

Apollo Energy Management Advisors – Referral Agent Agreement

This Agent Agreement ("Agreement") is entered into this ____ day of _____, 2015 by and between Apollo Energy Management Advisors, LLC ("Apollo") a Pennsylvania based corporation and _____ ("Agent"). Apollo and Agent are sometimes referred to herein in the singular as "Party" and collectively as "Parties".

WHEREAS, Apollo is a marketer of electricity and natural gas and is permitted lawfully to sell and schedule delivery, or cause delivery to be scheduled, electricity and/or natural gas to commercial customers located in certain states,

WHEREAS, Agent has been retained by certain entities or aggregated groups of entities ("Customers" or individually a "Customer") and may be retained by additional customers in the future to represent them in negotiating with Apollo for the purpose of procuring electricity and/or natural gas and may be authorized to negotiate Customer Sales Agreements ("Customer Contracts") and to administer these Customer Contracts after they are executed;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. Agent's Responsibilities. Agent shall refer to Apollo Customer accounts for third party electricity and/or natural gas procurement efforts. Agent will make all reasonable efforts to maintain the confidentiality of any information it receives from Apollo pertaining to pricing, products and the activities of Apollo except to the extent disclosure of such information to Customers or staff is required to negotiate and execute Customer Contracts on behalf of Customers.

- a) Agent agrees that for a period of twelve (12) months immediately following the termination of this relationship with Apollo for any reason, whether with or without cause, Agent shall not either directly or indirectly solicit, induce, or encourage any of Apollo active customers to leave their Apollo Service, either for itself or for any other person or entity.
- b) For a period beginning with the signing of this Agreement and for a period of twelve (12) months immediately following the termination of this relationship for any reason, whether with or without cause, neither party shall not either directly or indirectly solicit, induce, recruit or encourage any of either Party's employees, Agents, Sub-Agents, Licensees, Affinity Partners or others who through their relationship with either Party, have been identified to either Party as employees, Agents, Sub-Agents, Licensees, Affinity Partners or other designated distribution partners of either Party, to leave their employment, or take away such Agents, Sub-Agents, Licensees, Affinity Partners or other designated distribution partners, or attempt to solicit, induce, recruit, encourage or take away employees, Agents, Sub-Agents, Licensees, Affinity Partners or other designated distribution partners of either Party, either for itself or for any other person or entity for any purpose whatsoever.
- c) Both parties acknowledge that any breach of their obligations under this Agreement may result in irreparable injury for which the non-breaching Party shall have no adequate remedy at law. Accordingly, if the breaching Party breaches any of its obligations under this Agreement, the non-breaching Party shall be entitled, without proving or showing any actual damage sustained, to a temporary restraining order, preliminary injunction, permanent injunction and/or order compelling specific performance to prevent or cease the breach of the breaching Party's obligations under this Agreement. Nothing in this Agreement shall be interpreted as prohibiting the Parties from obtaining any other remedies otherwise available to them for such breach or threatened breach, including the recovery of damages.

2. Apollo's Responsibilities. Apollo will remit all Fees to Agent in compliance with the terms of this Agreement and "Attachment A" attached hereto. Apollo may evaluate the creditworthiness of each Customer who wishes to purchase electricity and/or natural gas from any of Apollo's broker partners. Apollo may at its sole option refuse to enter into a Customer Agreement with any or all Customers proposed by Agent even after the execution of a Customer Addition Addendum.

3. Term. The term of this Agreement shall be one (1) year, provided that any Customer Contract signed under this agreement shall be subject to the terms of this agreement until the expiration of that contract. Following the expiration of the Customer Agreement with Apollo, if Customer re-signs with Apollo, then the Agent shall receive compensation for the new Customer contract in accordance with the terms of whatever agreement is in place between Agent and Apollo at the time of Customers execution of the new contract. ***In the event that no agreement exists between Agent and Apollo at the time Customer re-signs, Agent shall receive compensation in accordance with the terms of this agreement including "Attachment A". Agent will continue to receive compensation for the life of the relationship with Customer. The only exemption to Apollo payment obligation is if Agent has been terminated due to material breach of this agreement (see Paragraph 5, Termination). Apollo failure to extend this one-year agreement upon its completion will not relieve any Agent fee obligations arising from renewals executed after this contract expires.***

4. Compensation. Apollo shall remit all Fees to Agent as set forth in the "Attachment A" to Apollo Agent Agreement. If a Customer becomes past due and is terminated for non-payment and is assigned to the Collections or Legal Department, all Agent commissions will be discontinued.

