

## GUARANTY

This Guaranty, dated \_\_\_\_\_, 20\_\_ (**Guaranty**) is made by \_\_\_\_\_ (**Guarantor**) in favor of Columbia Gas of Ohio, Inc. (**Guaranteed Party**), an Ohio corporation with offices located at 290 W Nationwide Blvd, Columbus, Ohio 43215, with respect to \_\_\_\_\_, a \_\_\_\_\_ corporation, with offices located at \_\_\_\_\_ (**Debtor**).

## RECITALS

A. Debtor is an affiliate, direct or indirect subsidiary of the Guarantor and has entered or will enter into a Standard CHOICE Offer Supplier Agreement ("SCO Supplier Agreement") with Guaranteed Party to supply natural gas under Guaranteed Party's Standard CHOICE Offer Program for the time period April 1, 20\_\_ through March 31, 20\_\_.

B. Guaranteed Party has requested that Guarantor guarantee the obligations of Debtor under the SCO Supplier Agreement.

## AGREEMENT

1. Subject to the terms and conditions set forth in this Guaranty, Guarantor hereby unconditionally guarantees to Guaranteed Party the payment when due of all amounts owed by Debtor under the SCO Supplier Agreement (including any renewals, extensions or modifications thereof), in accordance with the terms of the SCO Supplier Agreement after giving effect to all applicable grace periods (**Obligations**), subject to the terms and conditions set for below, provided, however, that Guarantor's liability under this Guaranty shall not exceed \$\_\_\_\_\_. The Obligations shall also include any costs and expenses, including without limitation, reasonable attorney's fees incurred by Guaranteed Party in collection and enforcement of this Guaranty against Guarantor.

2. This Guaranty is a continuing guaranty of payment and not of collection and shall remain in full force and effect through the expiration or termination of the SCO Supplier Agreement (**Termination Date**). The termination of this Guaranty shall not affect Guarantor's liability for Obligations created or incurred prior to the Termination Date. If at any time Guaranteed Party is required by a court of competent jurisdiction to return a payment made under the SCO Supplier Agreement because it was a fraudulent or preferential payment, Guarantor's obligation with respect to such payment shall be reinstated to the same extent as if such payment had never been made regardless of whether the payment is returned before or after the Termination Date.

3. Guarantor expressly waives notice of the following: (a) acceptance of this Guaranty by Guaranteed Party; (b) Debtor incurring any Obligations; (c) the modification or amendment of the SCO Supplier Agreement; (d) extension of the time for payment or modification of any other

terms for payment of any Obligations; (e) presentment, demand for payment, default, dishonor, protest or notice of protest with respect to any notes, drafts or other instruments evidencing the Obligations; and (f) any defaults by or disputes with Debtor with respect to payment or performance of the Obligations.

4. Guarantor expressly consents and agrees that Guaranteed Party, in its sole discretion, may at any time, without in any way impairing or affecting this Guaranty: (a) extend the time of payment of or renew any of the Obligations, (b) make any agreement with Debtor or any other party liable on the Obligations to extend, renew, pay, compromise, discharge or release any of the Obligations (in whole or in part), or (c) modify any of the terms of the Obligations or any agreement between Guaranteed Party and Debtor.

5. Guarantor represents and warrants to Guaranteed Party that: (a) it is properly organized, validly existing and in good standing under the laws of the state of its organization; (b) it has all requisite power and authority to execute and deliver and perform all of its obligations under this Guaranty; (c) the execution, delivery and performance of this Guaranty by Guarantor are within its corporate powers, have been duly authorized by all necessary corporate actions and do not contravene its Articles of Incorporation or by-laws or any law or material contractual restriction binding on or affecting Guarantor; and (d) this Guaranty constitutes a legally valid and binding agreement of Guarantor, subject only to insolvency, bankruptcy, moratorium, reorganization, fraudulent conveyance or similar laws affecting creditors' rights generally.

6. Any demand for payment under this Guaranty and all other notices shall be in writing and delivered by mail, overnight courier, or personal delivery to the address set forth in the first paragraph of this Guaranty and if addressed to Guarantor such demand for payment or other notice should be directed to the attention of \_\_\_\_\_ and if to the Guaranteed Party, such notice should be directed to Director, Risk Management. There are no other requirements of notice, presentment or demand. All demands for payment shall be effective when received by Guarantor. Guarantor or Guaranteed Party may change the address to which demands for payment and notices are to be sent upon written notice to the other party.

