

**Electric Service Agreement**

Exhibit 1 to accompany the Memorandum of Understanding  
on Community Choice Aggregation

This Electric Service Agreement is by and between the Village of Croton-on-Hudson,  
Constellation NewEnergy, Inc., 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 Framework Order”) enabling Community Choice throughout New York State;

WHEREAS, the Sustainable Westchester 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 Village of Croton-on-Hudson (“Municipality”) has adopted a Local Law to participate in the Sustainable Westchester Community Choice Program (“Program”) to aggregate customers located within the Municipality and to negotiate competitive rates for the supply of electricity for such customers;

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, the Sustainable Westchester Community Choice Program enrolled Participating Customers from an initial group of 20 participating municipalities in April 2016, and nine additional municipalities have joined in the years since its inception;

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 2024, to issue a request for proposals (“RFP”) to suppliers to provide energy to Participating Customers, and to award supply contracts;

WHEREAS, Constellation NewEnergy, Inc., an entity duly authorized to conduct business in the State of New York as an energy service company (“ESCO”) (the “Competitive Supplier”), desires to provide Full-Requirements Power Supply to customers located within the Municipality, pursuant to the terms and conditions of 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 Participating Customers within the Municipality;

WHEREAS, Competitive Supplier is willing to provide two distinct electric supply products and two corresponding pricing levels: (1) a 50% Renewable Clean Power Product comprised of the Standard Product plus New York Voluntary Clean Power RECs making up 50% of Participating Customers' electricity usage and price, and (2) a 100% Renewable Clean Power Product comprised of the Standard Product plus New York Voluntary Clean Power RECs making up 100% of Participating Customers' electricity usage and price, which shall be available only on an opt-in basis, as set out in Exhibit A herein;

WHEREAS, Municipality has chosen the 50% Renewable Clean Power product as the Default Product for Participating Customers;

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.

## 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.

1.1 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, affiliates, 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.

1.2 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 of such proceeding, or any trustee, receiver, custodian or liquidator of said Party or of all or any substantial part of its properties is appointed without the consent or acquiescence of said Party, and such appointment is not vacated or stayed on appeal or otherwise within ninety (90) days after the appointment, or, within ninety (90) days after the expiration of any such stay, has not been vacated, provided that, notwithstanding the foregoing, the exercise of rights to take over operation of a Party's assets, or to foreclose on any of a Party's assets, by a secured creditor of such Party (including the appointment of a receiver or other representative in connection with the exercise of such rights) shall not constitute a Bankruptcy.

1.3 CCA Orders – Collectively, the February 26, 2015 “Order Granting Petition in Part” issued by the PSC in Case 14-M-0564; the April 21, 2016 “Order Authorizing Framework for Community Choice Aggregation Opt-out Program” issued by the PSC in Case 14-M-0224 (the “CCA Framework Order”), which sets forth the requirements, terms, and conditions under which CCA programs can proceed through implementation; the November 15, 2018 “Order Approving Renewal of the Sustainable Westchester Community Choice Aggregation Program” issued by the PSC in Case 14-M-0564, which reauthorizes the Sustainable Westchester CCA program under a Master Implementation Plan; and the January 19, 2023 “Order Modifying Community Choice Aggregation Programs and Establishing Further Process” issued by the PSC in Case 14-M-0224 (the “CCA Framework Modification Order”).

