

Electric Service Agreement

Exhibit 1 to accompany the Memorandum of Understanding
on Community Choice Aggregation
between local government members of Sustainable Westchester
and Sustainable Westchester

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RECITALS

WHEREAS, Sustainable Westchester, Inc. sought approval of a demonstration community choice energy aggregation (“Community Choice”) program in Westchester County in 2014, which would allow local governments to participate in a Sustainable Westchester program to procure energy supply from an Energy Services Company for the residents of the municipalities;

WHEREAS, on February 26, 2015, the Public Service Commission of the State of New York approved implementation of the first Community Choice pilot program in New York State;

WHEREAS, the PSC subsequently issued the order 'Authorizing Framework for Community Choice Aggregation Opt-out Program' on April 21, 2016' (the “CCA Order”) enabling Community Choice throughout New York State;

WHEREAS, the Westchester ~~pilot~~ Community Choice Aggregation program (also known as Westchester Power) is intended to include residential and small non-residential customers, and to permit the aggregation of electric purchases by the communities which elect to participate;

WHEREAS, the City/Town/Village of _____ (“Municipality”) has adopted a Local Law to participate in the Sustainable Westchester Community Choice Program (“Program”) to aggregate consumers located within the Municipality and to negotiate competitive rates for the supply of electricity for such consumers;

WHEREAS, the program allows Municipality to solicit competitive bids for the supply of electricity individually or as part of a buying group with other municipal aggregators;

WHEREAS, Sustainable Westchester, Inc. has been authorized by the Municipality to act as Program Manager for a Community Choice Program, pursuant to Local Law and Memorandum of Understanding, issue a request for proposals to suppliers to provide energy to Participating Customers, and to award supply contracts;

WHEREAS, the Program executed the first electric service contracts in 2016 (the “2016 ESA”) with 14 municipalities in the Westchester Con Ed utility territory, adding one more in February of 2018, and these contracts expire on December 31, 2018;

WHEREAS, [Supplier], a ~~ConEdison Solutions~~ _____n entity duly authorized to conduct business in the State of New York as an energy service company (ESCO) (“Competitive Supplier”), desires to provide Full- Requirements Power Supply to consumers located within the Municipality, pursuant to the terms and conditions of the Municipality's Program and this Electric Service Agreement (“ESA”);

WHEREAS, the Municipality desires that the Competitive Supplier provide Firm Full- Requirements Power Supply and Consolidated Billing as an alternative to Default Service for consumers within the Municipality;

WHEREAS, Competitive Supplier ~~has submitted offers~~ is willing to provide two distinct electric supply products and two corresponding pricing levels, (1) a ~~Default-Standard~~ Product and price, and (2) a 100% Renewable Clean Power Product and price as set out in Exhibit A herein;

WHEREAS, Municipality has chosen the Standard Product / Clean Power Product (select one) as the Default Product for its residents and small businesses;

WHEREAS, Competitive Supplier agrees to pay a fee to Program Manager;

WHEREAS, Municipality prefers for Competitive Supplier to collect and remit the fees due the Program Manager;

WHEREAS, the local governments that participate in the Sustainable Westchester Community Choice Program, including this Municipality, intend that this Agreement be uniform in form and substance in each instance throughout the Program; and

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

Commented [DW1]: See also clarifications of definitions of Standard and Default products

ELECTRIC SERVICE AGREEMENT

ARTICLE 1 DEFINITIONS

Capitalized 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 that 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.

1.0 Associated Entities – Any and all of the employees, officers, agents, representatives, and independent contractors and subcontractors of the Competitive Supplier or of any of its corporate parents or subsidiaries, which provide goods or services to, or in any way assist, the Competitive Supplier in meeting its obligations under the ESA, but specifically excluding the Distribution Utility.

1.1 Bankruptcy - With respect to a Party, (i) such Party 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.

1.2 CCA Orders – Collectively, the February 26, 2015 “Order Granting Petition in Part” issued by PSC in Case 14-M-0564, “Petition of Sustainable Westchester for Expedited Approval for the Implementation of a Pilot Community Choice Aggregation Program within the County of Westchester” and, the “Authorizing Framework for Community Choice Aggregation Opt-out Program” issued on April 21, 2016 (the “CCA Order”) on CCA setting forth the requirements, terms, and conditions under which CCA programs can proceed through implementation.

~~1.32~~ Clean Power Product – 100% ~~r~~Renewable power supply product ~~offered to Participating Customers on an opt-in basis, generated by hydropower, solar energy or wind energy, as defined in, and subject to the environmental attributes and delivery rules of the Public Service Commission’s Environmental Disclosure Program.~~

Commented [DW2]: Revised to recognize that we will be complying with the March 2018 order which so defines. In other words, NY Renewable Energy Certificates (RECs)

1.43 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, as defined in the Uniform Business Practices or without limitation in additional applicable law and regulations, provided that in no event shall increased costs or economic hardship be an excuse for not performing a Party’s obligations under this ESA.

1.54 Community Choice – Municipal electricity procurement program, purchasing supply for the aggregated demand for all Eligible Customers within the Municipality.

1.65 Competitive Supplier or Energy Services Company (ESCO)– An entity duly authorized to conduct business in the State of New York as an ESCO.

1.76 Consolidated Billing - A billing option that provides Participating Customers with a single bill issued by the Distribution Utility combining delivery and supply charges from the Distribution Utility and Competitive Supplier respectively.

~~1.8~~ Default Product – the product selected by the Municipality for supply to its eligible residents and small businesses upon enrollment, unless they take action to select a different product or opt out.

~~1.87~~ Default Product – Traditional generation mix, meeting the minimum Renewable Portfolio Standards for electric power established by New York State.

Commented [DW3]: Redefined as Standard Product to avoid confusion with the default selected by the municipality

1.98 Default Service – Supply service provided by the Distribution Utility to customers who are not currently receiving service from a Competitive Supplier. Residential and small commercial consumers within the Municipality that receive Default Service, and have not opted out, will be enrolled in the Program as of the Effective Date.

1.109 Delivery Term - The period for which prices for Firm Full-Requirements Power Supply have been established, as set forth in Exhibit A.

1.110 Distribution Utility - Owner or controller of the means of distribution of the natural gas or electricity that is regulated by the Public Service Commission in the Participating Municipality.

1.124 Electronic Data Interchange (EDI) - The exchange of business data in a standardized format between business computer systems.

1.132 Effective Date - The day immediately following final day of the rescission period, which immediately follows the opt-out period, which occurs after notifications to Eligible Consumers, which occurs after this ESA has been executed by the Parties (to be determined by the later date, if the Parties execute on different dates).

1.143 Eligible Consumers – Residential and small commercial consumers of electricity who receive Default Service from the Distribution Utility as of the Effective Date, or have been served by the program under the 2016 ESA and have not opted-out, or “New Consumers” that subsequently become eligible to participate in the Program, at one or more locations within the geographic boundaries of the Municipality, except those consumers who receive Default Service and have requested not to have their account information shared by the Distribution Utility. 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 Municipality, as such boundaries exist on the Effective Date of this ESA.

Commented [A4]: The initial load for this new contract will include current customers, plus the accounts from the new municipalities. The original language only anticipates customers in utility service.

1.154 ESA - This Electric Service Agreement.

1.165 Environmental Disclosure Label – Competitive Supplier agrees to comply with any current and/or future rules and regulations related to Environmental Disclosure Labels in the State of New York.

~~1.16 February Order – February 26, 2015 “Order Granting Petition in Part” issued by PSC in Case 14 M 0564, “Petition of Sustainable Westchester for Expedited Approval for the Implementation of a Pilot Community Choice Aggregation Program within the County of Westchester.”~~

Commented [DW5]: See “PSC Orders”

1.17 Federal Energy Regulatory Commission (FERC)-The United States federal agency with jurisdiction over interstate electricity sales, wholesale electric rates, hydroelectric licensing, natural gas pricing, and oil pipeline rates.

1.18 Firm Full-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 at a fixed contract price including all those components regardless of changes in kWh usage or customer grouping during the contract term to Participating Consumers at the Point of Sale.

1.19 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 Municipality may not be asserted as an event of Force Majeure by the Municipality; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil or industrial 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 any Party shall not constitute an event of Force Majeure.

1.20 General Communications - The type of communications described and defined in Article 5.7 herein.

1.21 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 Municipality.

1.22 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.

1.23 kWh, kW - Kilowatt-hour and kilowatt, respectively.

1.24 Local Law – A local law or ordinance, adopted by Municipality according to General Municipal Law, which authorizes Municipality to join the Sustainable Westchester Community Choice pilot program.

1.25 Memorandum of Understanding – Binding agreement between Municipality and Program Manager authorizing Sustainable Westchester to administer the Program.

1.26 New Consumers – Residential and small consumers of electricity that become Eligible Consumers after the Effective Date, including those that opt in or move into Municipality and those who complete or terminate other 3rd party supply contracts and have returned to Default Service, provided these consumers have not previously opted out of the Program.