7. Any waiver, modification, variation, release, termination or surrender of this Guaranty, in whole or in part, shall be enforceable against Guarantor or Guaranteed Party only if such waiver, modification, variation, release, termination or surrender is contained in a written instrument signed by the party against which it is to be enforced. No failure by Guaranteed Party to exercise its rights under this Guaranty shall give rise to any estoppel against Guaranteed Party or excuse Guarantor from performing under this Guaranty. No waiver by Guaranteed Party of performance by Guarantor under any provision of this Guaranty shall be construed as a waiver of any subsequent performance by Guarantor under the same or any other provisions of this Guaranty.

8. Nothing in this Guaranty is intended to deny to Guarantor, and it is expressly agreed that the Guarantor shall have and may assert, any and all defenses, setoffs, counterclaims, and other rights with regard to any Obligations that Debtor may possess, including without limitation, any defense based upon the payment or satisfaction by Debtor of the Obligations, except that

Guarantor shall not have and may not assert defenses that Debtor may have or assert relating to (i) the lack of validity of enforceability of the SCO Supplier Agreement arising from the defective formation of Debtor, (ii) ultra vires or other defense relating to Debtor's lack of authority to enter into or perform under the SCO Supplier Agreement, (iii) Debtor's lack of good standing or qualification to do business in any applicable jurisdiction within the United States, or (iv) insolvency, bankruptcy, moratorium, reorganization, fraudulent conveyance or similar laws affecting Debtor's creditors' rights generally.

**9. THIS GUARANTY WILL BE CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK (EXCLUDING CONFLICT OF LAWS RULES).**

10. This Guaranty is binding upon Guarantor, its successors and assigns, and inures to the benefit of Guaranteed Party and its permitted successors and assigns. This Guaranty may not be pledged, mortgaged, assigned or otherwise transferred to any person or entity by either Guaranteed Party or Guarantor without the prior written consent of the other. Provided, however, that if the SCO Supplier Agreement is pledged, mortgaged or assigned by Guaranteed Party to any party as permitted under the terms of the applicable Agreement, the Guaranty, or portion thereof, as appropriate may be similarly pledged mortgaged or assigned without the consent of Guarantor, but Guaranteed Party must notify Guarantor of any such assignment to give Guarantor an opportunity to terminate this Guaranty.

11. This Guaranty is the complete and exclusive statement of the terms of this Guaranty and supersedes all prior oral or written representations, understandings and agreements between Guarantor and Guaranteed Party with respect to the Obligations.

12. Waiver of Venue. GUARANTOR AND BENEFICIARY IRREVOCABLY WAIVE ANY OBJECTIONS WHICH THEY MAY HAVE NOW OR HEREAFTER TO (A) THE PERSONAL OR SUBJECT MATTER JURISDICTION OF THE FEDERAL COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, (B) THE VENUE OF ANY PROCEEDINGS BROUGHT IN SUCH COURT, OR (C) THAT SUCH PROCEEDINGS HAVE BEEN BROUGHT IN A NON-CONVENIENT FORUM WHEN BROUGHT IN SUCH COURT. THE PARTIES IRREVOCABLY AGREE THAT ANY FINAL JUDGMENT (AFTER APPEAL OR EXPIRATION OF TIME FOR APPEAL) ENTERED BY SUCH COURT SHALL BE CONCLUSIVE AND BINDING UPON THE PARTIES AND MAY BE ENFORCED IN THE COURTS OF ANY OTHER JURISDICTION TO THE FULLEST EXTENT PERMITTED BY LAW.

13. Waiver of Jury Trial. EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS GUARANTY. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THE OVERALL TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS.

14. Waiver of Immunity. EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE UNITED STATES FEDERAL AND STATE LAW, ALL IMMUNITY (WHETHER ON THE BASIS OF SOVEREIGNTY OR OTHERWISE) FROM JURISDICTION, SERVICE OF PROCESS, ATTACHMENT (BOTH BEFORE AND AFTER JUDGMENT) AND EXECUTION TO WHICH IT MIGHT OTHERWISE BE ENTITLED IN ANY ACTION OR PROCEEDING RELATING IN ANY WAY TO THIS GUARANTY IN THE COURTS SPECIFIED IN SECTION 14 AND THE GUARANTOR HEREBY WAIVES ANY RIGHT IT MIGHT OTHERWISE HAVE TO RAISE OR CLAIM OR CAUSE TO BE PLEADED ANY SUCH IMMUNITY AT OR IN RESPECT OF ANY SUCH ACTION OR PROCEEDING.

15. The representative signing this Guaranty on behalf of Guarantor represents and warrants that he or she is authorized to do so on behalf of the Guarantor and by so signing to bind Guarantor under the terms of this Guaranty.

IN WITNESS WHEREOF, Guarantor has duly signed and delivered this Guaranty on \_\_\_\_\_, 20\_\_.

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

Name:\_\_\_\_\_

Title:\_\_\_\_\_