- 1.4 50% Renewable Clean Power Product - Has the definition set forth in Exhibit A.
- 1.5 100% Renewable Clean Power Product - Has the definition set forth in Exhibit A.
- 1.6 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.
- 1.7 Community Choice – Municipal electricity procurement program, purchasing supply for the aggregated demand for all Participating Customers within the Municipality.
- 1.8 Competitive Supplier or Energy Services Company (“ESCO”)– An entity duly authorized to conduct business in the State of New York as an ESCO.
- 1.9 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.
- 1.10 Default Product – The product selected by the Municipality for supply to its Participating Customers, unless they take action to select a different product or opt out.
- 1.11 Default Service – Supply service provided by the Distribution Utility to customers who are not currently receiving service from a Competitive Supplier.
- 1.12 Delivery Term - The period for which prices for Firm Full-Requirements Power Supply have been established, as set forth in Exhibit A.
- 1.13 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 Municipality.
- 1.14 Electronic Data Interchange (“EDI”) - The exchange of business data in a standardized format between business computer systems.
- 1.15 Effective Date - The date upon which this ESA has been executed by the Parties (to be determined by the later date if the Parties execute on different dates).
- 1.16 Eligible Customers – Customers of electricity eligible to participate in the CCA Program, either on an opt-out or opt-in basis, as delineated in the CCA Framework Order and the CCA Framework Modification Order. Competitive Supplier may provide Firm Full-Requirements Power Supply to Eligible Customers who are not Opt-out Eligible Customers at Competitive Supplier's sole discretion on an opt-in basis. For the avoidance of doubt, all Eligible Customers must reside or be otherwise located at one or more locations within the geographic boundaries of the Municipality and served by the Distribution Utility, as such boundaries exist on the Effective Date of this ESA.

1.17 ESA - This Electric Service Agreement.

1.18 Environmental Disclosure Label – The fuel mix purchased by an ESCO and the related emissions of those fuels compared to a statewide average, which is required to be reported under the DPS’s Environmental Disclosure Program.

1.19 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.

1.20 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 Customers at the Point of Sale, other than the cost of transmission and distribution services that are billed through the distribution tariff(s) and provided by the Distribution Utility and/or the NYISO to provide electricity to the Point of Delivery.

1.21 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.

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

1.23 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.

1.24 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.

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

1.26 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 Program.

1.27 Memorandum of Understanding 2024 – Binding agreement between Municipality and Program Manager authorizing Sustainable Westchester to administer the Program.

1.28 Newly Opt-Out Eligible Customers – Residential and small commercial customers of electricity that become Opt-out Eligible Customers after the Effective Date, including those that move into Municipality and those who complete or terminate other 3<sup>rd</sup> party supply contracts and have returned to Default Service, provided these customers have not previously opted out of the Program.

1.29 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 Customers.

1.30 Nominal Start Date – November 1, 2024.

1.31 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.

1.32 Opt-out Eligible Customers - Eligible Customers that are eligible for Opt-out treatment as delineated in the CCA Framework Order and the CCA Framework Modification Order, but shall not include customers in service classes SC8, SC12, and SC13. For the avoidance of doubt, Opt-out Eligible Customers shall not include customers that have previously opted out of the Program.

1.33 Participating Customers - Eligible Customers enrolled in the Program, including Opt-out Eligible Customers who have been enrolled subsequent to the opt-out process and other customers who have been enrolled after opting in.

1.34 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.

1.35 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

1.36 Point of Sale - The electric meter for each Participating Customer'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.



1.36 Program - Sustainable Westchester Community Choice Aggregation Program.

1.37 Program Manager – Sustainable Westchester, Inc., a non-profit organization comprised of multiple municipalities in Westchester County of which the Municipality is a member, authorized by the PSC to put out for bid the total amount of electricity being purchased by Participating Customers. Program Manager is responsible for Program organization, administration, procurement, and communications, unless otherwise specified.

1.38 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.

1.39 Qualifying Regulatory Event-- Implementation of a new, or changes to an existing, Governmental Rule by a Governmental Authority at any time after Competitive Supplier submits its bid response to the RFP associated with this ESA, 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 negatively or positively impact the majority of customers in the same service class, but not including a Regulatory Event that applies uniquely to Competitive Supplier. Notwithstanding anything to the contrary in this ESA or the RFP, any changes to the Purchase of Receivables (POR) approved by the PSC shall be deemed a Qualifying Regulatory Event hereunder.

1.40 Regulatory Event-- Implementation of a new, or changes to an existing, Governmental Rule by a Governmental Authority at any time after Competitive Supplier submits its bid response to the RFP associated with this ESA, 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.

