

**COMMERCIAL POWER CONTRACT**

This AGREEMENT is made and entered on \_\_\_\_\_ (date) by and between DIXIE ELECTRIC MEMBERSHIP CORPORATION (hereinafter called the "Seller") and \_\_\_\_\_ (name of business) (hereinafter called the "Consumer"), a \_\_\_\_\_ (type of entity), represented herein by \_\_\_\_\_ its duly authorized \_\_\_\_\_ (title of representative).

**WITNESSETH:**

Seller agrees to sell and to deliver to Consumer, and Consumer agrees to purchase and receive from Seller, all of the electric power and energy, subject to the Standard Terms and Conditions for Electric Service of Dixie Electric Membership Corporation, which Consumer may need at \_\_\_\_\_ (location), up to \_\_\_\_\_ KVA, and with the following terms:

1. **SERVICE CHARACTERISTICS**

Service hereunder shall be alternating current, \_\_\_\_\_ phase, sixty cycles, \_\_\_\_\_ volts.

2. **DEPOSIT**

Before service will be rendered by Seller to Consumer a cash deposit of \_\_\_\_\_ Dollars shall be placed with Seller. Interest will accrue on such deposits in the manner and at the rate prescribed by the Louisiana Public Service Commission and shall be credited to the Consumer's deposit account.

In lieu of cash, and at Consumer's option, subject to approval by Seller as to acceptability, Consumer may deliver to Seller (a) an irrevocable letter of credit from the Consumer's Bank in the amount of \_\_\_\_\_ Dollars; (b) a surety bond in favor of Seller, of the type required by Seller and in the amount of \_\_\_\_\_; or (c) a continuing guaranty from a party, other than Consumer, acceptable to Seller shall be delivered by Consumer to Seller. Consumer understands and agrees that Seller may, in its discretion, require one or more of options (a) (b) or (c) in combination in lieu of a cash deposit.

A. A surety bond shall be effective for a period of \_\_\_\_\_ year(s). Such surety bond shall obligate the bond company to notify Seller within five (5) business days in writing in the event such surety bond is terminated by Consumer or canceled by the bonding company. Consumer shall also notify Seller within five (5) business days in writing of said termination or cancellation and shall immediately furnish to Seller a new deposit of the type satisfactory to Seller and for the amount required by Seller.

B. A letter of credit shall be effective for a period of \_\_\_\_\_ year(s). Such letter of credit shall obligate the issuer to notify Seller within five (5) business days in writing in the event such letter of credit is terminated by Consumer or canceled by the issuer. Consumer shall also notify Seller within five (5) business days in writing of said revocation or cancellation and shall immediately furnish to Seller a new deposit of the type satisfactory to Seller and for the amount required by Seller.

C. A continuing guaranty shall be effective for a period of \_\_\_\_\_ year(s). Such continuing guaranty shall obligate the issuer to notify Seller within five (5) business days in writing in the event such continuing guaranty is terminated by Consumer or canceled by the issuer. Consumer shall also notify Seller within five (5) business days in writing of said revocation or cancellation and shall immediately furnish to Seller a new deposit of the type satisfactory to Seller and for the amount required by Seller.

D. Failure to maintain a deposit with Seller, or failure to furnish a surety bond or irrevocable letter of credit to Seller, shall constitute sufficient cause for discontinuance of electric service, and Consumer agrees and understands that in such event, Seller, at its option, may discontinue electric service without notice or putting in default.

E. In the event Consumer becomes delinquent in the payment of bills for service, minimum charges, construction charges, or files bankruptcy, or has bankruptcy filed against it or assigns its assets for the benefit of its creditors or is placed in receivership or liquidation or otherwise ceases to do business, Seller may elect to set off the deposit, in whatever form, against any delinquent amounts due and/or discontinue service hereunder.

F. In the event Seller institutes collection proceedings or files suit to recover any delinquent amounts due under this Commercial Power Contract or brings an action to enforce its rights to the security provided by Consumer pursuant to this Agreement, Consumer and/or Consumer's guarantors, sureties, assigns and/or successors shall be liable for all attorneys fees in the amount of twenty-five percent (25%) of the amount owed with interest together with all costs of such proceedings.

### 3. **PAYMENT**

A. Consumer shall pay the Seller for electricity received from Seller hereunder at the rate and upon the terms and conditions set forth in Schedule \_\_\_\_\_ attached hereto and made a part of this Agreement. Said Schedule shall be subject to any future rate adjustments. Any fuel cost adjustment factor for actual kwh used shall be added to the minimum payment described in the rate schedule.

B. Minimum Payment - Consumer shall pay Seller for the minimum charges set forth in the attached rate schedule regardless of the amount of electricity Consumer receives from Seller. Should Consumer not terminate this Agreement after expiration of the initial term as provided in paragraph eight (8), the minimum charge, as specified in existing rate schedule, shall thereafter remain applicable until this Agreement is terminated by either party.

C. The initial billing period shall begin when Consumer begins receiving electric power and energy, or ten days after Seller notifies Consumer in writing that service is available hereunder, whichever shall occur first.

D. Invoices for service and minimum charges hereunder shall be paid monthly within twenty (20) days following the billing date. If Consumer fails to pay any such invoice within this twenty (20) day period, Seller may discontinue service hereunder by giving five (5) days notice in writing to the Consumer, except in cases of emergency or fraud. Seller shall not be liable for damages occasioned by discontinuance of service when such discontinuance is effected in accordance with the provisions of this contract.

E. The Consumer agrees that if, at any time, the rate under which the Seller purchases electric energy at wholesale is modified, Seller may make a corresponding modification in the rate for service hereunder without prior notification to Consumer.

### 4. **CONSTRUCTION CHARGE**

Consumer shall pay Seller a special construction charge of \_\_\_\_\_ Dollars before construction begins and a charge of \_\_\_\_\_ Dollars per month (over and above any rates set forth in paragraph 3.A and 3.B) for a period of \_\_\_\_ years, for a total of \_\_\_\_\_ Dollars, becoming effective when Consumer begins receiving electric power and energy, or ten (10) days after Seller notifies Consumer in writing that service is available hereunder, whichever shall occur first.

### 5. **CONTINUITY OF SERVICE; FORCE MAJEURE**

Seller shall use reasonable diligence to provide a constant and uninterrupted supply of electric power to Consumer; but if such supply fails or is interrupted because of or due to Force Majeure, Seller shall not be liable to Consumer or any other person or entity for failure to perform its obligations under this Agreement. Force Majeure shall mean any cause beyond the reasonable control of Seller, including, without limitation, failure, or imminent threat of failure, of facilities or equipment, flood, freeze, earthquake, storm, fire, lightning, other Acts of God, epidemic, war, acts of a public enemy, riot, civil disturbance or disobedience, strike, lockout, work stoppages, other industrial disturbance or dispute, labor or material shortage, sabotage, restraint by court order or other public authority, in action or non-action by, or failure or inability to obtain the necessary authorizations or approvals from, any governmental agency or authority, which by the exercise of due diligence such party could not reasonably have been expected to avoid and by exercise of due diligence it could not overcome. Nothing contained herein shall be construed so as to require Seller to settle any strike, lockout, work stoppage or any industrial disturbance or dispute in which it may be involved, or to seek review of or take an appeal from any administrative or judicial action. IT SHALL BE THE RESPONSIBILITY OF CONSUMER TO PROVIDE ADEQUATE OVERCURRENT PROTECTION IN EACH PHASE ON ALL MOTOR INSTALLATIONS. IT SHALL BE THE RESPONSIBILITY OF CONSUMER TO COMPLY WITH NATIONAL

6. **ACCELERATION**

In the event that Seller elects to exercise its right to discontinue service to Consumer under Part 2.C, 2.D, 2.E or Part 3.D of this Agreement, or if Consumer commits a breach of this Agreement prior to its termination, the unpaid future minimum charges set forth in Part 3.A and 3.B and the unpaid construction charges set forth in Part 4 hereinabove for the entire term of the Agreement shall become due and collectible immediately without notice or a putting in default. Said charges shall be due Seller in full even if said actions by Consumer only constitute a partial breach of this Agreement.

7. **MEMBERSHIP**

Upon the effective date of the execution of this Agreement and the payment by Consumer of the membership fee, Consumer shall become a member of Seller; and shall be bound by the provisions of the Articles of Incorporation and Bylaws of Seller and by such rules and regulations as may from time-to-time be adopted by Seller. Consumer acknowledges receipt of the Bylaws of Seller.