5. Termination. This Agreement, shall continue in effect for a period of one (1) year and will automatically renew for consecutive one-year terms unless either Party informs the other Party in writing of its intent to terminate this Agreement at least sixty (60) days prior to the expiration of the then current term. Notwithstanding the foregoing, either Party may terminate this Agreement upon sixty (60) days prior written notice to the other Party for any reason or no reason. This Agreement may be terminated immediately by either Party at its sole option if the other Party fails to perform any material duty, obligation, covenant and agreement and such default continues longer than ten (10) days from the time the Defaulting Party is notified in writing by the Non-Defaulting Party of the default. In addition, either Party shall have the right to terminate this Agreement, without liability to the other, in the event of judicial, regulatory or legislative change rendering general performance of this Agreement impossible, or illegal. No Agent, Sub-Contractor or 3rd party, may



create, use or distribute any marketing materials, or make representations of any kind, that have not been approved by the Apollo Legal Department. Any violation of this policy will result in immediate termination of any contractual obligation between the Parties including the termination of any previously agreed upon fees, payments and/or commission payments. All inquiries should be sent to legal@apolloema.com.

6. Relationship of the Parties. The Parties' relationship to each other in the performance of this Agreement is that of independent contractor. Nothing in this Agreement is intended to imply a joint venture, partnership, association principal-Agent, employer-employee, fiduciary or employer-employee relationship between Apollo and Agent. Neither Party to this Agreement will have any right to obligate or bind the other in any manner whatsoever nor represent to third parties that it has any right to enter into any binding obligations on the other's behalf.

7. Notices. All notices and other communications required or permitted under this Agreement shall be validly given, made, or served if in writing and delivered personally, sent by registered mail, or overnight delivery to Agent at the following address:

Addressed to Agent at: _____

Addressed to Apollo at: **Apollo Energy Management Advisors, LLC**
Attention: Legal Department
811 N. 19th Street
Allentown, PA 18104

Either Party providing written notice in compliance with this section may change the above addresses, from time to time.

8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State in which the conduct of the Defaulting/Breaching Party is alleged to have occurred, without giving effect to any conflicts of law principles that might otherwise be applicable.

9. Agreement Binding. This Agreement shall be binding upon the Parties hereto and shall not be assigned to any third party without the prior written consent of the other Party. Such consent shall not be unreasonably withheld.

10. Amendment. This Agreement may be amended only by written agreement of the Parties hereto.

11. Confidentiality. If either Party provides confidential information to the other in writing which is identified as such, the receiving Party shall, to the extent authorized by law, protect the confidential information from disclosure to third parties with the same degree of care afforded its own confidential and proprietary information. Neither Party shall, however, be required to hold confidential any information which becomes publicly available other than through the recipient, who is required to be disclosed by a governmental or judicial order, or by statute, is independently developed by the receiving Party or which becomes available to the receiving Party without known restrictions from a third party. Neither Apollo nor Agent may use confidential information to directly market to Customers.

(a) **Apollo Information.** Agent agrees at all times during the term of his engagement by Apollo and thereafter, to hold in strictest confidence, and not to use, except for the benefit of Apollo, or to disclose to any person, firm or corporation except for the benefit of Apollo and with written authorization of an authorized officer of Apollo, any Confidential Information of Apollo. Agent understands that "Confidential Information" means any Apollo proprietary information, financial data, technical data, trade secrets or know-how, including, but not limited to, research, product plans, products, services, customer lists and customers (including, but not limited to, customers of Apollo on whom Agent called or with whom Agent became acquainted during the term of his Agent status by Apollo), markets, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finances or other business information disclosed to the Agent by Apollo either directly or indirectly in writing, orally or by drawings or observation of parts or equipment.

(b) **Company Information.** Agent agrees that it will not, during his engagement with Apollo, improperly use or disclose any proprietary information or trade secrets of any former or concurrent client of the Agent or of other persons or entity and that Agent will not bring onto the premises of Apollo any unpublished document or proprietary information belonging to any such client, person or entity unless consented to in writing by such client, person or entity.

(c) **Third Party Information.** Agent recognizes that Apollo has received and in the future will receive from third parties their confidential or proprietary information subject to a duty on Apollo part to maintain the confidentiality of such information and to use it only for certain limited purposes. Agent agrees to hold all such confidential or proprietary information in the strictest confidence and not to disclose it to any person, firm or corporation or to use it except as necessary in carrying out his work for Apollo consistent with Apollo agreement with such third party.



12. Waiver. A waiver by either Party of any breach of this Agreement, or the failure of either Party to enforce any rights under this Agreement, will not in any way affect, limit, or waive that Party's right to enforce and compel strict compliance with other terms or provisions of this Agreement or to pursue any claim for non-performance or breach of a like kind or of another nature.

