 % renewable resources and will be made available to Aggregation Members upon request.

The Parties recognize all prices include Good Energy's fee of $.00075/kilowatt-hour, which shall be paid to Good Energy by Supplier in monthly installments for the corresponding electricity consumption of participating accounts in Aggregator's program.