Commented [U6]: See 3.44 change and comment

1.27 New Taxes - Any taxes not in effect as of the Effective Date enacted by a Governmental Authority or the Municipality, to be effective after the Effective Date with respect to Firm Full-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.

1.28 NYISO - The New York Independent System Operator, or such successor or other entity which oversees the integrated dispatch of power plants in New York and the bulk transmission of electricity throughout the New York power grid.

1.29 Participating Consumers - Eligible Consumers enrolled in the Program, either because they are consumers who receive Default Service from the Distribution Utility as of the Effective Date and have not opted out, or have been served by the Program under the 2016 ESA and have not opted out. or are New Consumers.

1.30 Parties - The Municipality, the Program Manager, and the Competitive Supplier, as the context requires. In the singular, "Party" shall refer to any one of the preceding.

1.31 Point of Delivery - The boundary of the Distribution Utility's electricity franchise, or the point at which the Competitive Supplier delivers the power to the Distribution Utility.

1.32 Point of Sale - The electric meter for each Participating Consumer's account, as designated by the Distribution Utility, such that all line loss costs are included in Competitive Supplier price to bring power to the meter.

1.33 Program - Sustainable Westchester Community Choice Aggregation Program.

1.34 Program Manager – Sustainable Westchester, Inc., a not-for-profit organization comprised of multiple municipalities in Westchester County of which the Municipality is a member, authorized by PSC to put out for bid the total amount of electricity being purchased by Participating Consumers. Program Manager is responsible for Program organization, administration, procurement, and communications, unless otherwise specified.

1.35 PSC or DPS - The New York State Public Service Commission or the New York State Department of Public Service acting as Staff on behalf of the PSC, or any successor state agency.

1.36 Qualifying Regulatory Event-- Implementation of a new, or changes to an existing, Governmental Rule by a Governmental Authority, including without limitation the Distribution Utility's tariffs, market rules, operating protocols and definitions, which 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 or interpretation. To meet the threshold of being a Qualifying Regulatory Event, the impact of the event must impact the majority of customers in the same rate class and must not be unique to Competitive Supplier's customers.

1.37 Regulatory Event-- Implementation of a new, or changes to an existing, Governmental Rule by a Governmental Authority, including without limitation the Distribution Utility's tariffs, market rules, operating protocols and definitions, which 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 or interpretation.

1.38 Retail Price - As set forth in Exhibit A.

1.39 Service Commencement Date - The date of the Participating Consumers' first meter read date after the Effective Date, or as soon as necessary arrangements can be made with the Distribution Utility thereafter.

1.40 Standard Product – Traditional generation mix, meeting the minimum Renewable Portfolio Standards for electric power established by New York State.

Commented [DW7]: Some confusion in the original between the terms "Default Product" and "Standard Product. Modifying to Default=Selected by Muni as default product, and Standard= regular grid supply with no RECs.

1.41~~0~~ Term - As defined in Article 4.1.

1.42~~1~~ Uniform Business Practices – Regulations governing the business practices of utilities and Energy Services Companies with regards to service, billing, marketing, data, and customer rights, issued by the New York State Public Service Commission (Case 98-M-1343).

ARTICLE 2 RIGHTS GRANTED

2.1 GENERAL DESCRIPTION AND LIMITATIONS

Competitive Supplier is hereby granted the exclusive right to be the default provider of Firm Full-Requirements Power Supply to Participating Consumers pursuant to the terms of this ESA. For the avoidance of doubt, Competitive Supplier shall be authorized to supply Firm Full-Requirements Power Supply only to Participating Consumers enrolled in the plan or plans managed by the Program Manager, and the Distribution Utility 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, Default Service, until changes in law, regulation or policy may allow otherwise.

In accordance with Article 3 below, all Eligible Consumers shall be automatically enrolled in the Program unless they choose to opt-out or have previously opted out of the Program. In the event the geographic boundaries of the Municipality change during the term of this ESA, Competitive Supplier shall only be obligated to supply Firm Full-Requirements Service to those Participating Consumers located within the Municipality 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 Distribution Utility, and any arrangements which may be necessary with the NYISO so that Participating Consumers receive the electricity supplies to be delivered pursuant to this ESA.

The Municipality shall specifically authorize the Distribution Utility 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 Distribution Utility.

The Distribution Utility Fees for the provision of this data shall be paid for by the Supplier.

Competitive Supplier shall request consumption data for individual Participating Consumers from the Distribution Utility via EDI. If further action is required by the Distribution Utility to authorize Competitive Supplier to receive such consumption and billing data, the Program Manager, on behalf of the Municipality 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 PSC, where necessary as a prerequisite to the provision of such information. Competitive Supplier shall not be responsible for any errors that Competitive Supplier or any of its Associated Entities makes in the provision of Firm Full-Requirements Power Supply only to the extent both that: 1) such errors are caused by errors or omissions in the information provided to it by the Distribution Utility; and 2) it was reasonable for the Competitive Supplier to rely upon that provided

Commented [A8]: This is what happens now, but it doesn't seem to be anywhere in the contract that I see.

information. The Municipality shall not be responsible for any such errors by the Competitive Supplier in any event.

2.2 NO THIRD PARTY BENEFICIARIES

Except as specifically provided in Section 18.11, this ESA does not and is not intended to confer any rights or remedies upon any person other than the Parties. This ESA facilitates rights under the ~~February Order~~ PSC Orders and Local Law for Eligible Consumers to purchase electricity from the Competitive Supplier in accordance with this ESA. The Municipality, or Program Manager in support of the Municipality, has the right, but not the obligation, to advocate on behalf of the Eligible Consumers interested in contracting for electric supply and on behalf of all Participating Consumers, unless otherwise prevented by law.

2.3 COMPLIANCE WITH LAWS

The Municipality represents that the Local Law has been duly adopted.

Competitive Supplier specifically represents that it has exercised due diligence to review and has fully complied with all relevant regulations, requirements, and orders of the FERC, NYISO, and PSC.

2.4 CONDITIONS PRECEDENT

The Municipality's obligations under this ESA shall be conditioned upon the Competitive Supplier fulfilling the following requirements:

- a) maintain Competitive Supplier's license from PSC (as such term is defined in the Local Distribution Utility's Terms and Conditions for Competitive Suppliers);
- b) execute any appropriate NYISO applications and agreements;
- c) obtain authorization from the FERC to sell power at market-based rates;
- d) complete EDI testing with Distribution Utility;
- e) provide all other documentation required by the Distribution Utility; and
- f) satisfying all insurance requirements set forth in Article 16 or elsewhere in this ESA.

If Competitive Supplier has not fulfilled all such requirements by the Service Commencement Date, then the Municipality may terminate this ESA without any liability from Municipality to the Competitive Supplier.

2.5 OWNERSHIP AND USE OF ELIGIBLE CONSUMER DATA

Competitive Supplier acknowledges that: 1) all Eligible Consumer data (including addresses, telephone numbers or other identifying information) made available to Competitive Supplier as an agent of Municipality for such data must be protected by the Competitive Supplier and its Associated Entities to the fullest extent possible under the law; 2) the Competitive Supplier does not hold any permanent right, title or interest in this data; and 3) this data is to be obtained, retained and used by the Competitive Supplier and its Associated Entities solely to provide Firm

Full-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 other than for purposes directly related to this ESA is not permitted without the prior written consent of the Municipality ~~is strictly prohibited. Pursuant to such authorized use,~~ Competitive Supplier may share such Eligible Consumer data with third-party vendors as reasonably necessary to accommodate Competitive Supplier's provision of Firm Full-Requirements Power Supply or other performance pursuant to this ESA (including, without limitation, collection of receivables or enhancement of data exchange between the Parties), provided that Competitive Supplier will take reasonable measures to secure the confidential nature of such data and the restrictions set forth in this Article 2.5 and elsewhere in this ESA, and that any vendor or subcontractor is also bound by the terms and conditions of this ESA, especially those regarding data confidentiality and prohibition on non-permitted uses of data through a signed non-disclosure agreement, a copy of which will be provided to the Municipality. Except as expressly provided in this ESA, and as otherwise permitted by law, Competitive Supplier and its Associated Entities shall not disclose any Eligible Consumer data to any third-party and Competitive Supplier and its Associated Entities shall take all Commercially Reasonable measures to protect Eligible Consumer data from access by, or beneficial use for, any third-party. To the extent that the provision of Firm Full-Requirements Power Supply or other services under this ESA requires that Competitive Supplier and its Associated Entities have access to or make use of any Eligible Consumer data, Competitive Supplier and its Associated Entities 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.

Commented [DW9]: Revisions in this 2.5 were made to clarify that our data services company (Ampion) can receive the data for the purposes of supporting our activity under this ESA. The original language already allowed in my view, but our Suppliers attorneys asked that we go out and get signoff from every town back when we initiated this upgrade to our data management program. This new language was used with our last new entrant, Croton.