1.41 Retail Price - As set forth in Exhibit A.

1.42 Service Commencement Date - The date of the first meter read date for Participating Customers on or after the Nominal Start Date, or as soon as necessary arrangements can be made with the Distribution Utility thereafter.

1.43 Standard Product - Firm Full-Requirements Power Supply consisting of the standard generation mix, meeting the minimum Clean Energy Standard for electric power established by New York State. [There is no Standard Product supplied under this ESA because both products detailed in Exhibit A include additional RECs.]

1.44 Term - As defined in Article 4.1.

1.45 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), as may be amended from time to time.

## **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 Customers 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 Customers 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 Customers 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 Opt-out Eligible Customers 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 Customers 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 Customers 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 Customers 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 Customers from the Distribution Utility via EDI or other adopted standards such as a secure file transfer protocol. 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 Customers, including, without limitation, assisting Competitive Supplier in obtaining permission from such Participating Customers 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 information. The Municipality shall not be responsible for any such errors by the Competitive Supplier in any event. Competitive Supplier shall not be responsible for a delayed or unsuccessful enrollment of a Participating Customer, or de-enrollment, that is a direct result of the Municipality, Program Manager, or Distribution Utility's negligent act or omission or breach of this ESA.

## 2.2 NO THIRD-PARTY BENEFICIARIES

Except as specifically provided in Article 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 CCA Orders and Local Law for Eligible Customers 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 Customers interested in contracting for electric supply and on behalf of all Participating Customers, 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 fourteen days prior to the Nominal Start Date, then the Municipality may terminate this ESA without any liability from Municipality to the Competitive Supplier.

## 2.5 OWNERSHIP AND USE OF ELIGIBLE CUSTOMER DATA

Competitive Supplier acknowledges that: 1) all Eligible Customer 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 Customers and to render other services expressly required or permitted under this ESA. Any other use of Eligible Customer data without the prior written consent of the Municipality is strictly prohibited.

Competitive Supplier may share such Eligible Customer 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 data security agreement, a copy of which will be provided to the Municipality within a reasonable time following Municipality's request. Except as expressly provided in this ESA, and as otherwise permitted by law, Competitive Supplier and its Associated Entities shall not disclose any Eligible Customer data to any third party and Competitive Supplier and its Associated Entities shall take all Commercially Reasonable measures to protect Eligible Customer 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 Customer data, Competitive Supplier and its Associated Entities shall treat such Eligible Customer data as confidential information. Competitive Supplier may use Eligible Customer data to engage in direct marketing only during the term of this ESA and subject to the terms set forth in Article 18.2. A violation of this Article 2.5 shall be grounds for termination under Article 4.2(a). Competitive Supplier agrees violation of this Article 2.5 shall constitute irreparable harm.

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

### **3.1 CUSTOMER CHOICE**

The Parties acknowledge and agree that all Participating Customers have the right, pursuant to CCA Orders, Local Law, and the Program, to change their source or product 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 Customers 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 Customers to affirmatively agree to remain in the Program, consistent with any Governmental Rules.

### **3.2 NOTIFICATION TO NEWLY OPT-OUT ELIGIBLE CUSTOMERS 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 Newly Opt-out Eligible Customer and has provided to Competitive Supplier such Newly Opt-out Eligible Customer's account number, service and billing address, and other pertinent contact information, Competitive Supplier shall notify such Newly Opt-out Eligible Customer (i) of the date on which such Newly Opt-out Eligible Customer will be automatically enrolled in the Program, and (ii) that the Competitive Supplier will be providing Firm Full-Requirements Power Supply to such Newly Opt-out Eligible Customer as of the same date, subject to the opt-out provisions of the PSC Orders, Local Law, and the Program ("Opt-Out Notice"). The Opt-Out Notice shall be mailed to each such Newly Opt-out Eligible Customer 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; (iii) state how such

Newly Opt-out Eligible Customer may opt-out of the Program prior to enrollment and remain on Default Service from the Distribution Utility; and (iv) state how all Participating Customers, 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. The Parties understand that with respect to official communications, time is of the essence.

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 Customers 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 or Program Manager; 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 CUSTOMER AWARENESS

Upon mutual agreement concerning the content and method, either the Competitive Supplier, Municipality, or Program Manager may conduct customer awareness efforts at its sole expense. Notwithstanding anything to the contrary in this Agreement, Municipality and Program Manager shall be responsible for ensuring approval by the applicable Governmental Authority of the overall content in connection with any consumer awareness efforts, actions or notices, including but not limited to any education, outreach or similarly situated activities regarding the Program or an Eligible Consumer's ability to opt-out of the Program.

### 3.4 ENROLLMENT

3.4.1 Participating Customers –All Opt-out Eligible Customers as of the Effective Date will be enrolled in the Program, thus becoming Participating Customers, under the terms of this ESA unless there is a delay, through no fault of the Competitive Supplier, in obtaining information from the Distribution Utility or they opt-out during the 30-day period specified in the PSC Orders. Participating Customers 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 data security agreement, a list of Participating Customers as of the Effective Date, as well as such Participating Customer's service and billing addresses, and any other information necessary for Competitive Supplier to commence Firm Full-Requirements Power Supply to such Participating Customers as of the Service Commencement Date.

3.4.2 Newly Opt-out Eligible Customers - If Newly Opt-out Eligible Customers elect not to opt-out of the Program as provided in Article 3.2, such Newly Opt-out Eligible Customers will be automatically enrolled by Competitive Supplier in the Program. These Newly Opt- out Eligible Customers electing not to opt out of the Program as provided in Article 3.2 shall be enrolled in the Program as set out in Exhibit A, 4.6, and at a price as defined in Exhibit A. For the avoidance of doubt, Participating Customers that have opted into the Program shall also be enrolled in the Program at a price as defined in Exhibit A. Competitive Supplier shall enroll such Newly Opt-out Eligible Customers and opt-in customers in accordance with applicable PSC and Distribution Utility rules.

3.4.3 Eligible Customers Who Have Previously Opted Out - At any time during this ESA, Eligible Customers who would otherwise be Opt-out Eligible Customers but 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 Customers at a price as set forth in Exhibit A. Following mutually agreed upon procedures, the Competitive Supplier is responsible for accurately and promptly transmitting information regarding Eligible Customers, 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. For the avoidance of doubt, Eligible Customers in service classes that are not eligible for opt-out treatment as delineated in the CCA Framework Order and the CCA Framework Modification Order may be enrolled in the Program at Competitive Supplier's discretion.

3.4.4 Customers Served by Third Parties - Customers being served under other competitive supply programs offered by third parties will not be automatically enrolled as Participating Customers under this ESA until such program terminates or is otherwise completed. Competitive Supplier agrees that Eligible Customers with an opt-out eligible service class in the Con Edison territory under such third-party competitive supply programs may affirmatively opt-in at any time and receive Firm Full-Requirements Power Supply, thereby becoming Participating Customers. Competitive Supplier further agrees that customers being served under other competitive supply programs that terminate or are otherwise completed become Newly Opt-out Eligible Customers and may be automatically enrolled as Participating Customers under the CCA Orders in accordance with Article 3.2 above. Eligible Customers who opt-in as provided in this Article 3.4.4 or who enroll following the termination or completion of another competitive supply program offered by a third party shall be enrolled in the Program at the rates reflected in Exhibit A. For the avoidance of doubt, Eligible Customers in service classes that are not eligible for Opt-out treatment as delineated in the CCA Framework Order and the CCA Framework Modification Order may be enrolled in the Program at Competitive Supplier's discretion.

3.4.5 Termination Fees. There shall be no termination fees for any residential, small commercial, or municipal Participating Customers to disenroll from the Program. Competitive Supplier will continue providing Firm Full- Requirements Power Supply until Distribution Utility processes the disenrollment.

## **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 as delineated in Exhibit A, unless this ESA is terminated earlier under Article 4.2 below ("Term").

### **4.2 TERMINATION**

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

a) by the 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(f), 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 any Governmental Authority 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 Customers; 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 Customers, 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 of this ESA, Competitive Supplier shall have all Participating Customers switched back to obtaining supply from the Distribution Utility or another supplier by submitting drop requests of all Participating Customers via EDI or alternative data protocol to the Distribution Utility in a form acceptable to the Distribution Utility. Competitive Supplier shall provide written notice to Program Manager at least sixty (60) days prior to submitting any such Participating Customer drop requests in accordance with Article 4.3, which notice shall include the timing of submission of such requests to the Distribution Utility, that Competitive Supplier intends to be executed before or in anticipation of the termination of this ESA; provided, however, that Competitive Supplier's notice obligation shall not apply to any Participating Customer drop that is initiated by a Participating Customer.

#### 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 Customers; and that, at all times with respect to Participating Customers, 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 Customers. Such services shall be reasonably accessible to all Participating Customers, shall be available during normal working hours, shall allow Participating Customers 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 Customers 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 Administrator will provide to Municipality, and the Municipality will post program-related information on the Municipality's website which will be available to Participating Customers 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 Customer(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 Customers, but excluding any confidential or proprietary information of the Competitive Supplier. Competitive Supplier agrees to designate a service representative or representatives (the "Service Contacts") who shall be available for these purposes, and shall identify the email 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 Customers, 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 Customers, 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 Customers, the Competitive Supplier shall utilize such arrangements and exercise all Commercially Reasonable efforts as may be necessary to continue to serve Participating Customers 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 Customers 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 Customers (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 Customers on a non-discriminatory basis; provided, however, that those prices and other terms may vary in accordance with reasonably established service classes (e.g., residential and small commercial as defined by the Distribution Utility) 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 Governmental Rules or 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 Customer 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 Customer's failure to pay bills from the Competitive Supplier, subject to any applicable 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.

#### 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 Customers 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 Customers (but excluding individually drafted or tailored communications responding to the specific complaint or circumstance of an individual customer), 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, except that approval shall not be required for any communications that are standardized by the Governmental Rules or applicable law, in which case they will be considered already approved by all Parties.

The Municipality and Program Manager understand that time is of the essence regarding their review and that Competitive Supplier is dependent on their timeliness to ensure that its obligations are met. 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 in 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 Customers 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, including but not limited to any notice of Force Majeure or Change in Law.

## 5.7 COMMUNICATION OF INSERTS AND MESSAGES

Competitive Supplier shall, without increasing the prices reflected Exhibit A, print and mail one letter or postcard per year to all active Participating Customers, the design of which shall be determined by the Municipality or Program Manager. The letter or postcard shall be limited to one page, double-sided, and printed in color with each Municipality's identification. Any additional expenses outside of the limitations set forth above shall be paid by Program Manager.

In addition, Competitive Supplier agrees that if it communicates with Participating Customers 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 two (2) weeks before a direct communication to Participating Customers is to be mailed. Program Manager shall provide Program General Communications insert file within seven (7) calendar days of receiving such notice.

Competitive Supplier agrees to allow and facilitate the Program Manager to utilize the supplier messages area of the bill for Program communications; provided, however, Program Manager shall provide a written request to Competitive Supplier of not less than fourteen (14) days, which requests details the message to be included on the bill, and any such message shall be subject to Competitive Supplier's approval, such approval not to be unreasonably withheld.

#### 5.8 PARTICIPATING CUSTOMER LISTS

To the extent not prohibited by any Governmental Rule or expressly prohibited by any Participating Customer(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 Customer lists in an electronic format, secure transfer mode, frequency and format as set out in Exhibit C, subject to a data security 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 the PSC Orders 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 Customers. 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 the PSC Orders 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 Customer due to any act or failure to act on the part of the Competitive Supplier or its Associated Entities relating to the delivery, supply of or billing for Firm Full-Requirements Power Supply.

Municipality may 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 Customers 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, including but not limited to the following:

File final versions of the customer opt-out letters, after the supply procurement is finalized, that provide details on the Program.

Agreeing to protect that information consistent with the discussion in the body of this Order.

In addition, Program Manager 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 verified to be a qualified electricity supplier by the NYISO in the Distribution Utility’s service territory 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;
- e. Provide the Municipality with timely communications content to implement customer notification requirements for approval, not to be unreasonably withheld, given the

- projected schedule of Program’s implementation;
- 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 \$0.00175 for each kWh delivered, invoiced and paid for by Participating Customers 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 Customers. 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 Customer 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 a sufficiently detailed explanation of the error.

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.

## 7.5 AUCTION SERVICE FEE

Competitive Supplier shall, for the duration of this ESA, pay the auction service company, AuctionURenergy LLC (“Auction Service Company”), \$0.00015 for each kWh delivered, invoiced and paid for by Participating Customers during the Term (“Auction Service Fee”). This provision shall be binding upon the Parties and all permitted assigns and other successors-in-interest of the Parties, subject to the execution of any necessary separate agreement between the Auction Service Company and Competitive Supplier .

Payment to the Auction Service Company shall be made monthly by ACH to the account indicated by the Auction Service Company, provided that Competitive Supplier has received payment with respect to the electricity used by the Participating Customers.

The Auction Service Fee shall be paid by the last business day of the month based on revenue collected by Competitive Supplier with respect to each Participating Customer during the calendar month two months prior. For example, for full payments received from Participating Customers in January the Auction Service Fee associated with those payments will be paid by the end of March. If Competitive Supplier has paid a past Auction Service Fee in error (or the payment was based on information subsequently determined invalid), it may deduct from or add to future payments due to the Auction Service Company and provide a sufficiently detailed explanation of the error.

## **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 Customers under the Program. Competitive Supplier, except as explicitly limited by the terms included in Exhibit A, shall be obligated to accept all Participating Customers, regardless of their location or energy needs provided such Participating Customers 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 Customers 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 Customers 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 Customer's meter(s) performed by the Distribution Utility. Competitive Supplier shall cause the Distribution Utility to prepare and mail bills to Participating Customers monthly. The Competitive Supplier shall adopt the billing and payment terms offered by the Distribution Utility to its Eligible Customers on Default Service. If actual meter date is unavailable, the Competitive Supplier may cause the Distribution Utility to bill based on its good faith estimates of usage. Any overcharge 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 Customers 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 Customer'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 Customers' bills. Participating Customers shall be responsible for all taxes that are customarily imposed upon a purchaser of electricity and are associated with electricity consumption under the ESA. The Parties acknowledge and agree that Participating Customers 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 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 and any regulations, orders or policies adopted pursuant thereto.

### **ARTICLE 10 SERVICE PROTECTIONS FOR RESIDENTIAL CUSTOMERS**

#### 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 agree to comply with any code of conduct or policies the PSC may adopt in accordance with the PSC Orders and to all related Orders of Case 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, no later than ten days after a request from Municipality or Program Manager, 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 Customer(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 customer complaints received from a Participating Customer, 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 Customer 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 Monthly Report of Sales

Competitive Supplier shall provide the Municipality or its agent with the following monthly reports as shown on Exhibit B attached hereto within 30 days of the end of the month:



1. kWh and counts disaggregated by municipality, utility zone, customer type, service class, product
2. Add-Drop report with count of transactions for drop categories Moved, Changed Supplier, Opt-out, Other, and add categories of Opt-in and Newly Eligible.

All reports provided under this 12.1 shall be provided in electronic format.

#### 12.1.2 Customer-Related Data

On and after the Service Commencement Date, Competitive Supplier will maintain customer-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 corrections to such information or data to the Municipality or its agent within a Commercially Reasonable time.

### 12.2 POWER SUPPLY REPORT

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, including the creation of separate labels to reflect renewable CCA products within the Competitive Supplier's portfolio, as well as individual municipal renewable purchases within the CCA program.

