
Energy Purchase Agreement & Equipment Lease

This Energy Purchase Agreement & Equipment Lease ("**EPA**") between Tru-Energy Inc. (the "**Seller**") and _____ (the "**Customer**") (each a "**Party**" and collectively the "**Parties**") is entered into and effective as of _____ (m/d/y).

- 1. Transactions:** The terms of this EPA apply to all end-use sales of heat and power (as applicable) (each a "**Commodity**" and collectively, the "**Commodities**") using a Combined Heat and Power Unit and any corresponding or ancillary equipment (the "**Equipment**") by the Seller to the Customer (each sale a "**Transaction**"), which will be agreed to in writing and signed by both Parties in purchase confirmations (each a "**Purchase Confirmation**"). Each Purchase Confirmation shall set out the details of each Transaction. If a conflict arises between the terms of this EPA and a Purchase Confirmation, the provisions of the Purchase Confirmation will govern with respect to that particular Transaction. This EPA, any amendments to this EPA and related Purchase Confirmation(s) (together, a single integrated, "**Agreement**") is the entire understanding between Parties with respect to the Commodities and subject matter outlined therein and supersedes all other communication and prior writings with respect thereto.
- 2. Equipment Lease:** For the duration of the Contract Term, the Seller agrees to lease the Equipment to the Customer, and the Customer agrees to lease the Equipment from the Seller in accordance with the terms outlined herein. Specifically:
 - a. **NOTICE TO CUSTOMER:** This Agreement, as it relates to the Equipment, is a lease. The Seller is not buying the Equipment. Do not sign this Agreement before you read it. You are entitled to a completed copy of this Agreement when you sign it upon your request.
 - b. The Equipment is the property of the Seller and will remain the property of the Seller. The Customer agrees that the Equipment shall not be characterized, or become, a fixture, or form of a part of the Site or any building or structure. At all times, the Customer agrees that the Equipment is a moveable chattel solely belonging to the Seller.
 - c. The Customer, nor anyone on behalf of the Customer, shall encumber or pledge, or allow the encumbering or pledging, of the Equipment as security in any manner.
 - d. The Customer agrees that the Seller shall hold a registrable security interest over the Equipment. The Customer consents to the Seller registering a financing statement against the Equipment as a secured party under the *Personal Property Security Act* [Alberta], or equivalent legislation in the jurisdiction of the Site. The Customer waives any right to receive notice of registration of such financing statement.
 - e. The Seller shall take out, maintain, and pay for insurance against loss and damage to the Equipment. In addition, and for the duration of the Contract Term, and for any period of time in which the Equipment remains on the Site or in the possession of the Customer, the Customer shall take out and maintain comprehensive general liability insurance against claims for third party bodily injury, including death, and property damage or loss arising out of the use or occupation of the Site, or the Customer's business on or about the Site, and covering replacement value of the Equipment in the event of loss, damage, or destruction of the Equipment, such insurance to be in the joint name of the Customer and the Seller so as to indemnify and protect both the Customer and the Seller and to contain a "cross liability" or "severability of

interest" clause so that the Seller and the Customer may be insured in the same manner and to the same extent as if individual policies had been issued to each, and shall be for the amount of not less than five million (\$5,000,000.00) dollars combined single limit or such other amount as may be reasonably required by the Seller from time to time; such comprehensive general liability insurance shall include contractual liability insurance in a form and of a nature broad enough to insure the obligations imposed upon the Customer under the terms of this Agreement.