ARTICLE 3 CONSUMER CHOICE, NOTIFICATION OF RIGHTS, ENROLLMENT

3.1 CONSUMER CHOICE

The Parties acknowledge and agree that all Participating Consumers have the right, pursuant to ~~PSC Orders~~ February Order, Local Law, 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 interfere with the right of Participating Consumers to opt-out of the Program, and shall comply with any rules, regulations or policies of PSC, the Distribution Utility and/or other lawful Governmental Authority regarding the procedures for opting out or of switching from one source of electric supply to another. Not inconsistent with the above, 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 Distribution Utility 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 Firm Full-Requirements Power Supply to such New Consumer as of the same date, subject to the opt-out provisions of the ~~PSC Orders~~February Order, Local Law, 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 and shall: (i) prominently state all charges to be assessed by the Competitive Supplier; (ii) at a minimum, 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 Default Service by the Distribution Utility; (iii) state how such New Consumer may opt-out of the Program prior to enrollment and remain on Default Service from the Distribution Utility; and (iv) state how all Participating Consumers, subsequent to enrollment, will also have the right to opt-out at any time and return to Default 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 Municipality.

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 Distribution Utility for the purpose of performing its obligations. Competitive Supplier will not be responsible for any errors in connection with notification of Eligible Consumers only to the extent both that: 1) such errors are caused by errors or omissions in the information provided to it by the Distribution Utility; and 2) it was reasonable for the Competitive Supplier to rely upon that provided information. The Municipality shall not be responsible for any such errors by the Competitive Supplier in any event.

3.3 CONSUMER AWARENESS

Upon mutual agreement concerning the content and method, either the Competitive Supplier, Municipality, or Program Manager may conduct consumer awareness efforts at its sole expense.

3.4 ENROLLMENT

3.4.1 Participating Consumers –All Eligible Consumers as of the Effective Date will be enrolled in the Program, thus becoming Participating Consumers, under the terms of this ESA unless they opt-out during the ~~320~~-day period specified in the ~~Local Law~~PSC Orders. Participating Consumers may disenroll from the Program at any time thereafter with no fee or penalty. The Municipality shall authorize the Distribution Utility to provide to Competitive Supplier or to an alternative designee of the Program Manager who has agreed in writing to a non-disclosure agreement, a copy of which will be provided to the Municipality, a list of Participating Consumers as of the Effective Date, as well as such Participating Consumer's service and billing addresses, and any other information necessary for Competitive Supplier to commence Firm Full-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. These New Consumers electing not to opt out of the Program as provided in Article 3.2 shall be enrolled in the Program at the rates reflected in Exhibit A that refer specifically to New

Consumers. Competitive Supplier shall enroll such New Consumers in accordance with applicable PSC and Distribution Utility 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 enrolled or re-enrolled in the Program. Competitive Supplier shall provide Firm Full-Requirements Power Supply to such Eligible Consumers at a price ~~determined by the then-prevailing market conditions~~, as defined in Exhibit A. Following mutually agreed upon procedures, the Competitive Supplier is responsible for accurately and promptly transmitting information regarding Eligible Consumers, to the Distribution Utility. The Competitive Supplier shall be responsible for enrolling all Eligible Customers through EDI transactions submitted to the Distribution Utility for initial enrollment in the aggregation and all enrollments thereafter.

Commented [DW10]: Re-opt-ins happen, but not so frequently as to constitute a significant financial factor. Our supplier has never required that pricing be reviewed for these.

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 at any time and receive Firm Full-Requirements Power Supply, thereby becoming Participating Consumers. New Consumers who opt-in as provided in this Article 3.4.4 shall be enrolled in the Program at the rates reflected in Exhibit A that refer specifically to New Consumers.

Commented [DW11]: We can't know if a consumer has come off of another contract, and in fact these customers have been coming in with no apparent issue. However, our supplier always filters lists against the list of customers who have opted out of WP.

3.4.5 Termination Fees. There shall be no termination fees for any residential, small commercial, or municipal Participating Consumers to disenroll from the Program.

ARTICLE 4 TERM OF CONTRACT AND TERMINATION

4.1 TERM

This ESA shall commence on the Effective Date, provided, however, that Competitive Supplier's obligation to provide Firm Full-Requirements Power Supply shall commence on the Service Commencement Date, and shall terminate with the Participating Consumers' first meter read determined by the Parties and delineated in Exhibit A, unless terminated earlier under Article 4.2 below ("Term"). Term shall not exceed 36 months.

4.2 TERMINATION

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

- a) by the Municipality, or the Competitive Supplier, if the other 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 Firm Full-Requirements Power Supply, which is addressed in Article 4.2(d)), within sixty (60) days following written notice to do so by the non-breaching party; or
- b) by the Municipality, or the Competitive Supplier, if any material provision or condition of this ESA be finally adjudged invalid by any court of competent jurisdiction, or if PSC exercises

any lawful jurisdiction so as to invalidate or disapprove this ESA in whole or in significant part;
or

c) by the Municipality, if a Regulatory Event that is not a Qualifying Regulatory Event affects the Competitive Supplier and Competitive Supplier incurs costs and chooses to allocate and collect excess costs from Participating Consumers; or

d) by the Municipality, if a court, PSC or other lawful authority adjudicates contrary to Article 6;
or

e) by the Municipality, i) if an order is entered against the Competitive Supplier approving a petition for an arrangement, liquidation, dissolution or similar relief relating to Bankruptcy or insolvency and such order remains unvacated for thirty (30) days; or (ii) immediately if the Competitive Supplier shall file a voluntary petition in Bankruptcy or any petition or answer seeking any arrangement, liquidation or dissolution relating to Bankruptcy, insolvency or other relief for debtors or shall seek, consent to, or acquiesce in appointment of any trustee, receiver, or liquidation of any of Competitive Supplier's property; or

f) notwithstanding the foregoing, the failure of Competitive Supplier to provide or arrange for Firm Full-Requirements Power Supply to Participating Consumers, in the absence of Force Majeure or the Municipality's failure to perform, shall constitute an act of default, and the Municipality may terminate this ESA upon giving written notice and without a cure period. In the event the Competitive Supplier has performed its obligations hereunder and its failure to arrange for or provide Firm Full-Requirements Power Supply is a direct result of actions or non-actions by any transmission service provider, the Distribution Utility, or the NYISO, the Competitive Supplier's failure shall not be deemed to be an act of immediate default and would be subject to remedy or cure as provided in Article 4.2(a).

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 and Competitive Supplier shall continue to have the right to collect all monies due for services rendered to that date.

Upon termination, Competitive Supplier shall have all Participating Consumers switched back to obtaining supply from the Distribution Utility by submitting all consumer drops via EDI to the Distribution Utility in a form acceptable to the Distribution Utility.

4.4 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 Extension. 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 any Party pursuant to the provisions of Article 4.2 or until the date stated in such extension.

ARTICLE 5 CONTINUING COVENANTS

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 an uninterrupted 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 all Commercially Reasonable skills, systems and methods available.

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 Municipality, and the Distribution Utility. 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 Time, Monday through Friday) to resolve concerns, answer questions and transact business with respect to the service received from Competitive Supplier. To the extent practicable, the Municipality will post program-related information on the Municipality's website which will be available to Participating Consumers for general information, comparative pricing, 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 Municipality 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 PSC regarding customer service.

5.4 ARRANGING FOR FIRM FULL-REQUIREMENTS POWER SUPPLY

Competitive Supplier shall participate in or make appropriate arrangements with NYISO, any relevant regional transmission organization, wholesale suppliers or any other entity to ensure an uninterrupted flow of Firm Full-Requirements Power Supply to the Distribution Utility for delivery to Participating Consumers, and exercise all Commercially Reasonable efforts to cooperate with NYISO or any other entity to ensure a source of back-up power in the event that Competitive Supplier is unable to deliver Firm Full-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 and exercise all Commercially Reasonable efforts 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 efforts and obligations. Competitive Supplier shall not be responsible to the Municipality or any Participating Consumers in the event that, through no fault of the Competitive Supplier or its Associated Entities, the Distribution Utility disconnects, curtails or reduces service to Participating Consumers (notwithstanding whether such disconnection is directed by NYISO).

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 and small commercial) 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 New York General Laws, the regulations of PSC, and other applicable provision of law. To the extent required by law and/or the conditions of any PSC approval of this ESA, the Competitive Supplier may not deny service to an Eligible or Participating 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 or applicable PSC orders or regulations. Provision of electric energy supply shall be subject to Competitive Supplier's Standard Credit Policy, to the extent permitted by law, as described in Exhibit A.

In any event, should either Program Manager or Municipality actively achieve and document (e.g. to the satisfaction of the New York State Public Service Commission and the Utility) reduction in capacity tag buying obligations, Competitive Supplier will pay or distribute benefits from these tag reductions to Participating Consumers at the NYISO strip clearing price for the appropriate zone (i.e., H, upper Westchester or I, lower Westchester), in which the capacity tag reduction is certified by appropriate party. Program Manager agrees it does not intend to pursue any actions that would increase the capacity tag obligation to Competitive Supplier.

