

### DESCRIPTION:

The MI Clean Air program provides eligible customers with the opportunity to offset a portion, or all, of their carbon emissions from natural gas use through carbon offsets procured or developed on the customers' behalf ("Offsets"). Participation in the MI Clean Air Program is voluntary. Eligible customers who elect to participate in the program subscription will pay a monthly premium, which will be added to their utility bill, to offset their natural gas emissions.

The carbon offset subscriptions will be available on a first-come, first-served basis. Should carbon offset procurement become price prohibitive, or should carbon offset availability decrease, the program will close to new subscriptions, and a customer waitlist will be utilized until the program becomes available again through customer attrition or new supply.

### ELIGIBILITY:

The Carbon Offset Program provides eligible Customers with the opportunity to subscribe to carbon offsets equal to up to 100% of their total annual natural gas usage as measured in metric tons of carbon dioxide. The source of the carbon offset credits varies depending on the preferences and size of the qualifying Customer, with two program options including:

- 1) Carbon offsets procured from resources in the Midwest, through Program Option A (detailed below);
- 2) Carbon offsets procured regionally, nationally, or internationally, according to Customer preference, through Program Option B (detailed below).

Customers will not be eligible for any of these programs if they have received a shutoff notice within nine months preceding their application. A Customer that receives a shutoff notice after enrolling in the program will be disenrolled and restricted from participating in the Carbon Offset Program for a minimum of nine months, contingent on not receiving any shutoff notices within that nine-month period. Subscriptions will be available on a first-come, first-served basis. Participation in the Carbon Offset Program is dependent upon the availability and affordability of contracted carbon offsets as secured by the Company. In the event, carbon offsets are unavailable or cannot be procured in a manner to serve the authorized purpose of the program, the program will close to new subscriptions and current subscriptions may be on hold until additional supply is cost-effectively available. In all events, the Company reserves the right to prioritize Customer participation based on economic, financial, operational, legal, or other considerations. Subject to the provisions of this program, both options of the Carbon Offset Program will remain open until rescinded on a future date to be announced by the Company.

## **DEFINITIONS:**

- Carbon block - A block equal to 0.8 Mcf per month. Based on average residential customer usage, a subscription of approximately 10 carbon blocks per month for a period of twelve-months would equal a 100% match of the customer's annual usage.
- Carbon offset - A set of activities that reduce greenhouse gas emissions or remove greenhouse gases from the atmosphere and is usually measured in metric tons. Examples may include forestry projects or renewable natural gas projects.
- Co-benefit - Additional beneficial attributes related to a carbon offset, such as water quality improvements, poverty reduction, or wildlife habitat protection or development.
- Project type - The different options of carbon offset sources. Examples may include forestry projects, reduction in landfill gas emissions, and other types of carbon offset options.
- Retire - To remove a carbon offset from circulation and apply it against a Customer's usage.
- Vintage - The year a carbon offset is generated from a carbon offset project.

## **CARBON OFFSET – RESIDENTIAL & SMALL/MEDIUM BUSINESS (OPTION A)**

### **CUSTOMER ELIGIBILITY:**

Residential Customers and Non-Residential Customers taking service on rate categories General Service Rate GS-1 or GS-2 may be eligible to participate in Carbon Offset Program Option A.

Subject to any restrictions, subscriptions are available for a portion of a Customer's annual natural gas usage, not to exceed the following:

- For Residential Customers: the number of carbon offset blocks sufficient to offset the average annual Residential natural gas usage, as measured in metric tons of carbon dioxide, or
- For Non-Residential Customers taking service on rate categories General Service 1 or 2 (GS-1, GS-2): the number of carbon offset blocks sufficient to offset a Non-Residential Customer's actual annual natural gas usage, in metric carbon tons, as represented by the Customer's subscription under this program.