- f. The Seller shall deliver and install the Equipment to the Site at its own cost, and shall be responsible for obtaining any permits required for the same. The Customer agrees to cooperate with the Seller, and to provide the Seller with any necessary information, documentation, and Site access, to complete the foregoing. The Customer agrees that the Seller is not responsible to pay any rent, fees, or other costs, or otherwise lease, any area in which the Equipment is installed or otherwise takes up space, including any area surrounding the Equipment that is required to be segregated or fenced off.
- g. The Customer confirms it has had the opportunity to inspect the Equipment and acknowledges that upon delivery of the same into its possession the Equipment shall be deemed to be in good working order and condition and repair, and the Customer shall be deemed to be satisfied with and has accepted the Equipment in such condition and repair.
- h. The Customer shall use the Equipment in a good and careful manner and will comply with all requirements and recommendations of the Seller with respect to the use of the Equipment and with any applicable law, whether local, municipal, provincial, or federal, including but not limited to, environmental law. The Customer shall use the Equipment for the purpose for which it was designed and not for any other purpose. Notwithstanding anything to the contrary, the use of the Equipment shall be limited to allowing the Seller to install the Equipment at the Site in a secure location of the Seller's choosing. Unless the Customer obtains the prior written consent of the Seller, the Customer will not access, move, alter, modify, dispose, sell, attempt to repair, or attach anything to, the Equipment, and shall not do anything to, or allow anything to be done to, the Equipment that would alter the appearance, functional capabilities, or economic value of the Equipment, nor allow any third-party to do any of the foregoing.
- i. During the Contract Term (as outlined in the Purchase Confirmation), the Seller shall, at its own expense, conduct regular maintenance and repairs to the Equipment that arise from the Equipment's ordinary use, including supplying and installing parts, and providing all labour that is necessary to keep the Equipment properly functioning and in such state. Notwithstanding anything to the contrary, and to the extent permitted by law, the Customer will be responsible for all risk of loss, theft, damage, or destruction to the Equipment from any and every cause and / or for all repairs to the Equipment, including the appearance of same, that arise from the Customer's actions, or that arise outside of the ordinary use of the Equipment, or that arise from the use of the Equipment in a manner that contravenes the terms of this Agreement. The Customer shall be responsible to take reasonably necessary steps to avoid loss, theft, damage, or destruction to the Equipment. If the Equipment is lost, damaged, destroyed, stolen, is not functioning, or otherwise requires repairs, the Customer shall immediately notify the Seller.
- j. At the end of the Contract Term, or if this Agreement is terminated, if the Equipment is not in good repair, appearance, and condition when it is returned to the Seller, the Seller may make such repairs or may cause such repairs to be made as are necessary to put the Equipment in a state of good repair, appearance, and condition, at the cost of the Customer. The Seller will make the said repairs within a reasonable time of taking possession of the Equipment and will provide the Customer written notice of the invoices for the said

repairs. Upon receipt of such invoices, the Customer will immediately reimburse the Seller for the cost of the same.

- k. The Seller may, but is not obligated to, enforce any warranty that the Seller has against the supplier or manufacturer of the Equipment. The Seller will enforce such warranty or indemnity in its own name and at its own expense.
- l. Other than what is expressly agreed to in this Agreement, the Seller makes no representation or warranty as to the condition of or the working order of the Equipment.
- m. The Customer shall indemnify and hold harmless the Seller against any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including legal fees on a solicitor and his / her own client (full indemnity) basis, arising out of or related to the Customer's use of the Equipment outside of the ordinary course or breach of the Customer's obligations under this Agreement.
- n. Upon request, and whether during the Contract Term or subsequent to the termination of this Agreement, the Customer shall provide the Seller with immediate unfettered access to the Site and to the Equipment for the purposes of inspecting the Equipment or conducting any repairs or maintenance to the same.
- o. At the end of Contract Term, or in any circumstance in which the Agreement is terminated for any reason whatsoever, whether if at the Seller or the Customer's request, whether pursuant to the terms of this Agreement or not, or whether such termination is in breach of the terms of this Agreement, the Customer agrees to immediately surrender the Equipment to the Seller and allow the Seller to attend the Site and dismantle and retrieve the Equipment. The Customer specifically agrees that the Seller has no right of overholding the Equipment or any right to a possession of the Equipment, whether at law or in equity, except as expressly allowed or granted under this Agreement, including the right to seize, lien, or withhold the Equipment as a form of damages or set-off, or otherwise.

3. Performance: The Parties' obligations under this Agreement are firm. Customer is obligated to purchase and receive, and Seller is obligated to sell and provide, the Annual Contract Quantity specified in a Purchase Confirmation in accordance with the terms of this Agreement (the "**Annual Contract Quantity**"). The Customer will only use the Commodity at the listed Sites in the applicable Purchase Confirmation and will not resell the Commodity or use it at other locations without Seller's prior written consent.

4. Contract Price & Flow Date: The Customer will pay the Contract Price stated in each Purchase Confirmation (the "**Contract Price**"). If the Contract Price incorporates an index and the index is not announced or published on any day for any reason, or if the Seller reasonably determines that a material change in the formula for or the method of determining the Contract Price has occurred, then the Seller shall use a commercially reasonable replacement price that is calculated by the Seller at its sole discretion. If Seller concludes that a change in any Law(s) increases the Seller's costs, the Contract Price may be adjusted by Seller to reflect such costs. "**Law(s)**" mean all applicable Directive(s), laws, common laws, rules of equity, by-laws, statutes, regulations, rules, ordinances, policies, orders, codes and guidelines of regulatory and governmental authorities, as enacted, amended, restated, replaced or re-enacted from time to time. For greater certainty, the term "**rules**" includes any rules of the independent system operator respecting payments for capacity. "**Directive**" means any agreement with, or policies, rules, or directives of, any applicable governmental third party. Seller will begin supplying the Commodity to each Site and selling the Commodity to the Customer, and the Customer will begin buying and consuming the Commodity supplied by the Seller, on the date specified on each applicable Purchase Confirmation ("**Flow Date**").