5.6 APPROVAL OF GENERAL COMMUNICATIONS

Competitive Supplier shall cooperate with the Municipality in the drafting and sending of messages and information to Eligible or Participating Consumers concerning the Program or any

matter arising under or related to this ESA. Competitive Supplier shall, prior to sending, whether directly or through its Associated Entities, any direct mail, advertising, solicitation, bill insert, electronic mail, or other similar written or electronic communication (collectively, "General Communications") to Eligible or Participating Consumers (but excluding individually drafted or tailored communications responding to the specific complaint or circumstance of an individual consumer), provide a copy of such General Communication to the Municipality and to Program Manager for its review to determine whether it is consistent with the purposes and goals of the Municipality and Program Manager. The Municipality or Program Manager 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 Municipality, factually inaccurate or likely to mislead; provided, however: (i) that the communication shall be deemed approved if the Municipality and Program Manager fails to respond within seven (7) calendar days (not including weekends and holidays); 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; or (b) 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) above shall require approval. If the Municipality objects to any General Communication on the grounds it is inconsistent with the purposes and goals of the Municipality, 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 communication that it has not been endorsed by the Municipality, and (ii) has previously provided all Participating Consumers a meaningful chance to opt not to receive such General Communications. The Municipality 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 Municipality, provided, however, any such right of rejection or exclusion shall not apply to Competitive Supplier's notice to exercise or enforce its rights under the ESA or Customer Agreement, including but not limited to any notice of Force Majeure or Change in Law.

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 Municipality or Program Manager to include no less than three (3) inserts per year into such communications, provided that the Program Manager or Municipality, where appropriate 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 Municipality'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) calendar days after receipt (not including weekends and holidays); and (ii) that no approval shall be necessary for any communication which has been ordered by PSC or any other Governmental Authority to be so communicated. Competitive Supplier shall notify Program Manager at least (four) 4 weeks before a direct communication to Participating Consumers is to be mailed. Program manager shall provide

Program General Communications insert file within ten (10) calendar days of receiving such notice.

Commented [DW12]: We have not taken advantage of this, and part of it is because we are not aware until too late.

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 Municipality or of Program Manager, provide aggregate consumption information as the Municipality or Program Manager may request to the extent such information is available to Competitive Supplier. Competitive Supplier shall provide Participating Consumer lists in an electronic format ~~reasonably acceptable to both Parties and with no more frequency than once a month~~, secure transfer mode, frequency and format as set out in Exhibit E, subject to non-disclosure agreement for customers who have not requested that their personal information be denied to Program Manager or to Municipality.

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 Municipality's assistance in obtaining such consent or approval and the Municipality 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 Municipality's assistance, and if so, the Competitive Supplier shall reimburse the Municipality for all costs, up to the estimated dollar amount, reasonably incurred by the Municipality in connection with such efforts.

ARTICLE 6 ROLE OF THE MUNICIPALITY

Under this ESA, the Municipality shall not actually receive, take title to, or be liable for the supply or delivery of Firm Full-Requirements Power Supply in any manner whatsoever. The Parties specifically agree that the role of the Municipality is established under PSC Orders~~February Order~~ and Local Law and may include negotiating the terms and conditions under which Firm Full-Requirements Power Supply will be provided by the Competitive Supplier under this ESA. It is the sole obligation of the Competitive Supplier to arrange for delivery of Firm Full-Requirements Power Supply to Participating Consumers. The Parties agree that, with regards to electricity, Municipality is not a "public utility company" or providing any "public utility service" within the meaning of GML 360 and Article 4 of Public Service Law as a result of this ESA. Should a court, PSC, or other lawful authority adjudicate to the contrary, the provisions of 4.2 a) shall apply. However, the Municipality may be considered to be operating a municipal load aggregation plan pursuant to PSC Orders~~February Order~~ and Local Law. The Competitive Supplier hereby agrees that it will take no action, whether directly or through its

Associated Entities, that would make the Municipality liable to any Participating Consumer due to any act or failure to act on the part of the Competitive Supplier or its Associated Entities relating to the delivery or supply of Firm Full-Requirements Power Supply.

Municipality shall conduct outreach to the community in addition to the initial program notification letter, **which will be delivered at the Competitive Supplier's expense, with a Business Reply Mail insert to allow Eligible Consumers to opt out without postage expense.** Municipality will report on their endeavors to Program Manager to inform residents on the Program and "non-demand charge" commercial businesses. In case of any doubt, Municipality shall retain final control of content related to all communications.

ARTICLE 7 ROLE OF PROGRAM MANAGER

7.1 PROGRAM MANAGER DUTIES

Sustainable Westchester Inc, as Program Manager, agrees to:

- a. Provide the involved agencies and parties, such as but not limited to the PSC or Distribution Utility, requested information about and documentation of the actions undertaken by the Municipality in furtherance of enabling participation in the Program;
- b. Prepare, or cause to be prepared, and provide the Municipality with requested and non-confidential information that the involved agencies and parties, such as but not limited to the PSC or Distribution Utility, provide to the Program Manager in furtherance of establishing the Program;
- c. Upon execution hereof, initiate all the necessary steps to secure the needed information to fulfill the customer notification requirements of the PSC Orders ~~February Order~~, including but not limited to the following:
 - "5. Sustainable Westchester, Inc., its municipal members, and any other municipal contractors receiving the personally identifiable information of utility customers shall agree to protect that information consistent with the discussion in the body of this Order, and shall submit their agreement to Department of Public Service Staff at the time the letter certifying authorization discussed in the body of this Order is submitted.
 6. Sustainable Westchester, Inc. will file any Requests for Proposals, or Requests for Information, and similar documents, as well as any contracts entered into for energy supply, at the time they are issued."
- d. Sign the ESA in a timely fashion including the conditions that the Competitive Supplier is deemed credit worthy for the duration of the ESA by an independent review of a qualified organization, such as an accounting firm, and the Competitive Supplier's response to the Energy Procurement Request for Proposals is deemed compliant with the terms and conditions set forth in the ESA by an independent review of a qualified organization, such as an energy consulting firm in good standing in the industry;
- e. Provide the Municipality with timely communications content to effect customer notification requirements for approval, not to be unreasonably withheld, given the projected schedule of Program's implementation; and
- f. Fulfill any other responsibilities as may reasonably adhere to facilitating the implementation of the Program, subject to the Program Manager's inherent and original role as an organization driven by the deliberated priorities of its constituent member municipalities; and

g. Fulfill any other responsibilities as set forth in this agreement herein.

7.2 PROGRAM MANAGER FEE

Competitive Supplier shall pay Program Manager \$0.001 for each kWh delivered, invoiced and paid for by Participating Consumers during the Term (“Program Manager Fee” or “Fee”). The Parties agree that Competitive Supplier will remit the Program Manager Fee to the Program Manager, pursuant to the terms of this ESA. Competitive Supplier shall pass through such payments to Sustainable Westchester, Inc. for the duration of this ESA. This provision shall be binding upon the Parties and all permitted assigns and other successors-in-interest of the Parties.

7.3 PAYMENT OF FEE

Payment to Program Manager will be made monthly by Automated Clearing House (“ACH”) (an electronic network for financial transactions) to the account set forth in Exhibit C hereto, provided that Competitive Supplier has received payment with respect to the electricity used by the Participating Consumers. The Program Manager Fee shall be paid by the last business day of the month based on revenue collected by Competitive Supplier with respect to each Participating Consumer during the calendar month two months prior. For example, full payments received in January will be paid by the end of March. If Competitive Supplier has paid a past Fee in error (or the payment was based on information subsequently determined invalid), it may deduct from or add to future payments due under this ESA and provide explanation of the error in sufficient detail.

Program Manager shall provide the Municipality with a reasonably detailed accounting not less than annually of the program impact, financial and other, including revenues received and expenses incurred on communication, administration and legal expenses.

7.4 INDEPENDENT CONTRACTOR

The Parties agree that Program Manager is not an agent or employee of Competitive Supplier for any purpose. All expenses which are incurred by Program Manager in connection with this ESA shall be borne wholly and completely by Program Manager. Program Manager shall be responsible for all state, federal, and local taxes, including estimated taxes and social security and employment reporting for Program Manager or any employees or agents of Program Manager.

ARTICLE 8 PRICES AND SERVICES; BILLING

8.1 SCHEDULE OF PRICES AND TERMS

Competitive Supplier agrees to provide Firm Full-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.

8.2 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 Firm Full-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 provided such Participating Consumers are eligible under the applicable regulations and tariffs of the Distribution Utility.

8.3 METERING

The Distribution Utility will be responsible for any metering which may be required to bill Participating Consumers in accordance with the Distribution Utility's Terms and Conditions for Competitive Suppliers.

8.4 TERMS AND CONDITIONS PERTAINING TO INDIVIDUAL ACCOUNT SERVICE

8.4.1 Title

Title to Firm Full-Requirements Power Supply will transfer from Competitive Supplier to Participating Consumers at the Point of Sale. In accordance with the Distribution Utility's Terms and Conditions for Competitive Suppliers, 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 Distribution Utility.