8. **TERM**

This Agreement shall become effective on the date first above written and shall remain in effect for so long as Consumer requires electric power and energy at the location described above, unless otherwise terminated by Seller as provided herein or by Consumer pursuant to the Articles of Incorporation, Bylaws and rules and regulations of Seller as the same may be amended from time to time, or pursuant to the provisions of the laws, rules or regulations of the State of Louisiana. Termination of this Agreement shall not give Consumer the right to seek electric service from any other utility except as otherwise permitted by law.

9. **RIGHT OF FIRST REFUSAL**

In the event that Consumer is permitted by law to seek electric power and energy service from any person or entity other than Seller, Consumer unilaterally and expressly grants to Seller a right of first refusal to provide electrical service to Consumer at the same rate offered by another electric service provider. Seller, as holder of right of first refusal, will have fifteen (15) days from receipt of notice from Consumer by U.S. certified mail to accept or reject Seller's right of first refusal.

10. **LIMITATION OF LIABILITY**

The liability of Seller for any loss or damages for any cause whatsoever including but not limited to any failure or disruption of service provided hereunder, regardless of whether such claim is based on breach of contract, tort liability or otherwise, shall be limited to Consumer's actual damages. In no event shall Seller be liable for any indirect, special, incidental or consequential damages.

11. **CONFIDENTIALITY**

During the term of this Agreement and for a period of three (3) years thereafter, Consumer shall keep confidential, and shall not disclose, transmit or otherwise disseminate to any third party any information concerning the terms of this Agreement and the exhibits and/or attachments hereto, unless authorized by Seller or unless compelled by legal process to do so.

12. **INDEMNIFICATION**

Consumer shall indemnify and hold Seller, its officers, directors, agents, representatives, employees, members, successors and assigns harmless from and against any and all losses, claims, damages or expenses, including court costs and attorney's fees, arising out of, or relating to any breach by Consumer of this Agreement, claims by any third party relating to Consumer's performance under this Agreement or any other act or failure to act by Consumer.

13. **GOVERNING LAW**

This Agreement shall be construed in accordance with the laws of the State of Louisiana and any dispute arising hereunder shall be heard by a court of competent jurisdiction in the State of Louisiana.

14. **SEVERABILITY**

Should any provision of this Agreement be found by a court of competent jurisdiction to be invalid or unenforceable, such finding shall not invalidate or render unenforceable any other provision hereof.

15. **ENTIRE AGREEMENT**

This Agreement, its attachments and/or exhibits, constitutes the entire understanding between the parties. No alterations or modification of this Agreement shall be effective unless made in writing and with the consent of the parties. Notwithstanding the above however, the parties acknowledge that Consumer and Seller are required to fully comply with Seller’s Articles of Incorporation, Bylaws and rules, regulations and policies, as they may be amended from time to time. To the extent that any provision of this Agreement shall be found to be inconsistent or in conflict with Seller’s Articles of Incorporation, Bylaws, or rules, regulations or policies or with Federal, State or local laws, the provisions of the Articles of Incorporation, Bylaws, rules, regulations or policies or Federal, State or local rules shall apply.

16. **WAIVER**

Nothing in paragraph eight (8) otherwise set forth in this contract shall be construed as a waiver by either party of the rights and protection afforded by law.

17. **NOTICE**

Any notice, request, instruction, legal process or other document to be given or made hereunder shall be provided in the following manner:

If to Seller:

Dixie Electric Membership Corporation  
P.O. Box 15659  
Baton Rouge, LA 70895  
16262 Wax Road  
Greenwell Springs, LA 70739  
(504) 261-1221

If to Consumer:

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

18. **MISCELLANEOUS**

(a) This Agreement shall be binding upon and inure to the benefit of the successors, legal representatives and assigns of the respective parties hereto.

(b) Consumer shall act at all times in a safe and prudent manner in the use of the electric power and energy provided by Seller hereunder. Consumer shall ensure that no activity is permitted respecting the use of the electric power and energy hereunder which may result in injury to any person or damage to any property.

(c) The parties executing this Agreement on behalf of Seller and Consumer represent that they have the authority to bind Seller and the Consumer to the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written and have read and understand the terms and conditions contained in this Commercial Power Contract.

DIXIE ELECTRIC MEMBERSHIP CORPORATION

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

BY: \_\_\_\_\_  
Agent of DEMCO

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

BY: \_\_\_\_\_  
Agent of Company’s signature/Title