5. Taxes: The Customer is responsible for paying any Taxes associated with the Commodity sold under this Agreement. The Contract Price does not include Taxes that are the responsibility of the Customer, unless such inclusion is required by Law. The Customer will reimburse the Seller for any Taxes that Seller is required to collect and pay on the Customer's behalf and will indemnify, defend, and hold the Seller harmless from any liability against all the Customer's Taxes. The Customer will furnish the Seller with any necessary documentation showing its exemption from Taxes, if applicable, and the Customer will be liable for any Taxes assessed against the Seller because of the Customer's failure to timely provide or properly complete any such documentation. **"Taxes"** means GST/HST/PST, assessments, levies, duties, fees, charges, etc., which may be imposed in connection with the supply and sale, and receipt and purchase of Commodity or related services to be provided under this Agreement, but does not include income taxes or taxes on capital.

6. Billing and Payment: The Billing Party will invoice the Customer for the Actual quantity of Commodity and for any other amounts incurred by the Customer under this Agreement. Payment is due by the date specified on the invoice and the Customer shall not have any right of set-off as against those payments. If an invoice is issued and the Actual Quantity cannot be verified by the time of billing, the invoice will be based on the Seller's estimate of the Actual Quantity. The Seller will adjust the Customer's account following (i) confirmation of the Actual Quantity, or (ii) any other corrections or adjustments, including adjustments to, or re-calculation of Taxes. The Customer will pay interest on late payments at the rate of 18% per annum or, if lower, the maximum rate permitted by law (**"Interest Rate"**). The Customer is also responsible for all costs and fees, including legal costs and disbursements on a solicitor and his/her own client (full indemnity) basis, incurred by the Seller in enforcing the terms of this EPA and / or the Purchase Confirmation, or otherwise in collecting payment. **"Actual Quantity"** means the actual quantity of Commodity that is either delivered or metered, as applicable, to the Customer's account.

7. Disputes: If the Customer disputes the amounts owed under this Agreement, the Customer shall immediately contact the Seller, and advise of the details of such dispute, but nonetheless the Customer shall pay the amount owed to the Seller by the payment due date without any right of set-off.

8. Title and Risk of Loss: Title to, possession of, and risk of loss to the Commodity will pass to Customer upon delivery through the physical connection where energy enters the Customer's Site.

9. Customer's Usage Obligations

Material Usage Deviation: The Seller may conduct an annual review of the Customer's aggregate annual usage as compared to Customer's Annual Contracted Quantities. If there is a Material Usage Deviation, the Customer will be responsible for the losses and costs, including the costs of obtaining and/or liquidating the applicable volume, based upon the difference between the applicable aggregated Annual Contract Quantity and aggregated annual Actual Quantity. The Customer will pay the amount of such losses and costs to the Seller upon receipt of such invoice. **"Material Usage Deviation"** means any deviation in Actual Quantity at the Site(s) stated in the related Purchase Confirmation of +/- 10% from the Annual Contract Quantity. **Financial Responsibility:** The Seller's entry into this Agreement and each Transaction is conditional upon the Customer, its parent, any guarantor or any successor maintaining its creditworthiness during the Contract Term. When the Seller has reasonable grounds for insecurity regarding the Customer's ability or willingness to perform all of its outstanding obligations under any agreement between the Parties, the Seller may require the Customer to provide adequate assurance, which may include, in the Seller's discretion, security in the form of cash deposits, prepayments, letters of credit or other guaranty of payment or performance (**"Credit Assurance"**).