8.4.2 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 Distribution Utility. Competitive Supplier shall cause the Distribution Utility to prepare and mail bills to Participating Consumers monthly. The Competitive Supplier shall adopt the billing and payment terms offered by the Distribution Utility to its Eligible Consumers on Default Service. If actual meter data is unavailable, the Competitive Supplier may cause the Distribution Utility to bill based on its good faith estimates of usage. Any over-charge or under-charge will be accounted for in the next billing period for which actual meter data is available.

8.4.3 Regional and Local Transmission

The prices quoted in Exhibit A do not include current and future charges for distribution service costs collected by the Distribution Utility under its distribution service tariff or local transmission costs as may be imposed by NYISO or individual electric utilities that have FERC transmission tariffs. The Competitive Supplier understands that these costs will be collected by the Distribution Utility. 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.

8.4.4 Taxes

All sales, gross receipts, excise or similar taxes imposed with respect to the sale or consumption of Firm Full-Requirements Power Supply required to be collected by the Competitive Supplier shall be included on the Participating Consumer's bill and shall be remitted to the appropriate taxing authority by Competitive Supplier. For avoidance of doubt, it is understood that the Competitive Supplier shall include gross receipts tax in its preparation of Participating Consumers' bills. Participating Consumers shall be responsible for all taxes that are customarily imposed upon a purchaser of electricity and are associated with electricity consumption 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. For avoidance of doubt, Competitive Supplier shall be responsible for all taxes imposed upon it as a supplier of electricity, including taxes on Competitive Supplier's income.

ARTICLE 9 COMPLIANCE WITH THE ~~FEBRUARY ORDER~~ PSC ORDERS

Competitive Supplier agrees that it, and its Associated Entities directly or indirectly involved in providing services or meeting the Competitive Supplier's obligations under the ESA, will comply with the applicable provisions of the ~~PSC Orders~~ ~~February Order~~ and any regulations, orders or policies adopted pursuant thereto.

ARTICLE 10 SERVICE PROTECTIONS FOR RESIDENTIAL CONSUMERS

10.1 UNIFORM BUSINESS PRACTICES COMPLIANCE

Competitive Supplier agrees that it and its Associated Entities directly or indirectly involved in providing services or meeting the Competitive Supplier's obligations under the ESA shall comply with the provisions of the Uniform Business Practices, as applicable to Competitive Suppliers, and any amendments thereto, notwithstanding any relief from the Uniform Business Practices offered by the PSC to the Program. In addition, the Competitive Supplier and its Associated Entities agrees to comply with any code of conduct or policies the PSC may adopt in accordance with the ~~PSC Orders~~ ~~February Order~~ and to all related Orders of Cases ~~15020~~ 14-M-0564 and 14-M-0224 to which the Program Manager is required to adhere, notwithstanding any relief from the Uniform Business Practices offered by the PSC to the Program.

10.2 DESCRIPTION OF SUPPLIER'S PROCEDURES AND SERVICES

The Competitive Supplier shall, on or before the Effective Date, provide a written, detailed description of its billing and termination procedures, customer services, confidentiality and related practices and procedures for approval by the Municipality (which approval shall not be unreasonably withheld). Such written description shall also include the Competitive Supplier's plans for protecting the rights and protections of Participating Customers under the Home Energy Fair Practices Act which requires that all utility customers be treated fairly with regard to application for service, customer billing, and complaint procedures. If the Participating Consumer(s) so permit(s) or to the extent such permission is required by law or the terms of any

PSC order with respect to this ESA, the Competitive Supplier agrees to provide notice to the Municipality of any consumer complaints received from a Participating Consumer, and the Municipality shall have the right, but not the obligation, to participate in resolution of the dispute, to the extent that such complaints relate directly to the Program, and to the extent permitted by PSC 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 PSC regulations and policies, shall be deemed grounds for termination of this ESA, at the discretion of the Municipality after providing written notice of such failure to the Competitive Supplier and allowing the Competitive Supplier sixty (60) days to cure such failure.

10.3 DISPUTE RESOLUTION

In accordance with the Uniform Business Practices, in the event of a dispute regarding an invoice or Competitive Supplier's service, whether directly or through its Associated Entities, under this ESA, a Participating Consumer may initiate a formal dispute resolution process by providing written notice to the PSC. The PSC will assist the Parties in reaching a mutually acceptable resolution. If no such resolution is reached within 40 calendar days of receipt of the formal written notice, any Party may request an initial decision from PSC. Parties may appeal this decision.

ARTICLE 11 NON-DISCRIMINATION IN HIRING AND EMPLOYMENT

Competitive Supplier agrees that it shall 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, and will require all Associated Entities to do the same.

ARTICLE 12 POWER SUPPLY INFORMATION AND ACCESS TO INFORMATION

12.1 POWER SUPPLY INFORMATION

12.1.1 Quarterly Report of Sales

Competitive Supplier shall provide the Municipality or its agent with a quarterly report of sales which will contain: (i) the actual aggregate kWh sales for each meter read of the reporting period and (ii) the number of Participating Consumer accounts active in each meter read of the reporting period. The quarterly report will be due to the Municipality or its agent within sixty (60) days following the close of each quarter (March 31, June 30, September 30, and December 31). The aggregate kWh sales and number of Participating Consumer accounts shall be listed in the report both by rate code and rate name as shown on Exhibit B attached hereto. This information shall be provided in electronic format.

12.1.2 Consumer-Related Data

On and after the Service Commencement Date, Competitive Supplier will maintain consumer-related data in electronic form including utility account number, billing name, billing address, service address historical usage, demand, and ICAP (Installed Capacity) data. A violation of this

Article 12.1.2 shall be grounds for termination under Article 4.2(a) unless such violation is due to a system or reasonable administrative error and the Competitive Supplier demonstrates to the Municipality's satisfaction that such system or administrative error exists and that the Competitive Supplier is acting in good faith to resolve such issue.

12.1.3 Standard of Care

Competitive Supplier and its Associated Entities shall use all Commercially Reasonable efforts 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 Municipality or its agent within a Commercially Reasonable time.

12.2 POWER SUPPLY REPORT

Unless the Environmental Disclosure Label requirement is waived by PSC, within fifteen (15) days of the end of the quarter, Competitive Supplier shall present a copy of the current Environmental Disclosure Label required by PSC 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.

12.3 BOOKS AND RECORDS

Competitive Supplier shall keep their books and records in accordance with any applicable regulations or guidelines of PSC, FERC, and any other Governmental Authority. The Municipality will have electronic access to any reports mandated by the Securities and Exchange Commission which are available on the Internet "EDGAR" system. Upon reasonable request by the Municipality and at the Municipality's reasonable expense, Competitive Supplier or its Associated Entities shall provide reasonable back up for any charge under this ESA questioned by the Municipality.

12.4 COPIES OF REGULATORY REPORTS AND FILINGS

Upon reasonable request, Competitive Supplier shall provide to the Municipality a copy of each public periodic or incident-related report or record relating to this ESA which it files with any New York 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. Competitive Supplier shall be reimbursed its reasonable costs of providing such copies, if only available in hard copy.

ARTICLE 13 RESOLUTION OF DISPUTES; CHOICE OF LAW AND FORUM

13.1 CHOICE OF LAW AND FORUM

This ESA and the rights of the Parties shall be interpreted and determined in accordance with the laws of the State of New York without respect to conflicts-of-laws principles. Any litigation arising hereunder shall be brought solely in the appropriate federal court in New York or appropriate state court sitting in the New York county in which the Municipality is located, to whose jurisdiction the Parties hereby assent, waiving all objections to venue or forum.

13.2 DISPUTE RESOLUTION

Unless otherwise provided for in this ESA, the dispute resolution procedures of this Article 13.2 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. 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, the Parties may seek judicial enforcement subject to the provisions of this ESA. Notwithstanding the foregoing, injunctive relief may be immediately sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this ESA.

ARTICLE 14 INDEMNIFICATION

14.1 INDEMNIFICATION BY THE COMPETITIVE SUPPLIER

In addition to any other remedies available to the Municipality at law or equity, and notwithstanding any other provision contained herein, the Competitive Supplier shall indemnify, defend and hold harmless the Municipality and the Program Manager ("Indemnified Parties") and the Indemnified Parties' officials, 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 Competitive Supplier or its Associated Entities of its obligations, covenants, representations or warranties contained in this ESA and not resulting from the actions (or omissions where there is a duty to act) of the NYISO, Distribution Utility, the Municipality or its employees or agents, or (ii) any action or omission taken or made by the Competitive Supplier or its Associated Entities in connection with Competitive Supplier's performance of this ESA.

14.2 NOTICE OF INDEMNIFICATION CLAIMS

If the Municipality or Program Manager seeks indemnification pursuant to this Article 14, it shall notify Competitive Supplier 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.

14.3 SURVIVAL

Notwithstanding any provision contained herein, the provisions of this Article 14 shall survive the termination of this ESA for a period of two (2) 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.

14.4 DUTY TO MITIGATE

Each Party agrees 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 the other Party's performance or non-performance of this ESA.