13. Damages for Breach. UNLESS OTHERWISE EXPRESSLY PROVIDED HEREIN, ANY LIABILITY UNDER THIS AGREEMENT WITH RESPECT TO EITHER PARTY WILL BE LIMITED TO DIRECT ACTUAL DAMAGES AS THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. NEITHER PARTY WILL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, INCLUDING LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, WHETHER IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISIONS OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT. THE LIMITATIONS IMPOSED ON REMEDIES AND DAMAGE MEASUREMENT WILL BE WITHOUT REGARD TO CAUSE, INCLUDING NEGLIGENCE OF ANY PARTY, WHETHER SOLE, JOINT, CONCURRENT, ACTIVE OR PASSIVE; PROVIDED NO SUCH LIMITATION SHALL APPLY TO DAMAGES RESULTING FROM THE WILLFUL MISCONDUCT OF ANY PARTY.

14. Representations and Warranties. Each of the Parties represents that the information supplied is true and correct; it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and has the legal right, power and authority to conduct its business and execute and perform its obligations hereunder; it is financially able to continue its business activities in the manner currently being conducted and is not aware of any situation which would alter such financial ability or its ability to perform its obligations; this Agreement constitutes a legal, valid and binding act and obligation of it, enforceable in accordance with its terms, subject to bankruptcy, insolvency and other laws affecting creditor's rights generally; and its has all necessary licenses, permits and registrations required to perform its obligations under this Agreement. In the event that Agent is unable to unwilling to obtain a license, permit or registration to meet governmental requirements, Agent shall so notify Apollo in writing and Apollo shall have the option to terminate this Agreement. Apollo obligation to pay Agent Fees shall survive termination of the Agreement pursuant to this paragraph.

15. Entire Agreement. This Agreement, including all exhibits attached hereto and incorporated herein by reference, contains the entire understanding between and among the Parties and supersedes any prior understandings and agreements among them with respect to the subject matter of this Agreement.

16. General Provisions.

(a) **Severability.** If one or more of the provisions in this Agreement are deemed void by law, then the remaining provisions will continue in full force and effect.

(b) **Successors and Assigns.** This Agreement will be binding upon Agent 's heirs, executors, administrators and other legal representatives and will be for the benefit of Apollo, its successors, and its assigns.

17. Acknowledgements by Agent. The Agent acknowledges and agrees to each of the following items:

- (a) It is executing this Agreement voluntarily and without any duress or undue influence by Apollo or anyone else; and
- (b) It has carefully read this Agreement. Agent has asked any questions needed for it to understand the terms, consequences and binding effect of this Agreement and fully understand them, including that Agent is waiving his right to a jury trial by signing below; and
- (c) It is compliant with all federal and state regulations regarding its ability to sell retail electricity and/or natural gas, if applicable; and
- (d) It sought the advice of an attorney of his choice if Agent desired before signing this Agreement.

For Apollo:

Apollo Energy Management Advisors, LLC

Accepted and Agreed



Signed

Douglas C. Kemmerer

Printed Name

President and CEO

Title

For Agent:

Accepted and Agreed

Signed

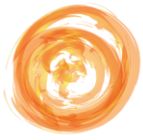
Printed Name

Title



Attachment A – Payment Terms

- AMOUNT:** The amount to be paid by Apollo to Agent shall be determined by applying the following calculation to the Agent Fee Rate. The Agent Fee Rate is defined as the total gross profit margin included in the electric and/or natural gas rate in the Customer Contract (e.g. \$0.005/kWh or \$0.30/DTH).
- CALCULATION OF FEE:** Agent Fee Rate multiplied by the Customer's actual monthly number of therms/kWh of consumption as determined by the Customer's applicable local distribution utility company ("LDC"); provided that Apollo reserves the right, at its sole option, to calculate the current Fee (or to adjust the current Fee based upon a reconciliation with a previous Fee payment) using the number of therms/kWh actually consumed, billed to, and/or the amount actually collected from, Customers during a payment period; and provided further that Apollo reserves the right to withhold payment of the final Agent's Fee until payment is tendered in full to Apollo or the LDC carrier (whichever applies) and all consumption data relating to such payment has been received by Apollo, not to exceed 90 days from contract termination.
- COMMISSION SCHEDULE:** Agent shall be paid a percentage of the total Agent Fee Rate for each Customer contracted by the Agent according to the following commission schedule. Additional escalation in commission schedule shall be at the discretion of Apollo
- 10% of the net profit to Apollo
- PAYMENT SCHEDULE:** Commissions are paid only after customer has remitted payment to Apollo or the LDC carrier (whichever applies). Commission payments are subject to meter read, start dates, payment terms, billing cycles and receipt of payment, therefore, it may take 60-90 days to receive commission payments after enrollment of a customer. Payments shall be made to Agent electronically via Automated Clearing House (ACH) and are paid on the 15th of the month following the month Apollo has received payment for each customer contracted by Agent.



Referral Agent Information

Agent's Company Name: _____

Agent's Contact Person: _____

Agent's Address: _____

Agent's Phone: _____

Agent's Fax: _____

Agent's Email Address: _____

Agent's Social Security/Tax ID: _____

Banking Institution: _____

Bank Address: _____

Account Number: _____

Checking Savings

Routing Number: _____

Agent's Enroller: _____