10. Default: "Event of Default" means: (i) any breach of the terms of this Agreement that the Seller determines at its sole discretion to constitute an Event of Default, including, but not limited to, with respect to the Customer's

lease and use of the Equipment; **(ii)** failure of the Customer to make payment by the applicable due date; **(iii)** failure of the Customer to provide Credit Assurance upon demand by the Seller; **(iv)** the Customer, its parent or guarantor, becomes Bankrupt or fails to pay its debts generally as they become due; **(v)** failure of the Customer to satisfy any representations and warranties applicable to it contained in this Agreement; or **(vi)** any third-party commencing, or threatening to take commence, proceedings against the Equipment. "**Bankrupt**" means an entity **(a)** files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, **(b)** makes an assignment or any general arrangement for the benefit of creditors, **(c)** otherwise becomes bankrupt or insolvent, however evidenced, **(d)** has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, **(e)** has a secured party take possession of all or any substantial portion of its assets or **(f)** is dissolved or has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger).

Remedies: In the Event of a Default, the Seller may: **(i)** suspend performance; **(ii)** accelerate and declare all amounts owing by the Customer under this Agreement for the duration of the Contract Term based on the Annual Contract Quantity due and payable without notice or demand; **(iii)** terminate any or all Transactions and/or this Agreement; **(iv)** commence legal proceedings to recover any amounts owing under this Agreement accrued before and after the Event of Default; **(v)** take possession of the Equipment, without demand or notice, wherever same may be located, without any court order or other process of law, and in doing so the Seller agrees to waive any and all damages occasioned by such taking of possession; and / or **(vi)** pursue any other remedy available in law or equity.

11. Representations and Warranties: Each of the following are deemed to be repeated each time a Transaction is entered into:

- A.** Each Party represents that: **(a)** it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary to perform to this Agreement; **(b)** the execution of this Agreement is within its powers, has been duly authorized and does not violate any of the terms or conditions in its governing documents or any contract to which it is a party or any law applicable to it; and **(c)** it is not Bankrupt.
- B.** The Customer represents and warrants that: **(a)** it is not a residential customer; **(b)** it will immediately notify the Seller of any change in its ownership; **(c)** execution of this Agreement initiates enrollment and service for the Term; **(d)** no communication, written or oral, received from the Seller will be deemed to be an assurance or guarantee as to any results expected from this Agreement; **(e)** if it is executing this Agreement in its capacity as an agent, such Party represents and warrants that it has the authority to bind the principal to all the provisions contained herein and agrees to provide documentation of such agency relationship, and **(f)** (i) it will provide, to the Seller, information reasonably required to substantiate its usage requirements, including information regarding its business, locations, meter/account numbers, historical/projected usage, time of use, hours of operation, distribution company rate classes, agreements, schedules, which in substantial part form the basis for the calculation of charges for the transactions hereunder; (ii) acceptance of this Agreement constitutes an authorization for release of such usage information; (iii) it will assist the Seller in taking all actions necessary to effectuate Transactions, including, if requested, executing an authorization form permitting the Seller to obtain its usage information from third parties; and (iv) the usage information provided is true and accurate as of the date furnished and as of the effective date of the Agreement.

- c. Each Party acknowledges that: **(a)** this Agreement is an eligible financial contract as described in Section 2(1) of the *Companies' Creditors Arrangement Act*; **(b)** this Agreement shall not be construed as creating an association, trust, partnership, or joint venture in any way between the Parties, nor as creating any relationship between the Parties other than that of independent contractors for the sale and purchase of Commodity and lessee / lessor relationship as it relates to the lease of the Equipment; **(c)** the Seller is not a "Distribution Company" as defined by the applicable legislation or codes or otherwise as used commonly used in the applicable industry; and **(d)** Commodity supply will be provided by the Seller under this Agreement, but delivery will be provided by the Customer's Distribution Company.