ARTICLE 15 REPRESENTATIONS AND WARRANTIES

15.1 BY THE COMPETITIVE SUPPLIER

As a material inducement to entering into this ESA, the Competitive Supplier hereby represents and warrants to the Municipality 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 Municipality 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 or for the benefit of the Municipality 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.

15.2 BY THE MUNICIPALITY

As a material inducement to entering into this ESA, the Municipality 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 contract of the Municipality enforceable in accordance with its terms, subject to applicable law;
- b) the execution, delivery and performance of this ESA are within the Municipality's powers, have been or will be duly authorized by all necessary action;
- c) Municipality has all authorizations from local 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; and
- d) no Bankruptcy is pending or threatened against the Municipality;

15.3 BY THE PROGRAM MANAGER

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

- a) this ESA constitutes the legal, valid and binding contract of Program Manager enforceable in accordance with its terms, subject to applicable law
- b) the execution, delivery and performance of this ESA are within Program Manager's powers, have been or will be duly authorized by all necessary action;
- c) Program Manager has all authorizations from any local or state 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; and
- d) no Bankruptcy is pending or threatened against Program Manager.

ARTICLE 16 INSURANCE

16.1 In order to help support the indemnifications provided in Article 14, and its other promises and covenants stated herein, Competitive Supplier shall secure and maintain, at its own expense, before the Effective Date and throughout the term of this ESA, unless otherwise specified, commercial general liability insurance of at least \$1,000,000 combined single limit and excess liability coverage of at least \$5,000,000 with insurers licensed to do business in the State of New York. Each of the required insurance policies shall be with insurers qualified to do business in the State of New York, with an A- or better rating for financial condition and financial performance by Best's Key Rating Guide, Property/Casualty Edition. In the event the Competitive Supplier's insurance carrier is downgraded to a rating of lower than Best's A-, Competitive Supplier shall have ninety (90) days to obtain coverage from a carrier with a rating of at least Best's A-. A certificate that each such insurance coverage is in force and effect, and listing the Municipality as an additional insured on all policies, shall be submitted on or before the Effective Date and thereafter whenever renewed or requested by the Municipality. All

insurers must be notified that the insurance policies must provide that a copy of any notice of cancellation or non-renewal will be sent to the Municipality.

16.2 With respect to any of the insurance policies provided by the Competitive Supplier pursuant to these requirements which are “claims made” policies, in the event at any time such policies are canceled or not renewed, the Competitive Supplier shall provide a substitute insurance policy with terms and conditions and in amounts which comply with these requirements and which provides for retroactive coverage to the date of the cancellation or non-renewal of the prior “claims-made” policy. With respect to all “claims made” policies which have been renewed, the Competitive Supplier shall provide coverage retroactive to the Effective Date under this ESA. All said substitute or renewed “claims made” policies shall be maintained in full force and effect for three (3) years from the date of the termination of the ESA.

16.3 Competitive Supplier, to the extent required by law, must provide worker’s compensation insurance meeting all applicable state and federal requirements.

ARTICLE 17 REGULATORY EVENT/NEW TAXES

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 despite such best efforts, a Regulatory Event affects Competitive Supplier and Program Manager and Municipality agree that Competitive Supplier is incurring excess costs as a result thereof and agrees that Competitive Supplier may recover such costs, such amount shall be allocated to and collected from Participating Consumers on a per kWh basis through applicable monthly invoice(s).

17.2 QUALIFYING REGULATORY EVENT

If a Qualifying 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 Qualifying 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).

17.3 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

18.1 NO ASSIGNMENT WITHOUT PERMISSION

Except in the event of the sale of all or substantially all of its retail electricity business to an entity with credit and service ability to deliver on all facets of this ESA reasonably acceptable to Municipality, Competitive Supplier or Program Manager shall not directly or indirectly assign this ESA or any of its rights, obligations and privileges under this ESA without the prior written approval of the Municipality. Such approval may be denied at the reasonable discretion of the Municipality, including if the proposed assignee does not have the experience and financial ability to fulfill all obligations of the Competitive Supplier or Program Manager in the ESA. Notwithstanding the above, any assignment of this ESA by the Competitive Supplier, whether as the result of the sale of all or substantially all of the Competitive Supplier's business related to this ESA or otherwise, shall be subject to the following requirements: (i) Competitive Supplier shall provide the Municipality with notice of the proposed assignment at least ninety (90) days prior to such assignment; (ii) Competitive Supplier's assignee shall agree in writing to be bound by the terms and conditions of this ESA; and (iii) Competitive Supplier and such assignee shall, at least ninety (90) days in advance of any assignment, reasonably demonstrate to Municipality that assignee has the experience and financial ability to fulfill all obligations of the Competitive Supplier in the ESA. The Municipality or Program Manager 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 Municipality or Program Manager and such assignment would not materially 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.

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 Municipality, Competitive Supplier agrees to (i) give the Municipality written notice of 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 Municipality the possible inclusion of such new product or service in this or another aggregation program undertaken by the Municipality.

Competitive Supplier also agrees not to engage, whether directly or through any of its Associated Entities, 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. 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:

If to Municipality:

and if to Program Manager:

Executive Director
Sustainable Westchester Inc
~~e/o Village Manager of Ossining~~ 55 Maple Ave
~~16 Croton Avenue~~
~~Ossining Mount Kisco NY 10562~~ 10549

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, on the third business day after the day on which deposited in the United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in this ESA; 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 Municipality and the Program Manager 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 Municipality changes, prompt notice shall be given to the Competitive Supplier and the Program Manager 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 Program

Manager changes, prompt notice shall be given to the Competitive Supplier and the Municipality in the manner set forth in Article 18.3.

18.5 ENTIRE ESA; AMENDMENTS

This ESA constitutes 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, duly authorized to sign such instrument.

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 the other Party 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 (i) an event of Force Majeure caused by any strikes, lockouts or other industrial disturbances involving Competitive Supplier or its Associated Entities continues for a period of thirty (30) days or longer, or (ii) an event of Force Majeure arising from any other cause continues for a period of one hundred eighty (180) days or longer, any 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. Additionally, Competitive Supplier shall submit all consumer drops via EDI to the Distribution Utility in accordance with the rules and regulations set forth by the PSC in Case 98-M-0667.

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 attorney's fees and expenses.

18.8 NO JOINT VENTURE

Each Party will perform all obligations 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 Municipality 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 any 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 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 with respect to an obligation to the waiving Party and shall only be effective if made in writing and signed by the Party who is making such waiver.

18.12 ADVERTISING LIMITATIONS

Competitive Supplier agrees not to use, whether directly or through any of its Associated Entities, the name of the Municipality, or make any reference to the Municipality in any advertising or other information to be distributed publicly for marketing or educational purposes, unless the Municipality expressly agrees to such usage. Any proposed use of the name of the Municipality must be submitted in writing for agreement and prior written approval which may be withdrawn through a notice in writing at any time. The Municipality 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 Municipality hereunder, and the Municipality agrees that it shall not assert any right, license or interest with respect to such trademark and/or trade name.

18.13 PRESS RELEASES

The Parties agree to cooperate in good faith prior to the issuance of any formal press release with respect to this ESA, such cooperation to include agreement as to the form, substance and timing of such formal press release.

18.14 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.

18.15 SURVIVAL OF OBLIGATION

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

19 REMEDIES

19.1 GENERAL

Subject to the limitations set forth in Article 19.2 below and Article 4, the Parties 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.

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, each Party acknowledges that the preceding sentence shall not limit the other Party's rights to seek direct damages or, under Article 14.1, to seek indemnification from Competitive Supplier for consequential, punitive, or incidental damages described in the preceding sentence or other such losses claimed by third- parties.

//Signatures Follow//

IN WITNESS WHEREOF, the Parties have caused this ESA to be executed by their duly authorized representatives, as required by the applicable laws of the city, town or municipality and the laws, rules and regulations of the State of New York, as of the respective dates set forth below

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COMPETITIVE SUPPLIER

By: _____

Name: _____

Title: _____

Address: _____

Dated: _____

MUNICIPALITY

By: _____

Name: _____

Title: _____

Address: _____

Dated: _____

PROGRAM MANAGER

By: _____

Name: _____

Title: _____

Address: _____

Dated: _____

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EXHIBIT A-Part 1, PRICES AND TERMS - STANDARD PRODUCT

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PRICES AND TERMS
SUSTAINABLE WESTCHESTER COMMUNITY CHOICE AGGREGATION PROGRAM
DEFAULT PRODUCT

Firm Full-Requirements Price by Rate Classification for all Participating Consumers located in Consolidated Edison of New York/New York State Electric & Gas (circle one) territory commencing service on the first Consumer meter-read date after ~~April 30, 2016~~ December 31st, 2018.

Table 1:

Rate Class	Fixed Price per kWh
Residential	\$0.#####
Small Commercial	\$0.#####

~~[Final Prices will be determined prior to the beginning of the respective pricing periods]~~

Terms for System Supply Service

Term: The Price and Terms stated on this Exhibit A will commence on the first Consumer meter read date after ~~April 30th, 2016~~ December 31, 2018 and continue until the first Consumer meter read date after ~~November 30, 2018~~ December 31, 2020, unless this ESA is sooner terminated in accordance with Article 4.2 of this ESA.

The period of delivery of Firm Full-Requirements Power Supply shall be consistent with the provisions of Article 4 and Exhibit A of this ESA.

Start-Up Service Date: Firm Full-Requirements Power Supply will commence at the prices stated above as of Participating Consumer's first meter read dates after December 31, 2018 ~~April 30th, 2016~~.

Renewable Energy in System Supply: The Competitive Supplier shall include Renewable Energy and Renewable Energy Certificates in the Firm Full-Requirements Power Supply mix in an amount equal to New York State's Renewable Portfolio Standards in a manner designated by New York State.

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 and Competitive Supplier will notify Distribution Utility to resume service as soon as possible after such notification. 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 will 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 Default Service in the event that the consumer fails to pay to Competitive Supplier amounts past due greater than sixty (60) days.

~~If you submitted a fixed price in Table 1 above, please complete Table 2 below. Supplier intends to serve~~ New Consumers who enroll or are enrolled into the Program after the first Consumer meter-read date referred to above ~~shall be served~~ at the fixed price in Table 1 above, ~~plus the applicable adder for each rate class outlined below~~ but reserves the right to add the adders in Table 2 below to those prices.

Table 2:

Rate Class	Adder per kWh
Residential	\$0.###
Small Commercial	\$0.###

~~It is ConEdison Solutions' intent to serve New Consumers at the applicable price listed above in Table 1, however ConEdison Solutions reserves the right to add the adders in Table 2 to the fixed prices listed in Table 1.~~

EXHIBIT A-Part 2. PRICES AND TERMS - CLEAN POWER PRODUCT
~~PRICES AND TERMS 100% RENEWABLE CLEAN POWER PRODUCT~~

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~~SUSTAINABLE WESTCHESTER COMMUNITY CHOICE AGGREGATION PROGRAM~~
~~100% RENEWABLE CLEAN POWER PRODUCT~~

Firm Full-Requirements Price for 100% Renewable Power Supply by Rate Classification for all Participating Consumers located in Consolidated Edison of New York/New York State Electric & Gas territory (circle one) commencing service on the first Consumer meter-read date after ~~April 30th, 2016~~ December 31, 2018 .

Table 3:

Rate Class	Fixed price per kWh
Residential	\$0.#####
Small Commercial	\$0.#####

~~{Final Prices will be determined prior to the beginning of the respective pricing periods}~~

Terms for System Supply Service

Term: The Price and Terms stated on this Exhibit A will commence on the first Consumer meter read date after ~~April 30th, 2016~~ December 31, 2018 and continue until the first Consumer meter read date after ~~November 30, 2018~~ December 31, 2020 unless this ESA is sooner terminated in accordance with Article 4.2 of this ESA.

The period of delivery of 100% Renewable Firm Full-Requirements Power Supply shall be consistent with the provisions of Article 4 and Exhibit A of this ESA.

Start-Up Service Date: 100% Renewable Firm Full-Requirements Power Supply will commence at the prices stated above as of Participating Consumer's first meter read dates after December 31, 2018 ~~April 30th, 2016~~.

Renewable Energy in System Supply: The Competitive Supplier shall include Renewable Energy Certificates in the Firm Full-Requirements Power Supply mix in an amount equal to 100% of all power supplied under this exhibit.

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 and Competitive Supplier will notify Distribution Utility to resume service as soon as possible after such notification. 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 will 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 Default Service in the event that the consumer fails to pay to Competitive Supplier amounts past due greater than sixty (60) days.

Supplier intends to serve New Consumers who enroll and are enrolled into the Program after the first consumer meter-read date referred to above ~~shall be served~~ at the price in Table 3, above, ~~plus the applicable adder for each rate class outlined below, but reserves the right to add the adders in Table 2 below to those prices.~~

Table 4:

Rate Class	Adder per kWh
Residential	\$0.001###
Small Commercial	\$0.001###

~~Please indicate below if you are willing to replace any portion of the 100% Renewable Firm Full Requirements Power Supply to fulfill this ESA with power supply procured or developed by the Municipality or by the Program Manager (check one)?~~

~~Yes No~~

~~If you checked 'Yes' above, please indicate what cost, if any, you will levy for that replacement (specify unit cost): \$ _____.~~

~~ConEdison Solutions agrees to work with Municipality and Program Manager in good faith to incorporate renewable energy and/or renewable energy certificates into its supply offering for Participating Consumers choosing the renewable product option.~~

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EXHIBIT B - TEMPLATE KWH SALES AND CONSUMER ACCOUNTS DATA SUMMARY FORMAT

~~TEMPLATE KWH SALES AND CONSUMER ACCOUNTS DATA SUMMARY~~

Rate Code	Residential	Small Commercial
Standard Supply		
Municipality		
# of Default Accounts of Eligible Consumers		
	kWh	kWh
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

Rate Code	Residential	Small Commercial
100% Renewable Supply		
Municipality		
# of Default Accounts of Eligible Consumers		
	kWh	kWh
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		

November		
December		

EXHIBIT C - PAYMENT SCHEDULE

PAYMENT SCHEDULE

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<p><u>PROGRAM MANAGER GENERAL INFORMATION</u></p> <p>Contact Name: Daniel Welsh</p> <p>Telephone Number: 914-242-4725</p> <p>E-mail Address: dan@westchesterpower.org</p>	<p><u>MUNICIPALITY GENERAL INFORMATION</u></p> <p>Contact Name:</p> <p>Telephone Number:</p> <p>E-mail Address:</p>	<p><u>SUPPLIER GENERAL INFORMATION</u></p> <p>Contact Name:</p> <p>Telephone Number:</p> <p>E-mail Address:</p>
<p><u>CONSULTANT LEGAL NOTICE ADDRESS</u></p> <p>ATTN: Program Director</p> <p>Address: 55 Maple Ave</p> <p>City, State Zip: Mtl Kisco, NY 10549</p> <p>Facsimile:</p>	<p><u>MUNICIPALITY LEGAL NOTICE ADDRESS</u></p> <p>ATTN:</p> <p>Address:</p> <p>City, State Zip:</p> <p>Facsimile:</p>	<p><u>SUPPLIER LEGAL NOTICE ADDRESS</u></p> <p>ATTN:</p> <p>Address:</p> <p>City, State Zip:</p> <p>Facsimile:</p>
<p><u>CONSULTANT BANK INFORMATION FOR PAYMENTS BY ACH</u></p> <p>Bank Name:</p> <p>Bank Routing Number:</p> <p>Bank Account Number:</p> <p>Federal ID:</p>		

EXHIBIT D - OPTION TO SUPPLY POWER

OPTION TO SUPPLY POWER

Competitive Supplier shall provide power to Participating Consumers, including the option to purchase REC's, throughout the term of this ESA and from sources of its own discretion. However, Program Manager desires to build or contract with renewable sources of energy ("Renewable Power Source") after the Effective Date of the Program for the benefit of the Participating Consumers. Upon completion of any Renewable Power Source the Program Manager may offer to sell output from the Renewable Power Source to Competitive Supplier (directly or through an Associated Entity) under a separate Power Purchase Agreement ("PPA"). Upon mutual agreement of such arrangement and completion of the PPA, Competitive Supplier (or its Associated Entity) shall take the output of the Renewable Power source for use for the Program. Competitive Supplier and Program Manager agree that any such PPA shall include a provision which requires that Program Manager agree to a rate adjustment to Participating Consumers to compensate Competitive Supplier (or an Associated Entity) for any losses should Competitive Supplier (or an Associated Entity) need to sell off any of the original power purchased to supply the program at a lower price than it purchased it for. This PPA shall also include a provision which requires that Competitive Supplier (or an Associated Entity) agree to a rate adjustment to Participating Customers to compensate Participating customers for any gains should Competitive Supplier (or an Associated Entity) need to sell off any of the original power purchased to supply the program at a higher price than it purchased it for.

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EXHIBIT E - DATA REQUIREMENTS

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DATA REQUIREMENTS

In order for program administrators and participants to have visibility into their participation with the program, certain data will need to be exchanged, in a regular format, with regular transmission methods and times.

The file format, timing of delivery, and mechanism for delivery of data are described here:

File Format: Fields required relate to Customer Records, Retailer Contract Account Records, Invoice Records, and Utility Account Records. If the records are compiled from a variety of tables, associative Primary Keys must be provided for ease of interacting with & communicating about data. File names will contain only alphanumeric characters.

Customer records will contain, among other fields, basic contact & billing information.

Retailer Contract Account records will define what Contract Type is active with the Customer, as well as what was applied to any given invoice. They will include, among other fields, the rate, start date, and expiry date of the contract.

Invoice Records will contain information relating to the billing period, charges billed, kWh billed for, and any additional fees put to the Customer.

Utility Account Records will contain information relating to the Utility Account, including Distribution Company, Account Number, Read Cycle, Service Address, Rate Class, and Meter Number.

A full list of fields will be provided with this document.

Timing: Files will be prepared & transmitted weekly on Mondays.

Mechanism: Files will be prepared in two comma-separated values (.csv) format. A secure FTP will be established between the Supplier and Westchester, or a party designated by Westchester.

<u>File Name</u>	<u>File Description</u>
<u>AccountFileyyyyymmdd.csv *</u>	<u>A complete historical record of all participating accounts</u>
<u>InvoiceFileyyyyymmdd.csv *</u>	<u>Records including the last two months of invoices</u>

* "yyyyymmdd" to refer to date of production of file

<u>Outward Field Name</u>	<u>Field Description</u>	<u>Format</u>
<u>Customer Record Created Date</u>	Date when Customer Record was Created	AccountFileyyyyymmdd.csv
<u>Customer Record Modified Date</u>	Most Recent date of Modification to Customer Record	AccountFileyyyyymmdd.csv
<u>Account Record Created Date</u>	Date when Account Record was Created	AccountFileyyyyymmdd.csv
<u>Account Record Modified Date</u>	Most Recent date of Modification to Account Record	AccountFileyyyyymmdd.csv
<u>Customer Type</u>	Field to hold "Residential", "Commercial" or "Public"	AccountFileyyyyymmdd.csv
<u>Company Name</u>	Field to hold Company Name, if Customer Type is "Commercial"	AccountFileyyyyymmdd.csv
<u>Organization Name</u>	Field to hold Organization Name, if Customer Type is "Public"	AccountFileyyyyymmdd.csv
<u>Contact Person First Name</u>	Field to hold Person-of-Contact First Name for "Commercial" or "Public" Customers	AccountFileyyyyymmdd.csv
<u>Contact Person Last Name</u>	Field to hold Person-of-Contact Last Name for "Commercial" or "Public" Customers	AccountFileyyyyymmdd.csv
<u>Customer/Contact Phone Number</u>	Field to hold Customer/Contact Phone Number	AccountFileyyyyymmdd.csv
<u>Customer/Contact email address</u>	Field to hold Customer/Contact phone number	AccountFileyyyyymmdd.csv
<u>Account Annual kWh Usage</u>	Field to hold most recent Annual kWh consumption	AccountFileyyyyymmdd.csv
<u>Municipality</u>	Field to hold Municipal Entity Account is Aggregated Under	AccountFileyyyyymmdd.csv
<u>AccountTurnOnDate</u>	Field to hold Date where Utility Account was Activated	AccountFileyyyyymmdd.csv
<u>AccountTurnOffDate</u>	Field to hold Date where Utility Account was Closed	AccountFileyyyyymmdd.csv
<u>Status of Account</u>	Field to hold Active/Inactive, depending on whether or not the account is being actively serviced by Retailer	AccountFileyyyyymmdd.csv
<u>Contract Start Date</u>	Field to hold beginning date for Retail Contract	AccountFileyyyyymmdd.csv
<u>Contract End Date</u>	Field to hold End date for Retail Contract	AccountFileyyyyymmdd.csv
<u>Account ID</u>	Field to hold Field Unique to Account, where an Account is defined as a single signed contract term	InvoiceFileyyyyymmdd.csv ; AccountFileyyyyymmdd.csv
<u>First Name</u>	Field to hold First Name for Residential Customers	InvoiceFileyyyyymmdd.csv ; AccountFileyyyyymmdd.csv

<u>Outward Field Name</u>	<u>Field Description</u>	<u>Format</u>
<u>Last Name</u>	<u>Field to hold Last Name for Residential Customers</u>	<u>InvoiceFileyyyyymmdd.csv ; AccountFileyyyyymmdd.csv</u>
<u>Billing Address 1</u>	<u>Field to hold Customer's first address line</u>	<u>InvoiceFileyyyyymmdd.csv ; AccountFileyyyyymmdd.csv</u>
<u>Billing Address 2</u>	<u>Field To hold Customer's second address line</u>	<u>InvoiceFileyyyyymmdd.csv ; AccountFileyyyyymmdd.csv</u>
<u>Billing City</u>	<u>Field To hold Customer's city address line</u>	<u>InvoiceFileyyyyymmdd.csv ; AccountFileyyyyymmdd.csv</u>
<u>Billing State</u>	<u>Field To hold Customer's state address line</u>	<u>InvoiceFileyyyyymmdd.csv ; AccountFileyyyyymmdd.csv</u>
<u>Billing Zip Code</u>	<u>Field To hold Customer's zip code address line</u>	<u>InvoiceFileyyyyymmdd.csv ; AccountFileyyyyymmdd.csv</u>
<u>Invoice Record Created Date</u>	<u>Date when Invoice Record was Created</u>	<u>InvoiceFileyyyyymmdd.csv</u>
<u>Invoice Record Modified Date</u>	<u>Most Recent date of Modification to Invoice Record</u>	<u>InvoiceFileyyyyymmdd.csv</u>
<u>Invoice Number</u>	<u>Field to hold Unique Invoice Number for issued invoices</u>	<u>InvoiceFileyyyyymmdd.csv</u>
<u>Name of Subscriber Contract</u>	<u>Field to hold the Name of the Subscriber Contract</u>	<u>InvoiceFileyyyyymmdd.csv</u>
<u>Rate of Subscriber Contract</u>	<u>Field to hold the Rate of the Subscriber Contract</u>	<u>InvoiceFileyyyyymmdd.csv</u>
<u>Subscriber Utility Account Number</u>	<u>Field to hold Utility Account Number of Subscriber</u>	<u>InvoiceFileyyyyymmdd.csv</u>
<u>Subscriber Meter Number</u>	<u>Field to hold Utility Meter Number of Subscriber</u>	<u>InvoiceFileyyyyymmdd.csv</u>
<u>Subscriber Utility Company</u>	<u>Field to hold Name of Subscriber's Utility Company</u>	<u>InvoiceFileyyyyymmdd.csv</u>
<u>Subscriber Distribution Company</u>	<u>Field to hold Name of Subscriber's Distribution Company</u>	<u>InvoiceFileyyyyymmdd.csv</u>
<u>Account Load Zone</u>	<u>Field to hold Load Zone of Subscriber Account</u>	<u>InvoiceFileyyyyymmdd.csv</u>
<u>Account Rate Class</u>	<u>Field to hold Rate Class of Subscriber Account</u>	<u>InvoiceFileyyyyymmdd.csv</u>
<u>Nonresidential Name on Bill</u>	<u>Field to hold the name listed on "Commercial" or "Public" Utility Accounts</u>	<u>InvoiceFileyyyyymmdd.csv</u>
<u>Service First Name</u>	<u>Field to hold Residential Service First Name</u>	<u>InvoiceFileyyyyymmdd.csv</u>
<u>Service Last Name</u>	<u>Field to hold Residential Service Last Name</u>	<u>InvoiceFileyyyyymmdd.csv</u>
<u>Service Address 1</u>	<u>Field to hold Address of Service for Utility Account</u>	<u>InvoiceFileyyyyymmdd.csv</u>
<u>Service Address 2</u>	<u>Field to hold Address of Service for Utility Account</u>	<u>InvoiceFileyyyyymmdd.csv</u>
<u>Service City</u>	<u>Field to hold City of Service for Utility Account</u>	<u>InvoiceFileyyyyymmdd.csv</u>
<u>Service State</u>	<u>Field to hold State of Service for Utility Account</u>	<u>InvoiceFileyyyyymmdd.csv</u>

<u>Outward Field Name</u>	<u>Field Description</u>	<u>Format</u>
<u>Service Zip Code</u>	<u>Field to hold Zip Code of Service for Utility Account</u>	<u>InvoiceFileyyyymmdd.csv</u>
<u>Dual Billing</u>	<u>Field to hold Y/N if Customer receives two bills (one from utility, one from retailer)</u>	<u>InvoiceFileyyyymmdd.csv</u>
<u>Read Cycle</u>	<u>Field to hold Read Cycle numerical indicator</u>	<u>InvoiceFileyyyymmdd.csv</u>
<u>InvoicePeriodStartDate</u>	<u>Field to hold beginning date for Invoiced Usage</u>	<u>InvoiceFileyyyymmdd.csv</u>
<u>InvoicePeriodEndDate</u>	<u>Field to hold End date for Invoiced Usage</u>	<u>InvoiceFileyyyymmdd.csv</u>
<u>Amount Invoiced</u>	<u>Field to hold total amount invoiced during Invoice Period</u>	<u>InvoiceFileyyyymmdd.csv</u>
<u>kWh invoiced</u>	<u>Field to hold total kWh billed for in the invoice period</u>	<u>InvoiceFileyyyymmdd.csv</u>
<u>Rate per kWh</u>	<u>Field to hold rate charged per kWh during this invoice period</u>	<u>InvoiceFileyyyymmdd.csv</u>
<u>Tax on Invoice</u>	<u>Field to hold total amount charged to customer for taxes during invoice period (unit in \$)</u>	<u>InvoiceFileyyyymmdd.csv</u>