### **ENROLLMENT:**

Customers shall submit an online application available on the Company's website to enroll in the program and commit to their desired subscription level. The Company will procure carbon offsets based on Customer subscription levels through market purchases, Requests for Proposal (RFP), directly from projects as available, or by other Company-chosen methods. The Company may also develop projects to supply carbon offsets to the program. The enrollment period is open through the full calendar year. The participation period is twelve-months from start date, with automatic re-enrollment unless the Customer cancels its subscription or is disenrolled according to the provisions of this program. Customers shall be permitted to cancel or change their level of participation at any time after the initial twelve-month period has elapsed.

## SUBSCRIPTION PAYMENTS AND FEES:

Customers will pay a monthly per-block fee based on their selected subscription amount. Block prices will be based on best available procurement costs for carbon offsets plus an administrative fee to support program administration, carbon offset procurement, and marketing. At the Company's full discretion, subscription fees may be adjusted on an annual basis. In the event carbon offset prices increase 25% or more, the subscription fee will be adjusted quarterly or annually, at Company's election. The Company shall retire the carbon offsets on the Customer's behalf.

- **MI Clean Air Subscription** Block Price: \$2.00 per block per month equating to 0.8158 mcf)

Further, should subscription costs increase due to a carbon offset price increase of 25% or more, the customer will have the opportunity to unenroll from the program.

In any event, Customers shall be disenrolled in the program for non-payment or if their account no longer meets the previously stated eligibility requirements. Lastly, each party shall be responsible for any taxes or other fees associated with its respective purchase or sale of carbon offsets.

## TERM AND FORM OF CONTRACT:

By completing the online enrollment form, Customer is entering into this written contract with Consumers Energy with a minimum term of twelve-months. Customers are automatically reenrolled in the program at the end of the twelve-month period for a rolling month-to-month contract unless they choose to cancel program participation by written notice to Consumers Energy at least 30 days before the then current term ends or they are disenrolled according to the provisions of this program.

To cancel or make changes to current participation, send an email to [MiCleanAir@CMSenergy.com](mailto:MiCleanAir@CMSenergy.com). Consumers Energy may, at its option (and in addition to any other rights or remedies that it may have), terminate this agreement in whole or in part, at any time and for any reason, by written notice to Customer.

Customers that relocate must submit a new application to enroll in the program at the new service location.

## **CARBON OFFSET – COMMERCIAL & INDUSTRIAL (OPTION B)**

### **CUSTOMER ELIGIBILITY:**

Customers taking service General Service 3 (GS-3) and Transportation Customers, may be eligible to participate in Carbon Offset Program Option B.

Subscriptions are limited to a match of up to 100% of Customer's prior twelve-month actual usage with carbon offsets as measured in metric tons of carbon dioxide.

### **ENROLLMENT:**

Customers shall agree to a written contract to enroll in the program and commit to their desired subscription level. The Company will procure carbon offsets based on Customer subscription levels through market purchases, through RFP, directly from projects as available, or by other Company-chosen methods. The Company may also develop projects to supply carbon offsets to the program. The enrollment period is open through the full calendar year. The participation period is for a twelve-month period, or as specified in the written contract.

Customers with specific carbon offset vintage, geographic region, project type, co-benefit requirements may identify those requirements in their participation contract and will be responsible for all costs resulting from those requirements.

### **SUBSCRIPTION PAYMENTS AND FEES:**

Customers pay a per-Mcf fee based on their subscription preference. Subscription fees will be based on the actual carbon offset cost spread evenly by month over the life of the agreed upon term, plus an additional administrative fee to support program administration, carbon offset procurement, and marketing. Subscription fees shall be adjusted on an annual basis if needed. The Company shall retire the carbon offsets on the Customer's behalf.

In the event reconciliation is required, such reconciliation will take place by March 31 for each proceeding program year, and Customers will be charged or credited any underage or overage in actual procurement costs. Lastly, each party shall be responsible for any taxes or other fees associated with its respective purchase or sale of carbon offsets.

### **TERM AND FORM OF CONTRACT:**

This program shall require a written contract with an initial term of twelve-months, or as specified in the written contract. Thereafter, a written contract will be required for every year of participation, and participants will not be automatically reenrolled in the program.

## ADDITIONAL LEGAL PROVISIONS:

1. **Intellectual Property.** Customer acknowledges that no title to the intellectual property in the service is hereby transferred to Customer. Customer shall have no rights in any trade names, trade dress, trademarks, service marks, commercial symbols, copyrightable material, designs, logos or any other intellectual property of Consumers Energy. Customer will not delete, alter, cover or distort any copyright or other proprietary notices or trademarks from the Services. Customer will use the Service solely for the internal use of Customer and not for the benefit of any third party. Customer shall not copy, reverse engineer, disassemble, decompile or attempt to derive the source code of the service or create any derivative work from the Service, and shall use reasonable care to prevent the intellectual property rights of Consumers Energy from damage and unauthorized use.

2. **Confidentiality.** In providing the Service under this agreement, each party will be exposed to certain Confidential Information (as hereinafter defined) of the other party. Each party on its own behalf and on behalf of its employees, contractors and agents (collectively, "**Representatives**") agrees not to, except as required by applicable law or regulation, use or disclose such Confidential Information without the prior written consent of the other party either during or after the term. To protect Confidential Information, each party agrees to: (i) limit dissemination of Confidential Information to only those Representatives having a "need to know"; (ii) advise each Representative who receives Confidential Information of the confidential nature of such information; and (iii) have appropriate agreements, policies and/or procedures in place with such Representatives sufficient to enable compliance with the confidentiality obligations contained herein. Each party shall be responsible for any breach of this confidentiality provision by any of its Representatives. The term "**Confidential Information**" means all information, including, without limitation, any trade secrets, which is disclosed, either orally or in written form, by either party, and shall be deemed to include: (x) any notes, analyses, compilations, studies, interpretations, memoranda or other documents prepared by either party, reflect or are based upon, in whole or in part, any Confidential Information furnished to a receiving party or its Representatives pursuant hereto; and (y) any information concerning the business relationship between the parties.

3. **Warranty/Disclaimer:** Consumers Energy hereby warrants that it shall convey Offsets to Customer free from all liens, security interests, and defects of title. Consumers Energy represents and warrants to Customer (i) that each Offset transferred pursuant to this agreement is, or will be at the time of transfer, validly issued and in force in accordance with applicable law and (ii) that Consumers Energy obtained and possessed, or will obtain and possess at the time of transfer, each Offset lawfully. Seller expressly negates any other representation or warranty, written or oral, express or implied, including without limitation, any representation or warranty with respect to conformity to models or samples or merchantability, or fitness for the particular purpose. Without limiting the generality of the foregoing, seller makes no representation or warranty hereunder regarding any action or failure to act, or approval or failure to approve, of any permitting authority or any other agency or governmental entity.

**4. Third Party Indemnity:** To the extent permitted by law, Customer shall indemnify and hold Consumers Energy, its agents, affiliates, employees, vendors and subcontractors harmless from and against, and shall at Consumers Energy's option undertake the defense of, any and all claims, losses, liabilities and damages (including but not limited to environmental harm), and any and all associated costs (including but not limited to reasonable attorneys' fees), which may be asserted by any third party against Consumers Energy, or which Consumers Energy may sustain or incur, as a result of the services performed under this agreement, whether based on warranty, contract, tort (including but not limited to negligence), strict liability or otherwise, except liability for bodily injury to persons or damage to property caused solely by the negligence of Consumers Energy, its agents or employees.

**5. Limitation of Liability:** Without limiting the generality or applicability of any other limitations or disclaimers of liability or remedies set forth herein, it is expressly understood that to the extent permitted by law in no event shall the total liability of Consumers Energy, its agents, employees, vendors and subcontractors, with respect to any and all claims under or arising out of this agreement, or the performance of breach thereof, whether based on contract, warranty, tort (including negligence), strict liability or otherwise, exceed in aggregate the lesser of the remaining contract value or \$1,000, and such liability of Consumers Energy shall in no event include special, indirect, punitive, incidental or consequential damages of any nature (including but not limited to loss of revenue or its use; loss by reason of plant or equipment shutdown or inability to operate at rated capacity; increased expense of operation of plant or equipment; increased cost of purchasing or providing equipment, materials, supplies or services outside Consumers Energy's scope of work hereunder; costs of replacement power or capital; claims of Customer's customers; or inventory or use charges) even if Consumers Energy has been advised of the possibility of such damages. This Limitation of Liability section shall prevail over any conflicting or inconsistent provisions contained herein or in any other applicable document and shall be in effect even if the remedy or remedies set forth elsewhere herein fail in their essential purpose.

**6. Force Majeure:** Consumers Energy shall in no event be in breach of contract as a result of any delay in performing, or failure to perform, its obligations if such delay or failure is due to strikes or other labor troubles; any inability to obtain, upon reasonable terms, equipment, materials, parts, components, supplies or transportation for any reason, including default of suppliers or subcontractors; acts of God; fire; flood; storm; earthquake or other natural calamities; war; insurrections; riot; embargoes; curtailment; order, regulations or restrictions imposed by governmental authorities; or any other cause which is beyond Consumers Energy's reasonable control, whether of a similar or dissimilar nature to any of the foregoing and whether or not existing or foreseeable at the time this agreement is entered into. Consumers Energy shall have no obligation to settle any strike or other labor difficulty in a manner not completely satisfactory to it. Should any such delay occur, the time for the performance of Consumers Energy's obligations shall be extended by a time equal to the length of the delay plus such additional time as is reasonable necessary to enable Consumers Energy to resume performance of its obligations.

**7. Independent Contractor Relationship:** In the performance of the services hereunder, Consumers Energy shall be deemed to be an independent contractor.

**8. Assignment and Subcontracting:** Any assignment or other transfer of this agreement or any part thereof by Customer without the previous written consent of Consumers Energy shall be void. Consumers Energy may assign this agreement at any time and may subcontract any services hereunder.

**9. Default:** If Customer defaults in the timely performance of any of its obligations hereunder, then Consumers Energy may, at its option, and in addition to any and all other rights or remedies it may have hereunder or at law or equity, terminate this agreement by written notice to Customer.

**10. Governing Law; Actions; Etc.:** This agreement shall be deemed a Michigan contract and shall be governed by and interpreted in accordance with the laws of the State of Michigan; excluding any conflicts of laws principles that would result in this agreement being interpreted in accordance with any different law. Venue for any lawsuit arising out of or in connection with this agreement shall be exclusively in the courts of the State of Michigan or a Federal court sitting in the State of Michigan. Any legal action against Consumers Energy relating to this agreement or the breach thereof shall be commenced within one year from the date on which the claimed breach, default or other cause of action arose (and, without limiting the foregoing, in all events not later than one year after the date of completion or other cessation of performance of the work hereunder). This agreement is intended for the benefit of the parties herein only and does not grant any rights to any third parties unless otherwise specifically stated herein. The section headings in this agreement are included for reference only; they shall not limit or restrict the interpretation and construction of any of the provisions of this agreement.

**11. Entire agreement; Changes:** With respect to the subject matter hereof, this agreement supersedes all previous representations, understandings and negotiations, either written or oral, between the parties hereto or their representatives and constitutes the entire agreement between the parties. No part of any purchase order, request for proposals or other documents issued by Customer shall be binding upon Consumers Energy or affect its rights or obligations hereunder. The terms of this agreement may be changed, revised or supplemented by Company at any time.

**12. Government Action:** "Government Action" means the adoption of, or change in, applicable law that affects or otherwise relates in any manner to the transferability, allocation, recordation, retirement or use of Offsets. The Parties understand that Offsets may hereafter be affected by Government Action. Customer will pay for, and shall not be entitled to any refund from Consumers Energy, nor shall Consumers Energy be liable for any other claims or damages, due to Government Action with respect to Offsets that have been delivered by Consumers Energy to Customer and recorded in Customer's Offsets account as of the date of such Government Action. If Applicable Law is affected by Government Action prior to the date that the Offsets have been delivered by Consumers Energy to Customer and recorded in Customer's Offsets account, such that it becomes unlawful for Consumers Energy to deliver or Customer to receive the Offsets, then this agreement may be terminated by the affected party without liability by written notice to the other party. This Section will survive the expiration or termination of this agreement.