12. Other: **(a)** This Agreement, and any dispute arising hereunder, is governed by the law of the province in which the Sites are located, without regard to any conflict of rules doctrine **(b)** Each Party waives its right to a jury trial regarding any litigation arising from this Agreement **(c)** No delay or failure by a Party to exercise any right or remedy to which it may become entitled under this Agreement will constitute a waiver of that right or remedy **(d)** the Seller warrants that (i) it has good title to Commodity delivered, (ii) it has the right to sell the Commodity, and (iii) the Commodity will be free from all royalties, liens, encumbrances, and claims. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED **(e)** the Customer will be responsible for and indemnify Seller against all losses, costs and expenses, including court costs and legal fees on a solicitor and his/her own (full indemnity) basis, arising out of claims for personal injury, including death, or property damage from the Commodity or other charges which attach after title passes to Customer **(f)** THE SELLER WILL NOT BE LIABLE TO THE CUSTOMER UNDER THE AGREEMENT FOR CONSEQUENTIAL, INDIRECT OR PUNITIVE DAMAGES, LOST PROFITS OR SPECIFIC PERFORMANCE, EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT **(g)** All notices and waivers will be made in writing and may be delivered by hand delivery, registered mail, courier service, or by electronic means, and will be effective upon receipt, and, if sent to Seller, a copy delivered to: Tru-Energy, Attn: Marek Lehmann or Ian Shapiro, 3550-97 Street NW, Edmonton, Alberta T6E 6BE, Phone: 780-893-7276, Email: info@tru-energy.ca **(h)** No amendment to this Agreement will be enforceable unless reduced to writing and executed by both Parties **(i)** The Seller may assign this Agreement, or any rights thereunder or with respect to the Equipment, without the Customer's consent. The Customer may not assign this Agreement, or any rights thereunder or with respect to the Equipment or its interest in same, without the Seller's written consent and which consent may be unreasonably withheld. In addition, the Seller may pledge, encumber, or assign this Agreement or the accounts, revenues, or proceeds of this Agreement in connection with any financing or other financial arrangements without the Customer's consent; in which case the Seller shall not be discharged from its obligations to the Customer under this Agreement **(j)** This Agreement may be executed in separate counterparts by the Parties, including by facsimile, each of which when executed and delivered shall be an original, but all of which shall constitute one and the same instrument **(k)** Any capitalized terms not defined in this Agreement shall have the well-known and generally accepted technical or trade meanings customarily attributed to it in the heat and power generation industries, as applicable **(l)** The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement **(m)** Any executed copy of this Agreement and other related documents may be digitally copied, photocopied, or stored on computer tapes and disks ("**Imaged Agreement**"). The Imaged Agreement will be admissible in any judicial, arbitration, mediation or administrative proceedings between the Parties in accordance with the applicable rules of evidence; provided that neither Party will object to the admissibility of the Imaged Agreement on the basis that such were not originated or maintained in documentary form **(n)** where multiple parties are the "Customer" under this Agreement, said Customers shall be jointly and severally liable for all obligations hereunder **(o)** The Customer will not disclose the terms of this Agreement, without prior written consent of the Seller, to any third party, other than the Customer's employees, affiliates, agents, auditors and counsel who are bound by substantially similar confidentiality obligations, trading exchanges, governmental authorities, courts, adjudicatory proceedings,

pricing indices, and credit ratings agencies; provided that if the Customer receives a demand for disclosure pursuant to court order or other proceeding, it will first notify the Seller, to the extent practicable, before making the disclosure **(p)** The Customer confirms that it appoints the Seller as its exclusive retailer and agent for all purposes related to the delivery of the Commodity to each Site listed in this Agreement and for all matters relating to the supply of the Commodity to such Site(s) including, but not restricted to, enrolling Sites and nominating and billing the supply of the Commodity on its behalf **(q)** this Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereunder. Any prior understanding or representations of any kind, whether in writing or oral, proceeding the date of this Agreement will not be binding on the Seller nor act to alter, replace, or redefine the terms of this Agreement **(r)** it is the intention of the Parties to this Agreement that this Agreement and the performance under this Agreement, and all claims, suits, and special proceedings under this Agreement, be construed in accordance with and governed, to the exclusion of the law of any other forum, by the laws of the Province of Alberta without regard to the jurisdiction in which any action or special proceeding may be instituted **(s)** If there is a conflict between any provision of this Agreement and the applicable legislation of the Province of Alberta (the "Act"), the Act will prevail and such provisions of the Agreement will be amended or deleted as necessary in order to comply with the Act. Further, any provisions that are required by the Act are incorporated into this Agreement. In the event that any of the provisions of this Agreement are held to be invalid or unenforceable in whole or in part, those provisions to the extent enforceable and all other provisions will nevertheless continue to be valid and enforceable as though the invalid or unenforceable parts had not been included in this Agreement and the remaining provisions had been executed by both Parties subsequent to the expungement of the invalid provision **(t)** This Agreement will extend to and be binding upon and inure to the benefit of the respective heirs, executors, administrators, successors and assigns, as the case may be, of each Party to this Agreement **(u)** time is of the essence in this Agreement **(v)**

13. English Language. It is the express wish of the Parties that this Agreement and any related documents be drawn up and executed in English.

IN WITNESS WHEREOF, this EPA is entered into and effective as of the date written above.

CUSTOMER:	SELLER: Tru-Energy Inc. 3550 97 street Edmonton, AB T6E 6B3
By: (I have the authority to bind the corporation)	By: (I have the authority to bind Direct Energy Business)
Name:	Name:
Title:	Title: