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# **COMPETITIVE ELECTRIC SERVICE AGREEMENT**

BETWEEN

**PUBLIC POWER, LLC**

AND

**CITY OF NORTH ADAMS**

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WHEREAS, the Massachusetts Legislature has adopted Chapter 164 of the Electric Utility Restructuring Act of 1997, (“Restructuring Act”), which, *inter alia*, (1) allows for competition in the generation and supply of electricity to consumers, (2) authorizes municipalities to aggregate the electrical load of electricity consumers within their boundaries, and (3) allows municipal aggregators to formulate an aggregation plan and conduct aggregation programs;

WHEREAS, the City of North Adams (“City”) has developed a Community Choice Power Supply Program (“Program”) to aggregate consumers located within the City and to negotiate competitive rates for the supply of electricity for such consumers;

WHEREAS, the City has received approval of its Program from the Massachusetts Department of Public Utilities (“Department”) in D.P.U. 13-140;

WHEREAS, Competitive Supplier, a State corporation duly authorized to conduct business in the Commonwealth of Massachusetts (“Competitive Supplier”), desires to provide All-Requirements Power Supply to consumers located within the City, pursuant to the terms and conditions of the City’s Program and this Competitive Electric Service Agreement (ESA); and

WHEREAS, the City desires that the Competitive Supplier provide All-Requirements Power Supply as an alternative to Basic Service for consumers within the City.

NOW THEREFORE, IT IS AGREED THAT, the City and the Competitive Supplier hereby enter into this ESA subject to the terms and conditions below.

## **ARTICLE 1 DEFINITIONS**

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Capitalized and in bold type terms that are used but not defined in the body of this ESA, including the Exhibits hereto, shall be defined as set forth in this Article 1. Words defined in this Article 1 which are capitalized shall be given their common and ordinary meanings when they appear without capitalization in the text. Words not defined herein shall be given their common and ordinary meanings.

**1.1 All-Requirements Power Supply** - The service under which the Competitive Supplier provides all of the electrical energy, capacity, reserves, and ancillary services, transmission services, transmission and distribution losses, congestion management, and other such services or products necessary to provide firm power supply to Participating Consumers at the Point of Delivery.

**1.2 Bankruptcy** - With respect to a Party, such Party (i) ceases doing business as a going concern, generally does not pay its debts as they become due or admits in writing its inability to pay its debts as they become due, files a voluntary petition in bankruptcy or is adjudicated bankrupt or insolvent, or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other Governmental Rule, or seeks or consents to or acquiesces in the appointment of any trustee, receiver, custodian or liquidator of said Party or of all or any substantial part of its properties, or makes an assignment for the benefit of creditors, or said Party takes any corporate action to authorize or that is in contemplation of the actions set forth in this clause (i); or (ii) a proceeding is initiated against the Party seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other Governmental Rule and, such proceeding is not dismissed within ninety (90) days after the commencement, or any trustee, receiver, custodian or liquidator of said Party or of all or any substantial part of its properties is appointed without the consent or acquiescence of said Party, and such appointment is not vacated or stayed on appeal or otherwise within ninety (90) days after the appointment, or, within ninety (90) days after the expiration of any such stay, has not been vacated, *provided that*, notwithstanding the foregoing, the exercise of rights to take over operation of a Party's assets, or to foreclose on any of a Party's assets, by a secured creditor of such Party (including the appointment of a receiver or other representative in connection with the exercise of such rights) shall not constitute a Bankruptcy.

**1.3 Basic Service** - As defined in M.G.L. c. 164, § 1 and in orders of the Department, as amended or promulgated, as the case may be, from time to time.

**1.4 Commercially Reasonable** - Any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known, or which in the exercise of due diligence, should have been known, at the time the decision was made, would have been expected in the industry to accomplish the desired result consistent with reliability, safety, expedition, project economics and applicable law and regulations.

**1.5 Competitive Supplier** - Public Power, LLC, a Connecticut limited liability company duly authorized to conduct business in the Commonwealth of Massachusetts.

**1.6 Competitive Supplier's Guarantor** – N/A.

**1.7 Credit Rating** – N/A.

**1.8 Delivery Term** - The period for which prices for All-Requirements Power Supply have been established, as set forth Exhibit A.

**1.9 Department** - The Massachusetts Department of Public Utilities or any successor state agency.

**1.10 EDI** - Electronic Data Interchange: The exchange of business data in a standardized format between business computer systems.

**1.11 Effective Date** - The date on which this ESA is executed by the Parties (to be determined by the later date, if the Parties execute on different dates).

**1.12 Eligible Consumers** – Residential, commercial, industrial, municipal, or other consumers of electricity who receive Basic Service from the Local Distributor as of the Effective Date, at one or more locations within the geographic boundaries of the City. For the avoidance of doubt, all Eligible Consumers must reside or be otherwise located at one or more locations within the geographic boundaries of the City; as such boundaries exist on the Effective Date of this ESA.

**1.13 ESA** - This Competitive Electric Service Agreement.

**1.14 Force Majeure** - Any cause not within the reasonable control of the affected Party which precludes that party from carrying out, in whole or in part, its obligations under this ESA, including, but not limited to, Acts of God; winds; hurricanes; tornadoes; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes; lock-outs or other industrial disturbances; acts of public enemies; acts, failures to act or orders of any kind of any governmental authorities acting in their regulatory or judicial capacity, provided, however, that any such discretionary acts, failures to act or orders of any kind by the City may not be asserted as an event of *Force Majeure* by the City; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil disturbances or explosions. Nothing in this provision is intended to excuse any Party from performing due to any governmental act, failure to act, or order, where it was reasonably within such Party's power to prevent such act, failure to act, or order. Economic hardship of either Party shall not constitute an event of *Force Majeure*.

**1.15 General Communications** - The type of communications described and defined in Article 5.6 herein.

**1.16 Governmental Authority** - Any national, state or local government, independent system operator, regional transmission owner or operator, any political subdivision thereof or any other

governmental, judicial, regulatory, public or statutory instrumentality, authority, body, agency, department, bureau, or entity, excluding the City.

**1.17 Governmental Rule** - Any law, rule, regulation, ordinance, order, code, permit, interpretation, judgment, decree, or similar form of decision of any Governmental Authority having the effect and force of law.

**1.18 Green Power** – Electric energy generated by equipment or facilities including solar power, biomass, landfill gas, wind turbine, hydro power or other renewable energy generating resource or technology, as may be defined by M.G.L. c. 25 A, § 11F, § 11F1/2, or M.G.L. c. 164, § 1, or, that may be otherwise added by mutual agreement of the Parties.

**1.19 ISO-NE** - The New England Independent System Operator, or such successor or other entity which oversees the integrated dispatch of power plants in New England and the bulk transmission of electricity throughout the New England power grid.

**1.20 kWh, kW** - Kilowatt-hour and kilowatts, respectively.

**1.21 Local Distributor** - Utility, or any successor company(ies) or entity(ies) providing electricity distribution services in the City.

**1.22 NEPOOL** - The New England Power Pool.

**1.23 New Consumers** - Residential, commercial, industrial, municipal, or other consumers of electricity that become Eligible Consumers after the Effective Date.

**1.24 New Taxes** - Any taxes not in effect as of the Effective Date enacted by a Governmental Authority or the City, to be effective after the Effective Date with respect to All-Requirements Power Supply, or any Governmental Rule enacted and effective after the Effective Date resulting in application of any existing tax for the first time to Participating Consumers.

**1.25 Participating Consumers** - Eligible Consumers enrolled in the Program.

**1.26 Parties** - The City and Competitive Supplier, as the context requires. In the singular, “Party” shall refer to any one of the preceding.

**1.27 Plan** - North Adams’ Community Choice Power Supply Program as adopted or amended by the City from time to time, and as approved by the Department on July 2, 2014 in D.P.U. 13-140. The Aggregation Plan is a plan developed by the City to aggregate electricity consumers for the primary purpose of negotiating the best rates for the supply of electricity for such consumers.

**1.28 Point of Delivery** - The point of interconnection between NEPOOL Pool Transmission Facilities and the transmission facilities of the Local Distributor.

**1.29 Point of Sale** - The electric meter for each Participating Consumer’s account, as designated by the Local Distributor.

**1.30 Program** - North Adams' Community Choice Power Supply Program, under which, the Plan is described and implemented.

**1.31 Regulatory Event** - A change in a Governmental Rule by a Governmental Authority, including without limitation the Local Distributor's tariffs, market rules, operating protocols and definitions, that have a material effect on the services and transactions contemplated by this ESA. A "change" as used herein includes without limitation any amendment, modification, nullification, suspension, repeal, finding of unconstitutionality or unlawfulness, or any change in construction, application or interpretation.

**1.32 Retail Price** - As set forth in Exhibit A.

**1.33 Service Commencement Date** - The Participating Consumers' first meter read dates for the month of November 2017.

**1.34 Term** - As defined in Article 4.1.

## **ARTICLE 2 RIGHTS GRANTED**

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### **2.1 GENERAL DESCRIPTION AND LIMITATIONS**

Competitive Supplier is hereby granted the exclusive right to provide All-Requirements Power Supply to Participating Consumers pursuant to the terms of the Program and this ESA. For the avoidance of doubt, Competitive Supplier shall be authorized to supply All-Requirements Power Supply only to Participating Consumers, and the Local Distributor will continue to have the right and obligation to supply electricity to Eligible Consumers who opt-out of the Program and remain on, or return to, Basic Service, until changes in law, regulation or policy may allow otherwise. Competitive Supplier further recognizes that this ESA does not guarantee that any individual Eligible Consumer will be served by the Competitive Supplier.

In accordance with Article 3 below, all Eligible Consumers shall be automatically enrolled in the Program unless they choose to opt-out. In the event the geographic boundaries of the City change during the term of this ESA, Competitive Supplier shall only be obligated to supply All-Requirements Service to those Participating Consumers located within the City as such boundaries existed on the Effective Date of this ESA. As between the Parties, the Competitive Supplier has the sole obligation of making appropriate arrangements with the Local Distributor, and any arrangements which may be necessary with the ISO-NE so that Participating Consumers receive the electricity supplies to be delivered pursuant to this ESA.

The City shall specifically authorize the Local Distributor to provide, and Competitive Supplier the right to obtain and utilize as required, all billing and energy consumption information for Participating Consumers as is reasonably available from the Local Distributor. Competitive Supplier shall request consumption data for individual Participating Consumers from the Local Distributor via EDI. If further action is required by the Local Distributor to authorize Competitive Supplier to receive such consumption and billing data, the City agrees to use Commercially Reasonable efforts, at Competitive Supplier's cost, to assist Competitive Supplier, if so requested

by it, in obtaining such information for Participating Consumers, including, without limitation, assisting Competitive Supplier in obtaining permission from such Eligible Consumers and/or the Department, where necessary as a prerequisite to the provision of such information. Competitive Supplier shall not be responsible for any errors that Competitive Supplier makes in the provision of All-Requirements Power Supply to the extent such errors are caused by errors or omissions in the information provided to it by the Local Distributor.

## **2.2 AGENCY RELATIONSHIP**

The City is authorized to act on behalf of the Eligible Consumers in contracting for electric supply for such Eligible Consumers, and is authorized to act as agent for all Participating Consumers. The City and Competitive Supplier agree and understand that Participating Consumers shall be principals under this ESA and shall have privity of contract with Competitive Supplier; *provided, however,* that in any litigation arising under this ESA, only the City, as agent for the Participating Consumers, has the right to bring claims against the Competitive Supplier.

## **2.3 COMPLIANCE WITH LAWS**

By entering into this ESA, the parties specifically represent that they have exercised due diligence to review and have fully complied with all relevant regulations and orders of the Federal Energy Regulatory Commission (FERC), the Department, Massachusetts Attorney General (AG), and the Massachusetts Department of Energy Resources (DOER) and any other governmental authorities having jurisdiction over any element of the transactions contemplated by this ESA.

## **2.4 CONDITIONS PRECEDENT**

The City's obligations under this ESA shall be conditioned upon the Competitive Supplier, or, with respect to (c) and (d) below, Competitive Supplier's wholesale power marketing affiliate, fulfilling or having met the following requirements:

- a) maintain Competitive Supplier's license from the Department (as such term is defined in the Local Distributor's Terms and Conditions for Competitive Suppliers);
- b) execute a Competitive Electric Supplier Service Agreement with the Local Distributor in a form reasonably satisfactory to Competitive Supplier;
- c) execute any appropriate ISO-NE applications and agreements;
- d) obtain authorization from the FERC to sell power at market-based rates; and
- e) complete EDI testing with Local Distributor.

If Competitive Supplier has not fulfilled all such requirements by the Service Commencement Date, either Party may terminate this ESA without any liability to the other Party. Competitive Supplier hereby represents and warrants that as of the Effective Date of this ESA, it has complied with the requirements listed above.

## **2.5 OWNERSHIP AND USE OF ELIGIBLE CONSUMER DATA**

Competitive Supplier acknowledges that the City shall have exclusive ownership of all right, title, and interest in and to all Eligible Consumer data (including addresses, telephone numbers or other identifying information) made available to Competitive Supplier as a result of execution of this ESA. Competitive Supplier shall use Eligible Consumer data solely to provide All-Requirements Power Supply to Participating Consumers and to render other services expressly required or permitted under this ESA. Any other use of Eligible Consumer data without the prior written consent of the City is strictly prohibited. Pursuant to such authorized use, Competitive Supplier may share such Eligible Consumer data with affiliates and third-party vendors as reasonably necessary to accommodate Competitive Supplier's provision of All-Requirements Power Supply or other performance pursuant to this ESA (including, without limitation, collection of receivables), provided that Competitive Supplier will take reasonable measures to inform any such vendor of the confidential nature of such data and the restrictions set forth in this Article 2.5 and elsewhere in this ESA. Except as expressly provided in this ESA, Competitive Supplier shall not disclose any Eligible Consumer data to any third-party that has not executed a non-disclosure certificate or agreement in a form mutually acceptable to the Parties, and Competitive Supplier shall take Commercially Reasonable measures to protect Eligible Consumer data from access by, or beneficial use for, any third-party. Notwithstanding the foregoing, the Parties agree that contract employees and entities with which Supplier contracts to provide contract employees shall not be deemed third parties for purposes of this Section 2.5. To the extent that the provision of All-Requirements Power Supply or other services under this ESA requires that Competitive Supplier have access to or make use of any Eligible Consumer data, Competitive Supplier shall treat such Eligible Consumer data as confidential information. Competitive Supplier may use Eligible Consumer data to engage in direct marketing only during the term of this ESA and subject to the terms set forth in Article 18.2. A violation of this Article 2.5 shall be grounds for termination under Article 4.2(a). Competitive Supplier agrees violation of this Article 2.5 shall constitute irreparable harm.

## **ARTICLE 3 CONSUMER CHOICE, NOTIFICATION OF RIGHTS, ENROLLMENT**

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### **3.1 CONSUMER CHOICE**

The Parties acknowledge and agree that all Participating Consumers have the right, pursuant to M.G.L. c. 164, § 134 and the Program, to change their source of electricity supply, as set forth in Article 2.1. The Parties represent and warrant to each other that they shall not unreasonably interfere with the right of Participating Consumers to opt-out of the Program, and shall comply with any rules, regulations or policies of the Department, the Local Distributor and/or other lawful Governmental Authority regarding the procedures for opting out or of switching from one source of electric supply to another. Notwithstanding the foregoing, however, the Parties may take Commercially Reasonable measures to encourage Participating Consumers to affirmatively agree to remain in the Program, consistent with any Governmental Rules.

### **3.2 NOTIFICATION TO NEW CONSUMERS OF OPT-OUT RIGHTS**

Consistent with the requirements of any applicable Governmental Rules, and within a reasonable time after the Local Distributor notifies Competitive Supplier of the existence of a New Consumer and has provided to Competitive Supplier such New Consumer's account number, service and billing address, and other pertinent contact information, Competitive Supplier shall notify such New Consumer (i) of the date on which such New Consumer will be automatically enrolled in the Program, and (ii) that the Competitive Supplier will be providing All-Requirements Power Supply to such New Consumer as of the same date, subject to the opt-out provisions of the M.G.L. c. 164, § 134, the Plan, and the Program ("Opt-Out Notice"). The Opt-Out Notice shall be mailed to each such New Consumer prior to the date of automatic enrollment. The Competitive Supplier, in its discretion as to form and content shall: (i) prominently state all charges to be assessed by the Competitive Supplier; (ii) provide a summary of the prices and terms included in Exhibit A as well as fully disclose the prices and terms then being offered for Basic Service by the Local Distributor; (iii) state how such New Consumer may opt-out of the Program prior to enrollment and remain on Basic Service from the Local Distributor; and (iv) state how all Participating Consumers, subsequent to enrollment, will also have the right to opt-out at any time and return to Basic Service or choose a new Competitive Supplier without paying a fee or penalty to Competitive Supplier. All such notices must be approved in advance by the City, with such approval not to be unreasonably withheld.

The above procedures also apply to New Consumers that are subsequent to the initial enrollment; however, it is the responsibility of the Competitive Supplier to request the subsequent New Consumer's pertinent information from the Local Distributor on a quarterly basis.

The Competitive Supplier is responsible for all mailings and mailing costs associated with consumer notification whether it be for the initial enrollment or subsequent enrollments. The Competitive Supplier will maintain a complete list of opt-outs throughout the life of the contract whether received prior to the initial enrollment or after accounts have been enrolled. Upon request, the Competitive Supplier will make this opt-out list available to the City or its agent.

In providing the notifications set forth in this Article 3.2, and in otherwise conducting the activities in Article 3.4 below, the Competitive Supplier must rely upon information provided to it by the Local Distributor for the purpose of performing its obligations. Competitive Supplier will not be responsible for any errors or omissions in connection with its notification of Eligible Consumers resulting from errors or omissions in the information provided to it by the Local Distributor.

### **3.3 CONSUMER AWARENESS**

Upon mutual agreement concerning the content and method, either the Competitive Supplier or Colonial Power Group, Inc. (CPG) may conduct consumer awareness efforts at its sole expense.



### **3.4 ENROLLMENT**

**3.4.1 Participating Consumers** - All Participating Consumers as of the Effective Date will continue to be enrolled in the Program under the terms of this ESA unless they opt-out. Within one (1) day after the Effective Date, the City shall provide to Competitive Supplier a list of Participating Consumers as of the Effective Date, as well as such Participating Consumers' service and billing addresses, and any other information necessary for Competitive Supplier to commence All-Requirements Power Supply to such Participating Consumers as of the Service Commencement Date.

**3.4.2 New Consumers** - If New Consumers elect not to opt-out of the Program as provided in Article 3.2, such New Consumers will be automatically enrolled by Competitive Supplier in the Program. Competitive Supplier shall enroll such New Consumers in accordance with applicable Local Distributor rules.

**3.4.3 Eligible Consumers Opting Out** - At any time during this ESA, Eligible Consumers who have previously opted out of the Program may request that they be re-enrolled in the Program. Competitive Supplier may provide All-Requirements Power Supply to such Eligible Consumers at Competitive Supplier's discretion, at the aggregation rate. Besides accurately and promptly transmitting information provided by such Eligible Consumers to the Local Distributor and following any procedural or other steps which may be mutually agreed to, the Competitive Supplier shall be responsible for enrolling all Eligible Customers through EDI transactions submitted to the Local Distributor for initial enrollment in the aggregation and all enrollments thereafter.

**3.4.4 Consumers Served by Third-Parties** - Consumers being served under other competitive supply programs offered by third-parties will not be automatically enrolled as Participating Consumers under this ESA when such program terminates or is otherwise completed. Competitive Supplier agrees that consumers under such third-party competitive supply programs may affirmatively opt-in and receive All-Requirements Power Supply at the Competitive Supplier's discretion, at the aggregation rate at the time any such Eligible Consumer notifies Competitive Supplier of the decision to opt-in.

## **ARTICLE 4 TERM OF CONTRACT AND TERMINATION**

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### **4.1 TERM**

This ESA shall commence on the Effective Date, *provided, however*, that Competitive Supplier's obligation to provide All-Requirements Power Supply shall commence on the Service Commencement Date, and shall terminate with the Participating Consumers' first meter read dates for the month of November 2020, unless terminated earlier under Article 4.2 below ("Term").

### **4.2 TERMINATION**

This ESA may be terminated at any time upon written notice:

- a) by the City, or the Competitive Supplier, if either Party fails to remedy or cure any breach of any material provision or condition of this ESA (including, but not limited to, Article 2.5 and Article 9, but excluding the failure to provide or arrange for All-Requirements Power Supply, which is addressed in Article 4.2(c)), within sixty (60) days following written notice to do so by the non-breaching party; or
- b) by the City, or the Competitive Supplier, if any material provision or condition of this ESA be finally adjudged invalid by any court of competent jurisdiction and such decision invalidates this ESA in whole or in significant part, or if the Department exercises any lawful jurisdiction so as to invalidate or disapprove this ESA in whole or in significant part; or
- c) by the City in the event of the failure of the Competitive Supplier to provide or arrange for All-Requirements Power Supply to Participating Consumers, in the absence of *Force Majeure* or the City's failure to perform and without the benefit of any cure period; *provided, however*, that the City shall not be permitted to terminate this ESA if the Competitive Supplier's failure to provide or arrange All-Requirements Power Supply is a direct result of actions or non-actions by any transmission service provider, the Local Distributor, or the ISO-NE.

### **4.3 OBLIGATIONS UPON TERMINATION**

Following termination of this ESA, the Parties shall each discharge by performance all obligations due to any other Party that arose up to the date of termination of the ESA. Upon the effective date of termination of the ESA, all rights and privileges granted to, and obligations imposed on, the Competitive Supplier shall cease, with the exception of the right to collect all monies due for services rendered to that date.

The Competitive Supplier specifically waives all rights it may have at law to claim that the City has no standing or otherwise lacks the authority to seek monetary damages on behalf of individual Participating Consumers in the event of a termination of this ESA.

### **4.4 SPECIFIC PERFORMANCE**

Notwithstanding any other provision herein, the Parties agree that if the City (i) fails to comply with any material provision of, or obligation under, this ESA, including but not limited to the provisions of Article 6, (ii) seeks to modify, suspend or terminate the Program during the Term, or (iii) seeks to terminate this ESA except as expressly authorized in Article 4.2, Competitive Supplier shall be entitled to specific performance of this ESA. The Parties acknowledge and agree that because monetary damages are not available to Competitive Supplier under this ESA, there is no remedy at law adequate to compensate Competitive Supplier for the City's actions as described in (i), (ii) and/or (iii), and further agree that Competitive Supplier will suffer irreparable harm if the City takes any of the actions described in (i), (ii) or (iii) herein.

### **4.5 EXTENSION**

The ESA may be extended beyond the termination date established in Article 4.1 by mutual, written agreement of the Parties. Any new pricing terms shall be added to and replace Exhibit A

as Exhibit A-1. Upon any such extension, this ESA shall continue to be in effect, and all provisions of the ESA shall retain the same force and effect as before the extension, unless it is terminated by either Party pursuant to the provisions of Article 4.2 or until the date stated in such extension.

## **ARTICLE 5 CONTINUING COVENANTS**

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The Competitive Supplier agrees and covenants to perform each of the following obligations during the term of this ESA.

### **5.1 STANDARDS OF MANAGEMENT AND OPERATIONS**

In performing its obligations hereunder, during the term of this ESA, the Competitive Supplier shall exercise reasonable care to assure that its facilities are prudently and efficiently managed; that it employs an adequate number of competently trained and experienced personnel to carry out its responsibilities; that it delivers or arranges to deliver a safe and reliable supply of such amounts of electricity to the Point of Delivery as are required under this ESA; that it complies with all relevant industry standards and practices for the supply of electricity to Participating Consumers; and that, at all times with respect to Participating Consumers, it exercises good practice for a Competitive Supplier and employs Commercially Reasonable skills, systems and methods available to it.

### **5.2 CUSTOMER SERVICE ACCESS**

The Competitive Supplier agrees to provide, or cause to be provided, certain customer services to Participating Consumers. Such services shall be reasonably accessible to all Participating Consumers, shall be available during normal working hours, shall allow Participating Consumers to transact business they may have with the Competitive Supplier, and shall serve as a communications liaison among the Competitive Supplier, the City, and the Local Distributor. A toll-free telephone number will be established by Competitive Supplier and be available for Participating Consumers to contact Competitive Supplier during normal business hours (9:00 A.M. - 5:00 P.M. Eastern Standard Time, Monday through Friday) to resolve concerns, answer questions and transact business with respect to the service received from Competitive Supplier. The City will post program-related information on the City's website which will be available to Participating Consumers for general information, product and service information, and other purposes.

### **5.3 RESPONDING TO REQUESTS FOR INFORMATION**

To the extent authorized by the Participating Consumer(s) and to the extent such individual permission is required by law, the Competitive Supplier shall, during normal business hours (as set forth above), respond promptly and without charge therefore to reasonable requests of the City for information or explanation regarding the matters covered by this ESA and the supply of electricity to Participating Consumers. Competitive Supplier agrees to designate a service representative or representatives (the "Service Contacts") who shall be available for these purposes, and shall identify the office address and telephone number of such representative(s). Whenever necessary to comply with this Article 5.3, the Service Contacts shall call upon other employees or agents of the Competitive Supplier to obtain such information or explanation as may

be reasonably requested. Nothing in this Article 5.3 shall be interpreted as limiting the obligation of the Competitive Supplier to respond to complaints or inquiries from Participating Consumers, or to comply with any regulation of the Department or AG regarding customer service.

#### **5.4 ARRANGING FOR FIRM ALL-REQUIREMENTS POWER SUPPLY**

Competitive Supplier shall participate in or make appropriate arrangements with the ISO-NE, any relevant regional transmission organization, wholesale suppliers or any other entity to ensure an uninterrupted flow of reliable, safe, firm, All-Requirements Power Supply to the Local Distributor for delivery to Participating Consumers, and take Commercially Reasonable steps to cooperate with the NEPOOL, the ISO-NE or any other entity to ensure a source of back-up power in the event that the facilities owned or controlled by Competitive Supplier's affiliates or other sources of power supply are unable to generate and/or deliver All-Requirements Power Supply to the Point of Delivery. In the event the Competitive Supplier is unable to deliver sufficient electricity to the grid to serve Participating Consumers, the Competitive Supplier shall utilize such arrangements as may be necessary to continue to serve Participating Consumers under the terms of this ESA, and shall bear any costs it may incur in carrying out these obligations. Competitive Supplier shall not be responsible to the City or any Participating Consumers in the event the Local Distributor disconnects, curtails or reduces service to Participating Consumers (notwithstanding whether such disconnection is directed by the ISO-NE) in order to facilitate construction, installation, maintenance, repair, replacement or inspection of any of the Local Distributor's facilities, to maintain the safety and reliability of the Local Distributor's electrical system, or due to any other reason, including emergencies, forced outages, potential overloading of the Local Distributor's transmission and/or distribution circuits, *Force Majeure* or the non-payment of any distribution service costs or other such costs due for services provided by the Local Distributor to a Participating Consumer.

#### **5.5 NON-DISCRIMINATORY PROVISION OF SERVICE**

Competitive Supplier shall supply electric energy to the Point of Delivery to all Participating Consumers on a non-discriminatory basis; provided, however, that those prices and other terms may vary in accordance with reasonably established rate classifications (e.g., residential, commercial, municipal, industrial) or by such other categories as appear in Exhibit A. To the extent applicable, Competitive Supplier's prices, terms and conditions shall be in accordance with the Massachusetts General Laws, the regulations of the Department, and other applicable provision of law. To the extent required by law and/or the conditions of any Department approval of this ESA, the Competitive Supplier may not deny service to an Eligible Consumer for failure to pay the bills of any other electric company (whether engaged in the distribution, transmission, or generation of electricity) or of any other aggregator, marketer or broker of electricity, but may reasonably deny or condition new service, or terminate existing service, based upon any Participating Consumer's failure to pay bills from the Competitive Supplier, subject to any provisions of law. Provision of electric energy supply shall be subject to Competitive Supplier's standard credit policies, to the extent permitted by law, as described in Exhibit A.

## **5.6 APPROVAL OF GENERAL COMMUNICATIONS**

Competitive Supplier shall cooperate with the City in the drafting and sending of messages and information to Eligible Consumers concerning the Program or any matter arising under or related to this ESA. Prior to sending any direct mail, advertising, solicitation, bill insert, electronic mail, or other similar written or electronic communication (collectively, "General Communications") to Participating Consumers (but excluding individually drafted or tailored communications responding to the specific complaint or circumstance of an individual consumer), Competitive Supplier shall provide a copy of such General Communication to the City for its review to determine whether it is consistent with the purposes and goals of the City. The City shall have the right to disapprove such General Communications and suggest revisions if it finds the communication inconsistent with the purposes and goals of the City, factually inaccurate or likely to mislead; provided, however: (i) that the communication shall be deemed approved if the City fails to respond within seven (7) business days; and (ii) that no approval shall be necessary for any communication (a) regarding any emergency situation involving any risk to the public health, safety or welfare; (b) which has been approved by or is required by the Department, the DOER, or any other Governmental Authority; or (c) in the nature of routine monthly or periodic bills, or collection notices, except that any bill insert or message included at the bottom of such bill not within the scope of (a) or (b) above shall require approval. If the City objects to any General Communication on the grounds it is inconsistent with the purposes and goals of the City, the Competitive Supplier, after consultation as provided in this Article 5.6, may nevertheless elect to send such General Communication provided that it: (i) clearly indicates on such mailing that it has not been endorsed by the City, (ii) has previously provided all Participating Consumers a meaningful chance to opt not to receive such General Communications, (iii) has stated in connection with such chance to opt not to receive such communications that "the City wants to protect Eligible Consumers from receiving marketing materials if you do not wish to do so," and (iv) has otherwise sought input from the City as to the means by which Eligible Consumers are given a chance to remove their names from any list which may receive General Communications. The City may reject or exclude any proposed General Communication that, in its reasonable judgment, is contrary to the interests and objectives of the Program or the City.

## **5.7 COMMUNICATION OF INSERTS AND MESSAGES**

Competitive Supplier agrees that if it communicates with Participating Consumers directly, and unless prevented for regulatory or other such reasons from doing so, it shall allow the City to include no less than three (3) inserts per year into such communications, provided that the City pays the cost of printing and reproducing such insert and any incremental postage or handling costs the Competitive Supplier may incur as a result of including such insert. Competitive Supplier shall have the right to disapprove such General Communications (that is communications other than those pertaining to the City's demand-side management, energy efficiency programs and technology, and renewable energy programs, if applicable) and suggest revisions if it finds the communication inconsistent with its business interests, factually inaccurate or likely to mislead; provided, however: (i) that the communication shall be deemed approved if the Competitive Supplier fails to respond within seven (7) business days after receipt; and (ii) that no approval shall be necessary for any communication which has been ordered by the Department, the DOER, or any other Governmental Authority to be so communicated.

## **5.8 PARTICIPATING CONSUMER LISTS**

To the extent not prohibited by any Governmental Rule or expressly by any Participating Consumer(s), the Competitive Supplier shall, upon request of the City, provide a list of the Participating Consumers being served by the Competitive Supplier, including such reasonable identifying and aggregate consumption information as the City may also request to the extent such information is available to Competitive Supplier. Competitive Supplier shall provide such Participating Consumer lists in an electronic format reasonably acceptable to both Parties and with no more frequency than once a month.

## **5.9 COMPLIANCE WITH LAWS**

The Parties shall promptly and fully comply with all existing and future Governmental Rules of all Governmental Authorities having jurisdiction over the activities covered by this ESA.

## **5.10 CONSENT**

Whenever performance of an obligation of any Party hereto requires the consent or approval of any Governmental Authority, such Party shall make Commercially Reasonable efforts to obtain such consent or approval. In the event the Competitive Supplier requests the City's assistance in obtaining such consent or approval and the City anticipates that it will incur costs in fulfilling the Competitive Supplier's request, it shall give the Competitive Supplier an estimate of such costs. Upon receiving the estimate, Competitive Supplier shall determine whether it will continue to request the City's assistance, and if so, the Competitive Supplier shall reimburse the City for all costs, up to the estimated dollar amount, reasonably incurred by the City in connection with such efforts.

## **ARTICLE 6 ROLE OF THE CITY**

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Under this ESA, the City shall not actually receive, take title to, or be liable for the supply or delivery of All-Requirements Power Supply in any manner whatsoever. The Parties specifically agree that the role of the City is to i) set the terms and conditions under which All-Requirements Power Supply will be provided by the Competitive Supplier under this ESA and to ensure that the Competitive Supplier complies with those terms and conditions, and ii) act as agent for Eligible Consumers with respect to the matters addressed in this ESA. It is the sole obligation of the Competitive Supplier to arrange for delivery of All-Requirements Power Supply to Participating Consumers. The Parties agree that City is not a "distribution company", "electric company", "generation company" or "transmission company" within the meaning of M.G.L. c. 164, § 1 as a result of this ESA, unless a court, the Department, or other lawful authority shall adjudicate to the contrary; provided, however, that the City may be considered to be operating a municipal load aggregation plan pursuant to M.G.L. c. 164, § 134. The Competitive Supplier hereby agrees that it will take no action that would make the City liable to any Participating Consumer due to any act or failure to act on the part of the Competitive Supplier relating to the delivery or supply of All-Requirements Power Supply.

## **ARTICLE 7 PRICES AND SERVICES; BILLING**

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### **7.1 SCHEDULE OF PRICES AND TERMS**

Competitive Supplier agrees to provide All-Requirements Power Supply and other related services as expressly set forth herein in accordance with the prices and terms included in Exhibit A to this ESA, which Exhibit is hereby incorporated by reference into this ESA.

### **7.2 OBLIGATION TO SERVE**

As between the Parties, Competitive Supplier has the sole obligation to obtain sources of supply, whether from generating facilities owned or controlled by its affiliates, through bilateral transactions, or the market, as may be necessary to provide All-Requirements Power Supply for all of the Participating Consumers under the Program. Competitive Supplier, except as explicitly limited by the terms included in Exhibit A, shall be obligated to accept all Participating Consumers, regardless of their location or energy needs, subject to Competitive Supplier's standard credit policies (to the extent permitted by law), Article 5.5 hereof, Exhibit A hereof and the terms of any approval or other order of the Department with respect to this ESA.

### **7.3 METERING**

In accordance with the Local Distributor's Terms and Conditions for Competitive Suppliers Sections 3B(6) and 7A, the Local Distributor will be responsible for any metering which may be required to bill Participating Consumers.

### **7.4 TERMS AND CONDITIONS PERTAINING TO INDIVIDUAL ACCOUNT SERVICE**

#### **7.4.1 Title**

Title to All-Requirements Power Supply will transfer from Competitive Supplier to Participating Consumers at the Point of Sale. In accordance with the Local Distributor's Terms and Conditions for Municipal Aggregators (M.D.P.U. No. 1202) and Terms and Conditions for Competitive Suppliers (M.D.P.U. No. 1201), the Competitive Supplier will be responsible for any and all losses incurred on the local network transmission systems and distribution systems, as determined by the Local Distributor.

#### **7.4.2 Billing and Payment**

Unless otherwise specified in an Exhibit to this ESA, all billing under this ESA shall be based on the meter readings of each Participating Consumer's meter(s) performed by the Local Distributor. Competitive Supplier shall, or shall cause the Local Distributor or any other entity, to prepare and mail bills to Participating Consumers monthly. If the Competitive Supplier arranges for the Local Distributor to perform billing services, the Competitive Supplier shall adopt the billing and payment terms offered by the Local Distributor to its Eligible Consumers on Basic Service unless the Competitive Supplier and Local Distributor otherwise agree. Any over-charge or under-charge

resulting from the use of estimated meter consumption data will be accounted for in the next billing period for which actual meter data is available.

### **7.4.3 Regional and Local Transmission**

The prices quoted in Exhibit A do not include current and future charges for distribution service costs collected by the Local Distributor under its distribution service tariff or local transmission costs as may be imposed by the regional power pool, ISO-NE, or individual electric utilities that have FERC transmission tariffs. Its Competitive Supplier understands that these costs will be collected by the Local Distributor. If, in the future, Competitive Supplier becomes responsible for such distribution or transmission costs, Competitive Supplier shall be entitled to collect such costs from Participating Consumers to the extent permitted by any Governmental Rules. These costs are “pass through” costs as determined by the appropriate regulatory agencies.

### **7.4.4 Taxes**

All sales, gross receipts, excise or similar taxes imposed with respect to the sale or consumption of All-Requirements Power Supply shall be included on the Participating Consumer’s bill and shall be remitted to the appropriate taxing authority by Competitive Supplier. Participating Consumers shall be responsible for all taxes (except for taxes on Competitive Supplier’s income) associated with sales under the ESA. Participating Consumers shall be responsible for identifying and requesting any exemption from the collection of any tax by providing appropriate documentation to Competitive Supplier and Competitive Supplier shall not be required to recognize any exemption until such time as the Participating Consumer provides all documentation required for the tax exemption to be valid. In the event that Competitive Supplier collects taxes from a Participating Consumer who is tax exempt and Competitive Supplier has paid those taxes to the appropriate taxing authority, Competitive Supplier will have no obligation to refund such taxes to the Participating Consumer but shall assign any right to collect such over payment of taxes to the Participating Consumer who shall be solely responsible for obtaining a refund from the appropriate taxing authority.

## **ARTICLE 8 DEVELOPMENT OR OFFERING OF RENEWABLE ENERGY SOURCES**

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Competitive Supplier agrees that it will comply with the applicable provisions of M.G.L. c. 25A, § 11F, § 11 F1/2, and any regulations, orders or policies adopted pursuant thereto.

## **ARTICLE 9 SERVICE PROTECTIONS FOR RESIDENTIAL CONSUMERS**

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Competitive Supplier agrees that it shall comply with the provisions of 220 C.M.R. 25.00, 27.00, 28.00 and 29.00, as applicable to Competitive Suppliers, and any amendments thereto, and any code of conduct or policies the Department may adopt in accordance with M.G.L. c. 164, § 1F(7). The Competitive Supplier shall, on or before November 2017, provide a written description of its billing and termination procedures, customer services, confidentiality and related practices and procedures for review by the City. Such written description shall also include the Competitive



Supplier's plans for complying with the "affirmative choice" requirements of § 1F(8); and for handling consumer complaints, including any arbitration procedures. If the Participating Consumer(s) so permit(s) to the extent such permission is required by law or the terms of any Department order with respect to this ESA, the Competitive Supplier agrees to provide notice to the City of any consumer complaints received from a Participating Consumer, and to grant the City the right to participate in resolution of the dispute, to the extent that such complaints relate directly to the Program, and to the extent permitted by Department regulations and other applicable law. The failure to timely submit such written description, or the submission of practices and procedures which materially fail to comply with Department regulations and policies, shall be deemed grounds for termination of this ESA, at the discretion of the City after providing written notice of such failure to the Competitive Supplier and allowing the Competitive Supplier sixty (60) days to cure such failure.

In addition, and in accordance with M.G.L. c. 164, § 1F(2) and 220 CMR 11.05(2)(b)19, in the event of a dispute regarding an invoice or Competitive Supplier's service under this ESA, a Participating Consumer may contact the Department, which may refer the dispute to the Massachusetts Office for Dispute Resolution for mediation of such dispute, if the amount in dispute is greater than one hundred dollars (\$100.00) and the subject of the dispute is within the Department's statutory and regulatory authority.

## **ARTICLE 10 NON-DISCRIMINATION IN HIRING AND EMPLOYMENT**

Competitive Supplier agrees to conduct its operations and activities under this ESA in accordance with all applicable state and federal laws regarding non-discrimination in hiring and employment of employees.

## **ARTICLE 11 POWER SUPPLY INFORMATION AND ACCESS TO INFORMATION**

### **11.1 POWER SUPPLY INFORMATION**

#### **11.1.1 Monthly/Quarterly Report of Usage**

**Monthly Report of Usage** – Competitive Supplier shall provide the City or its agent with a monthly report of usage, to the extent Competitive Supplier has received such information from the Local Distributor, which will contain:

- a. City Name
- b. Account Number
- c. Rate Code
- d. Rate Code Classification (per Local Distributor's Basic Service Filing)
- e. Load Zone
- f. Bill Date
- g. Contracted Unit Rate
- h. Bill Usage

The monthly report will be due to the City or its agent within five (5) business days following the close of each month. The information shall be listed in the report as shown on Exhibit B - Worksheet A and Rate Code Classification shall be mapped as shown on Exhibit B - Worksheet B, attached hereto. This information shall be provided in electronic format.

**Quarterly Report of Usage** – Competitive Supplier shall provide the City or its agent with a quarterly report of usage which will contain: (i) actual kWh usage for all meter reads of the reporting period and (ii) number of Participating Consumer accounts active in all meter reads of the reporting period. The kWh usage and number of Participating Consumer accounts shall be listed in the report by Load Zone and then by Rate Code Classification.

The quarterly report will be due to the City or its agent within forty-five (45) days following the close of each calendar quarter (March 31, June 30, September 30 and December 31). This information shall be provided in electronic format.

### **11.1.2 Consumer-Related Data**

On and after the Service Commencement Date, Competitive Supplier will maintain consumer-related data in electronic form including utility account number, service address historical usage, demand, and ICAP data. Competitive Supplier will make such data available to the City or its agent upon a Commercially Reasonable request by the City or its agent.

### **11.1.3 Standard of Care**

Competitive Supplier shall use Commercially Reasonable practice in preparing and providing any information or data required under the ESA. To the extent that Competitive Supplier determines that any information or data provided hereunder is in error, it shall provide such information or data to the City or its agent within a Commercially Reasonable time.

## **11.2 DISCLOSURE LABEL**

Within fifteen (15) days of the end of the quarter, Competitive Supplier shall present a copy of the current “Disclosure Label” required by the Department of all Competitive Suppliers to be disclosed to their Participating Consumers which includes information pertaining to Competitive Supplier’s power supply and a reasonably detailed description of the sources of Competitive Supplier’s power supply used to serve Participating Consumers pursuant to this ESA, except to the extent such disclosure would violate any confidentiality obligations of Competitive Supplier.

## **11.3 BOOKS AND RECORDS**

Competitive Supplier shall keep its books and records in accordance with any applicable regulations or guidelines of the Department, the FERC, and any other Governmental Authority. The City will have access to any reports mandated by the Securities and Exchange Commission which are available on the Internet “EDGAR” system. Upon a Commercially Reasonable request by the City and at the City’s expense, Competitive Supplier shall provide back-up for any charge under this ESA questioned by the City.

## **11.4 COPIES OF REGULATORY REPORTS AND FILINGS**

Upon reasonable request, Competitive Supplier shall provide to the City a copy of each public periodic or incident-related report or record relating to this ESA which it files with any Massachusetts or federal agency regulating rates, service, compliance with environmental laws, or compliance with affirmative action and equal opportunity requirements, unless the Competitive Supplier is required by law or regulation to keep such reports confidential. The City shall treat any reports and/or filings received from Competitive Supplier as confidential information subject to the terms of Article 16. Competitive Supplier shall be reimbursed its reasonable costs of providing such copies.

## **ARTICLE 12 RESOLUTION OF DISPUTES; CHOICE OF LAW**

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### **12.1 CHOICE OF LAW**

This ESA and the rights of the Parties shall be interpreted and determined in accordance with the laws of the Commonwealth of Massachusetts, without respect to conflicts of law principles.

### **12.2 DISPUTE RESOLUTION**

Unless otherwise provided for in this ESA, the dispute resolution procedures of this Article 12.2 shall be the exclusive mechanism to resolve disputes arising under this ESA. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this ESA. Any dispute that arises under or with respect to this ESA that cannot be resolved shall in the first instance be the subject of informal negotiations between the Parties involved in the dispute. The dispute shall be considered to have arisen when one Party sends the other Party(ies) involved in the dispute a written notice of dispute, sent via certified mail, return receipt requested, via Fed-Ex or other overnight delivery service with proof of receipt. The period for informal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless such time is modified by written agreement of the Parties involved in the dispute. In the event that the parties involved in the dispute cannot resolve a dispute by informal negotiations, either Party may and the Parties agree to submit the dispute to mediation. Within fourteen (14) days following the expiration of the time period for informal negotiations, the Parties shall propose and agree upon a neutral and otherwise qualified mediator. In the event that the Parties fail to agree upon a mediator, the Parties shall request that the American Arbitration Association (AAA), Boston, Massachusetts, appoint a mediator and the mediation will be held in Boston, Massachusetts or other mutually agreed to venue. The period for mediation shall commence upon the appointment of the mediator and shall not exceed sixty (60) days, unless such time period is modified by written agreement of the Parties. The decision to continue mediation shall be in the sole discretion of each party involved in the dispute. The Parties will bear their own costs of the mediation. The mediator's fees shall be shared equally by all parties involved in the dispute.

In the event that the Parties cannot resolve a dispute by informal negotiations or mediation, the Parties agree to submit such dispute to arbitration and agree that the arbitration process provided for in this Article 12.2 shall be the exclusive means for resolving disputes which the Parties cannot otherwise resolve through informal negotiation or mediation as described above. Any arbitration

hereunder shall be conducted under the Commercial Rules of the AAA as modified herein. Arbitration proceedings shall take place in Boston, Massachusetts, before a single arbitrator who shall be an attorney with at least 20 years of experience in the energy industry, to be jointly selected by the Parties. If the Parties fail to agree upon an arbitrator within thirty (30) days, then either Party may apply to the American Arbitration Association's office in Washington, D. C. to select the arbitrator who must be an attorney at least twenty (20) years of experience in the energy industry. Unless otherwise agreed by the Parties, the dispute must be submitted to the arbitrator for determination within ninety (90) days from the date the arbitrator is selected and the arbitrator shall render his or her decision within thirty (30) days after such submission. Each Party shall use its best efforts and cooperation in order that the dispute is fully submitted to the arbitrator within such ninety (90) day period. All arbitration proceedings shall be confidential. Neither Party shall disclose any information about the evidence produced by the other Party in the arbitration proceedings, except as may be lawfully demanded by government authority or otherwise required by law or the rules of a national securities exchange. Before making any disclosure permitted by the preceding sentence, a Party shall give the other Party reasonable advance written notice of the intended disclosure and an opportunity to prevent disclosure. In connection with any arbitration provisions hereunder, each Party shall have the right to take the depositions of individuals including any expert witness retained by the other Party. Additional discovery may be had where the arbitrator so orders, upon a showing of need. Each Party bears the burden of persuasion of any claim or counterclaim raised by that Party. The arbitration provisions of this ESA shall not prevent any Party from obtaining injunctive or other equitable relief from a court of competent jurisdiction to enforce the obligations for which such Party may obtain provisional relief pending a decision on the merits by the arbitrator. Each of the Parties hereby consents to the jurisdiction of Massachusetts courts for such purpose. The arbitrator shall apply Massachusetts law as required under Article 12.1 and shall have authority to award any remedy or relief that a court of the State of Massachusetts could grant in accordance with applicable law and the terms of this ESA, except that the arbitrator shall have no authority to award special, exemplary or punitive damages. All attorney's fees and costs of the arbitration shall be borne by the Party incurring such costs or fees except that upon application by the Prevailing Party, the arbitrator may award the Prevailing Party its attorney's fees and expenses to be paid by the other Party. Prevailing Party shall be defined for purpose of this Article 12.2 as the party to which the arbitrator issues an award of monetary damages or otherwise determines substantially prevailed on the merits in the arbitration. Any arbitration award shall be accompanied by a written statement containing a summary of the issues in controversy, a description of the award, and an explanation of the reasons for the award. The arbitrator's award shall be final, binding and non-appealable and judgment may be entered upon such award by any court of competent jurisdiction.

## **ARTICLE 13 INDEMNIFICATION**

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### **13.1 INDEMNIFICATION BY THE COMPETITIVE SUPPLIER**

To the extent permitted by law, a Party ("Indemnifying Party") shall indemnify, defend and hold harmless the other Party ("Indemnified Party") and the Indemnified Party's officers, employees, agents, representatives and independent contractors, from and against any and all costs, claims, liabilities, damages, expenses (including reasonable attorneys' fees), causes of action, suits or judgments, incurred by, on behalf of or involving any one of the foregoing parties to the extent

arising directly from or in connection with (i) any material breach by the Indemnifying Party of its obligations, covenants, representations or warranties contained in this ESA and not resulting from the actions of the Local Distributor, the Indemnified Party or the Indemnified Party's employees or agents, or (ii) the Indemnifying Party's actions or omissions taken or made in connection with the Indemnifying Party's performance of this ESA that were not Commercially Reasonable. The Indemnifying Party further agrees, if requested by the Indemnified Party, to investigate, handle, respond to, and defend any such claim, demand, or suit at its own expense arising under this Article 13.1.

### **13.2 NOTICE OF INDEMNIFICATION CLAIMS**

If the Indemnified Party seeks indemnification pursuant to this Article 13.2, it shall notify Indemnifying Party of the existence of a claim, or potential claim as soon as practicable after learning of such claim, or potential claim, describing with reasonable particularity the circumstances giving rise to such claim. Upon written acknowledgment by the Indemnifying Party that it will assume the defense and indemnification of such claim, the Indemnifying Party may assert any defenses which are or would otherwise be available to the Indemnified Party.

### **13.3 SURVIVAL**

Notwithstanding any provision contained herein, the provisions of this Article 13.3 shall survive the termination of this ESA for a period of three (3) years with respect to (i) any claims which occurred or arose prior to such termination and (ii) any losses occurring as a result of the termination.

### **13.4 DUTY TO MITIGATE**

All Parties agree that they have a duty to mitigate damages and covenant that they will use Commercially Reasonable efforts to minimize any damages they may incur as a result of any other Party's performance or non-performance of this ESA.

## **ARTICLE 14 REPRESENTATIONS AND WARRANTIES**

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### **14.1 BY THE COMPETITIVE SUPPLIER**

As a material inducement to entering into this ESA, the Competitive Supplier hereby represents and warrants to the City as of the Effective Date of this ESA as follows:

- 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 for it to perform its obligations under this ESA;
- b) it has all authorizations from any Governmental Authority necessary for it to legally perform its obligations under this ESA or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due;
- c) the execution, delivery and performance of this ESA are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions

- in its governing documents or any contract to which it is a party or any Governmental Rule applicable to it;
- d) subject to the conditions set forth in Article 2.4, this ESA constitutes a legal, valid and binding obligation of the Competitive Supplier enforceable against it in accordance with its terms, and the Competitive Supplier has all rights such that it can and will perform its obligations to the City in conformance with the terms and conditions of this ESA, subject to bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally and general principles of equity;
  - e) no Bankruptcy is pending against it or to its knowledge threatened against it;
  - f) none of the documents or other written information furnished by or on behalf of Competitive Supplier to the City pursuant to this ESA, contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading; and
  - g) all information furnished by Competitive Supplier in response to the Request for Proposals for competitive electric supply services is true and accurate to the best of Competitive Supplier's knowledge at the time the statement was made.

## **14.2 BY THE CITY**

As a material inducement to entering into this ESA, the City hereby represents and warrants to Competitive Supplier as of the effective date of this ESA as follows:

- a) this ESA constitutes the legal, valid and binding obligation of the City enforceable in accordance with its terms;
- b) the execution, delivery and performance of this ESA are within the City's powers, have been or will be duly authorized by all necessary action;
- c) the City has all authorizations from any Governmental Authority necessary for it to legally perform its obligations under this ESA or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due;
- d) all Participating Consumers are bound as principals to this ESA;
- e) no Bankruptcy is pending or threatened against the City;
- f) none of the documents or other written information furnished by or on behalf of City to the Competitive Supplier pursuant to this ESA and any solicitation process which led to the consummation of this ESA, contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading; and
- g) all information furnished by the City pursuant to this ESA is true and accurate to the best of the City's knowledge at the time the statement was made.

## **ARTICLE 15 INSURANCE AND OTHER FINANCIAL GUARANTEES**

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### **15.1 INSURANCE**

In order to help support the indemnifications provided in Article 13, and its other promises and covenants stated herein, Competitive Supplier shall secure and maintain, at its own expense, throughout the term of this ESA, comprehensive commercial general liability insurance of at least \$1,000,000 combined single limit and excess liability coverage of at least \$3,000,000 with insurers and with the City named as additional insured. Competitive Supplier shall provide the City with evidence, reasonably satisfactory to the City, of its required insurance hereunder, upon request.

## **15.2 ADDITIONAL FINANCIAL GUARANTEES**

Upon written request from the City, the Competitive Supplier shall, within twenty (20) business days after the Effective Date, provide the City with a guaranty issued by Competitive Supplier's Guarantor substantially in the form attached hereto as Exhibit X (the "Guaranty") and in the amount of [N/A] US dollars (the "Guaranty Amount"). Such Guaranty shall guarantee the obligations of Competitive Supplier to the City contained in this ESA, and shall establish the limit on Competitive Supplier's liability under this ESA. Such Guaranty shall become issued within twenty (20) business days after the Effective Date but shall be in effect as of the Effective Date, and shall continue in effect during the entire Term of ESA. On a quarterly basis, Competitive Supplier may, but is not required, to reduce the Guaranty Amount by the product of: (a) the ratio determined by dividing the total number of months remaining in the ESA by the total number of months in the initial term of the ESA times (b) the Guaranty Amount.

Competitive Supplier may, without the consent of the City, replace the Guaranty hereunder with cash or a letter of credit substantially in the form attached hereto as Exhibit Y ("Letter of Credit"), provided such replacement financial security is in the same amount as the Guaranty in effect at the time of such substitution. Competitive Supplier may also replace the financial security provided hereunder with another form of financial security, with the consent of the City, such consent not to be unreasonably withheld.

Upon reasonable request during the Term of this ESA and on a continuing basis, Competitive Supplier will provide the City with a copy of Competitive Supplier's annual report, and the annual report of its ultimate parent, Crius Energy, LLC. Competitive Supplier also agrees to notify the City in the event that Competitive Supplier's Guarantor's Credit Rating, if it has one, is less than BBB- by Standard & Poor's Rating Group or less than Baa3 by Moody's ("Downgrade Event"). Should a Downgrade Event occur, the City may request that Competitive Supplier provide cash or a Letter of Credit as a substitute form of security equal to the Guaranty Amount. Upon receipt of such notice, Competitive Supplier shall have ten (10) business days in which to provide such cash or Letter of Credit to the City.

## **ARTICLE 16 CONFIDENTIALITY**

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Competitive Supplier acknowledges that the City is subject to public records laws, including without limitation, M.G.L. c. 4, § 7, cl. 26 and M.G.L. c. 66, § 10. To the extent not prohibited by such laws, each Party shall keep confidential, and shall not disseminate to any third party (other than such Party's affiliates) or use for any other purpose (except with written authorization, such authorization not to be unreasonably withheld), any information received from the other that is confidential or proprietary in nature unless legally compelled by deposition, inquiry, request for

production of documents, subpoena, civil investigative demand or similar process, or by order of a court or tribunal of competent jurisdiction, or in order to comply with applicable rules or requirements of any stock exchange, government department or agency or other Governmental Authority, or by requirements of any securities law or regulation or other Governmental Rule, or as necessary to enforce the terms of this ESA. The Party receiving confidential or proprietary information shall have no obligation with respect to such information which: (i) is or becomes generally available to the public other than as a result of disclosure by the receiving Party; (ii) was in its possession prior to disclosure hereunder and which was not acquired directly or, to the Party's knowledge, indirectly from the disclosing Party; (iii) was received from a non-party to this ESA who to the receiving Party's knowledge, was not subject to a confidentiality agreement or fiduciary obligation regarding information; or (iv) was independently developed by the receiving Party without reference to the information.

Either Party may disclose the terms of this ESA to its affiliates, and to its and officers, directors, employees, attorneys, accountants and third party vendors as reasonably necessary to accommodate Competitive Supplier's provision of All-Requirements Power Supply or other performance pursuant to this ESA, and otherwise to entities that have executed a non-disclosure certificate or agreement in a form mutually acceptable to the Parties. This Article 16 shall survive the termination of this ESA for a period of two (2) years.

If either Party is compelled to disclose any confidential information of the other Party, such Party shall request that such disclosure be protected and maintained in confidence to the extent reasonable under the circumstances and use Commercially Reasonable efforts to protect or limit disclosure with respect to commercially sensitive terms. In addition, notwithstanding the public records laws referenced above, such Party shall provide the other Party with prompt notice of the requirement to disclose confidential information in order to enable the other Party to seek an appropriate protective order or other remedy, and such Party shall consult with the other Party with respect to the other Party taking steps to resolve the scope of any required disclosure. In the event the Competitive Supplier requests the City's assistance in protecting the confidentiality of information and the City anticipates that it will incur costs in fulfilling the Competitive Supplier's request, it shall give the Competitive Supplier an estimate of such costs within five (5) business days of a request from Competitive Supplier. Upon receiving the estimate, Competitive Supplier shall determine if it continues to request the City's assistance, and if so, the Competitive Supplier shall reimburse the City for all costs, up to the estimated amount, reasonably incurred by the City in connection with such efforts.

For the avoidance of doubt, the information related to this ESA that is considered confidential and proprietary in nature shall include the following:

- a) any account information related to the Participating Consumers including, without limitation, historic usage data, metering, and billing and payment information;
- b) any information regarding transactions entered into by Competitive Supplier and any third parties in connection with the provision of All-Requirements Power Supply;
- c) any list of Participating Consumers;
- d) any information disclosed by a Party during any settlement discussions;
- e) Competitive Supplier's insurance certificates;



- f) any financial security instrument(s) provided by Competitive Supplier;
- g) any non-public information provided by Competitive Supplier; and
- h) any information which either Party should reasonably understand to be confidential and proprietary by virtue of the sensitive nature of the information.

## **ARTICLE 17 REGULATORY EVENT/NEW TAXES**

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### **17.1 REGULATORY EVENT**

If a Regulatory Event occurs, the Parties shall use their best efforts to reform this ESA to give effect to the original intent of the Parties. If a Regulatory Event affects Competitive Supplier and Competitive Supplier incurs excess costs as a result thereof, such amount shall be allocated to and collected from Participating Consumers on a per kWh basis through applicable monthly invoice(s).

### **17.2 NEW TAXES**

If any New Taxes are imposed for which Competitive Supplier is responsible, the amount of such New Taxes shall be allocated to and collected from Participating Consumers through applicable monthly invoice(s).

## **ARTICLE 18 MISCELLANEOUS**

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### **18.1 NO ASSIGNMENT WITHOUT PERMISSION**

Competitive Supplier shall not assign its rights and privileges under this ESA without the prior written approval of the City, which approval may only be conditioned, if in the City's Commercially Reasonable judgement, the proposed assignee does not have at least the same financial ability as the assigning Competitive Supplier. Notwithstanding the foregoing, the City may not withhold its consent to an assignment to an affiliated entity under common control or management with Competitive Supplier or Competitive Supplier's corporate parent. Competitive Supplier's assignee shall agree in writing to be bound by the terms and conditions of this ESA. The City may assign this ESA without the prior consent of Competitive Supplier provided that the proposed assignee has at least the same financial ability as the City and such assignment would not in any way impair the rights and interests of Competitive Supplier under this ESA. The rights and obligations created by this ESA shall inure to the benefit of, and be binding upon, the successors and permitted assigns of, the respective Parties hereto. Any assignment in violation of this provision is void.

### **18.2 DIRECT MARKETING**

Prior to the introduction of any new product or service which Competitive Supplier may wish to make available to Participating Consumers or other Eligible Consumers located within the City, Competitive Supplier agrees to (i) give the City written notice of its desire to include such new product or service and (ii) subject to the entry into reasonable confidentiality terms to the extent permitted by law and mutually acceptable to the Parties, discuss with the City the possible inclusion of such new product or service in this aggregation program. The Parties agree to negotiate

in good faith the terms, conditions, and prices for such products and services which the Parties agree should be included in a City aggregation program.

Competitive Supplier also agrees not to engage in any direct marketing to any Participating Consumer that relies upon Competitive Supplier's unique knowledge of, or access to, Participating Consumers gained as a result of this ESA. For the purposes of this provision, "direct marketing" shall include any telephone call, mailing, electronic mail, or other contact between the Competitive Supplier and the Consumer. Broad-based programs of the Competitive Supplier that do not rely on unique knowledge or access gained through this ESA will not constitute such "direct marketing."

### **18.3 NOTICES**

All notices, demands, requests, consents or other communications required or permitted to be given or made under this ESA shall be in writing and addressed to:

If to Competitive Supplier:

Public Power, LLC  
Attn: Legal Department  
535 Connecticut Ave., 6<sup>th</sup> Floor  
Norwalk, CT 06854

With a Copy To:

Public Power, LLC  
Attn: Channel Sales  
2620 Technology Forrest Blvd  
The Woodlands, TX 77381

If to City:

Mr. Mark Cappadona  
Colonial Power Group, Inc.  
277 Main Street  
Marlborough, Massachusetts 01752  
(508) 485-5858 (phone)  
(508) 485-5854 (fax)  
[mark@colonialpowergroup.com](mailto:mark@colonialpowergroup.com)

With a Copy To:

Mr. Richard J. Alcombright, Mayor  
City of North Adams  
10 Main Street  
North Adams, MA 01247  
(413) 662-3000

Notices hereunder shall be deemed properly served (i) by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in this ESA; (ii) if sent by mail, United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in this ESA on the date of receipt by the Party to whom the notice is addressed as evidenced by a signature accepting such notice; or (iii) if by Federal Express or other reputable express mail service, on the next business day after delivery to such express mail service, addressed to the intended recipient at its address set forth in this ESA. Any party may change its address and contact person for the purposes of this Article 18.3 by giving notice thereof in the manner required herein.

#### **18.4 CHANGES IN EMERGENCY AND SERVICE CONTACT PERSONS**

In the event that the name or telephone number of any emergency or service contact for the Competitive Supplier changes, Competitive Supplier shall give prompt notice to the City in the manner set forth in Article 18.3. In the event that the name or telephone number of any such contact person for the City changes, prompt notice shall be given to the Competitive Supplier in the manner set forth in Article 18.3.

#### **18.5 ENTIRE ESA; AMENDMENTS**

This ESA and the Related Documents constitute the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. This ESA may only be amended or modified by a written instrument signed by all Parties hereto.

#### **18.6 FORCE MAJEURE**

If by reason of *Force Majeure* any Party is unable to carry out, either in whole or in part, its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (i) the non-performing Party, within two (2) weeks after the occurrence of the *Force Majeure*, gives all other Parties hereto written notice describing the particulars of the occurrence; (ii) the suspension of performance be of no greater scope and of no longer duration than is required by the *Force Majeure*; (iii) no obligations of the Party which were to be performed prior to the occurrence causing the suspension of performance shall be excused as a result of the occurrence; and (iv) the non-performing Party shall use Commercially Reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations. If any event of *Force Majeure* continues for a period of ninety (90) days or longer, either Party may terminate this ESA by sending the other Party a written notice as set forth in Article 4.2; *provided, however*, that the same shall not constitute a default under this ESA and shall not give rise to any damages.

#### **18.7 EXPENSES**

Each Party hereto shall pay all expenses incurred by it in connection with its entering into this ESA, including without limitation, all of its attorneys' fees and expenses.

#### **18.8 NO JOINT VENTURE**

Competitive Supplier will perform all services under this ESA as an independent contractor. Nothing herein contained shall be deemed to constitute any Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of the City and the Competitive Supplier hereunder are individual and neither collective nor joint in nature.

## **18.9 JOINT WORK PRODUCT**

This ESA shall be considered the work product of all Parties hereto, and, therefore, no rule of strict construction shall be applied against either Party.

## **18.10 COUNTERPARTS**

This ESA may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single agreement.

## **18.11 THIRD PARTIES**

The parties acknowledge that the Price for energy as described in Exhibit A includes a commission fee equal to \$0.001 (1 mil) per kWh of Participating Consumers' actual usage payable to CPG, the consultant hired by the City to develop, implement, and administer the Program, as set forth in Exhibit A. The Competitive Supplier agrees to include this commission fee in the Price for energy and to make the monthly commission payments on behalf of Participating Consumers, and acknowledges this obligation as a material obligation of this ESA; provided however, that (i) this ESA remains in full force and effect, and (ii) the commission fee shall be paid fifteen (15) business days following the end of each month, based on prior month meter readings of each Participating Consumer's meter(s) performed by the Local Distributor and payments received for Participating Consumers' billed usage. This provision shall be binding upon the Parties and all permitted assigns and other successors-in-interest of the Parties. Except as provided in this provision, there shall be no other third-party beneficiaries to this ESA.

## **18.12 WAIVER**

No waiver by any Party hereto of any one or more defaults by any other Party in the performance of any provision of this ESA shall operate or be construed as a waiver of any future default, whether of like or different character. No failure on the part of any Party hereto to complain of any action or non-action on the part of any other Party, no matter how long the same may continue, shall be deemed to be a waiver of any right hereunder by the Party(ies) so failing. A waiver of any of the provisions of this ESA shall only be effective if made in writing and signed by the Party who is making such waiver.

## **18.13 CO-OPERATION**

Each Party acknowledges that this ESA must be approved by the Department and agree that they shall use Commercially Reasonable efforts to cooperate in seeking to secure such approval.

## **18.14 PLAN**

Competitive Supplier agrees that it has been provided with and had a reasonable opportunity to read the Plan. The Parties agree that the Plan, in the forms as it exists on the Effective Date of this ESA, is incorporated into this ESA by reference, and that it shall be construed harmoniously to the greatest practicable extent; notwithstanding the foregoing, in the event of any conflict between this

ESA and the Plan, this ESA shall govern. The City will provide Competitive Supplier with amendments to the Plan as they are adopted; provided, however, that such amendments are not incorporated into this ESA as a result of such adoption. Any amendments hereto must be made in accordance with Article 18.5 of this ESA.

#### **18.15 ADVERTISING LIMITATIONS AND OWNERSHIP OF MARKS**

Competitive Supplier agrees not to use the name of the City, or make any reference to the City in any advertising or other information to be distributed publicly for marketing or educational purposes, unless the City expressly agrees to such usage. Any proposed use of the name of the City must be submitted in writing for agreement and prior approval, which shall not be unreasonably withheld, consistent with Article 5.6 hereof. The City acknowledges that the Competitive Supplier's corporate affiliates own the exclusive right to the trademarked logo and trade name used by Competitive Supplier. No right, license or interest in this trademark and/or trade name is granted to the City hereunder, and the City agrees that it shall not assert any right, license or interest with respect to such trademark and/or trade name.

#### **18.16 PRESS RELEASES**

The Parties shall not issue a press release or make any public statement with respect to this ESA without the prior written agreement of the other Party with respect to the form, substance and timing thereof, except either Party may make any such press release or public statement when the releasing Party is advised by its legal counsel that such a press release or public statement is required by law, regulation or stock exchange rules, provided however, in such event, the Parties shall use their reasonably good faith efforts to agree as to the form, substance and timing of such release or statement.

#### **18.17 HEADINGS AND CAPTIONS**

The headings and captions appearing in this ESA are intended for reference only, and are not to be considered in construing this ESA.

#### **18.18 SURVIVAL OF OBLIGATION**

Termination of this ESA for any reason shall not relieve the City or the Competitive Supplier of any obligation accrued or accruing prior to such termination.

#### **18.19 REMEDIES**

##### **18.19.1 General**


Subject to the limitations set forth in Article 18.19.2 below and Article 4, the City and the Competitive Supplier reserve and shall have all rights and remedies available to each of them at law or in equity with respect to the performance or non-performance of the other Party hereto under this ESA.

### **18.19.2 Limitations**

NO PARTY HERETO SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT. Notwithstanding the foregoing, the Parties acknowledge that the preceding sentence shall not limit the either Party's rights under Article 13.1 to seek indemnification.


IN WITNESS WHEREOF, the Parties hereto have executed this ESA as of the Effective Date

**COMPETITIVE SUPPLIER**

By:   
Name: Rob Cantrell  
Title: EVP  
Address: Woodlands, TX  
Dated: 8-31-17

LEGAL APPROVED  
DATE: 9-4-17  
INITIALS: (R)

**CITY**

By:   
Name: Richard J. Alcombright  
Title: Mayor  
Address: City of North Adams  
10 Main Street  
North Adams, MA 01247  
Dated: 8/8/17

**EXHIBIT A**

**PRICES AND TERMS**

**North Adams' Community Choice Power Supply Program**

Price by Rate Classification

<b>Rate Class</b>	<b>Price for Period 1 (November 2017 – November 2020) \$/kWh</b>
<b>Residential</b>	\$0.10708
<b>Commercial/Streetlight</b>	\$0.10708
<b>Industrial</b>	\$0.10708

**Terms for System Supply Service**

**Delivery Term:** as set forth in this Exhibit A, extending through the end of the Term as set forth in Article 4.1.

**Period 1 Pricing:** applies to service commencing with the Participating Consumers' first meter read dates for the month of November 2017 (billed in arrears, therefore the December 2017 billing statements) and terminating with the Participating Consumers' first meter read dates for the month of November 2020 (final bill, therefore the November 2020 billing statements).

The price for All-Requirements Power Supply shall be as stated on this Exhibit A for the applicable Pricing Periods, and shall be fixed for the entire length of each Pricing Period. Prices must include all adders and ancillary charges as well as the fee(s) described in Section 18.11 of the ESA. However, the Competitive Supplier may offer price reductions to Participating Consumers at any time during the term of this ESA.

**Start-Up Service Date:** All-Requirements Power Supply will commence at the prices stated above as of the Participating Consumers' first meter read dates for the month of November 2017.

**Renewable Energy in System Supply:** The Competitive Supplier shall include Renewable Energy in the All-Requirements Power Supply mix in an amount equal to Massachusetts' Renewable Portfolio Standards and Alternative Energy Portfolio Standards starting with the year in which load is served on the Start-Up Service Date or pay all penalties imposed by the Department related to Renewable Energy requirements. The price stated above also includes the purchase of National Wind RECs for a total amount equal to 100% Renewable Energy. The Competitive Supplier shall identify the technology, vintage, and location of the renewable generators that are the sources of the Renewable Energy Certificates (RECs). All such RECs will be created and recorded in the New England Power Pool Generation Information System or be certified by a third party such as Green-e. **[100% National Wind RECs]**



**Term:** The period of delivery of All-Requirements Power Supply shall be consistent with the provisions of Article 4 and Exhibit A of this ESA.

**Eligible Consumer Opt-Out:** Participating Consumers are free to opt-out of the Program utilizing established EDI drop protocols. Participating Consumers are to provide five (5) days' notice to the Competitive Supplier of such termination. There are no fees or charges for Participating Consumers to opt-out or terminate service.

**Competitive Supplier's Standard Credit Policy:** The Competitive Supplier will not require a credit review for any consumer participating in the Program, nor does Competitive Supplier require any consumer to post any security deposit as a condition for participation in the Program. The Competitive Supplier may terminate service to a Participating Consumer and return such consumer to Basic Service in the event that the consumer fails to pay to Competitive Supplier amounts past-due greater than sixty (60) days.

**EXHIBIT B**  
**MONTHLY REPORTING TEMPLATE**



.Supplier Monthly  
Reporting Template.