Unless the Environmental Disclosure Label requirement is waived by PSC, Competitive Supplier shall present a copy of the current Environmental Disclosure Label annually or as required by the PSC of all Competitive Suppliers to be disclosed to their Participating Customers, 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 Customers 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 and generally accepted accounting principles. 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 Competitive Supplier's obligations under this ESA and 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.

#### 12.5 ADDITIONAL REQUESTS FOR INFORMATION

Upon reasonable request, Competitive Supplier shall provide Program Manager or Municipality with information necessary to comply with the CCA Orders, including but not limited to information concerning Participating Customer complaints and reasons for opting out of the Program. Competitive Supplier shall make Commercially Reasonable efforts to maintain Participating Customer records in a manner that facilitates the Parties compliance with the CCA Orders.

### **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' elected 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 (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 that the following are true:

- a) This ESA constitutes a legal, valid and binding obligation of the Competitive Supplier enforceable against it in accordance with the ESA's terms, subject to applicable law, and the Competitive Supplier can and will perform its obligations hereunder 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.
- b) Subject to the conditions set forth in Article 2.4:

- i) 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;
- ii) 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;
- iii) 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;
- iv) no bankruptcy is pending against it or to its knowledge threatened against it;
- v) 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
- vi) 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 that the following are true:

- a) This ESA constitutes a legal, valid and binding contract of the Municipality enforceable in accordance with its terms, subject to applicable law, and Municipality will perform its obligations hereunder 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;
- 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 that the following are true:

- a) This ESA constitutes a legal, valid and binding contract of Program Manager enforceable in accordance with its terms, subject to applicable law, and the Program Manager can and will perform its obligations to the Competitive Supplier 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;
- 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) None of the documents or other written information furnished by or on behalf of Program Manager to or for the benefit of the Competitive Supplier 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
  - d) 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
  - e) 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 Nominal Start 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 fourteen days prior to the Nominal Start 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 Nominal Start 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 Customers 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 or reduced costs as a result thereof, such amount shall be allocated to and collected from Participating Customers 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 Customers 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 Customers or other Eligible Customers located within the Municipality, Competitive Supplier agrees to (i) give the Municipality and Program Manager 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 and Program Manager 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 Customer that relies upon Competitive Supplier's unique knowledge of, or access to, Participating Customers 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 Participating Customer with the intent to sell a new product or service. Programs of the Competitive Supplier that do not rely on unique knowledge or access gained through this ESA will not constitute such "direct marketing."

Notwithstanding the foregoing, Competitive Supplier shall have no liability for the marketing, offering or provision of products or services through any of its Associated Entities to Participating or Eligible Consumers if all of the following conditions are satisfied:

- 1) Such activity does not suggest, hint or otherwise imply that any marketed product(s) or service(s) is/are associated with Competitive Supplier or the CCA Program;
- 2) Such activity does not use the trade name or trade or service marks of the Competitive Supplier;
- 3) Such activity does not utilize any data obtained by Competitive Supplier obtained in connection with this ESA; and
- 4) Competitive Supplier is not aware of any such activity.

### 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:

Constellation NewEnergy, Inc.  
1001 Louisiana St., Suite 2300  
Houston, TX 77002  
Attn: Contract Administration

If to Municipality:

Village Manager  
Village of Croton-on-Hudson  
1 Van Wyck Street  
Croton-on-Hudson, NY 10520

and if to Program Manager:

Executive Director  
Sustainable Westchester Inc  
40 Green Street  
Mount Kisco, NY 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 18.2. 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 Participating Customer 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; DIGITAL SIGNATURES

This ESA may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single agreement. Any signature page hereto delivered by facsimile machine or by e-mail (including in portable document format (pdf), as a joint photographic experts group (jpg) file, or otherwise) or by other digital application (e.g., Docusign or Adobe Sign) shall be binding to the same extent as an original signature page, with regard to any agreement subject to the terms hereof or any amendment thereto and may be used in lieu of the original signatures for all purposes.

#### 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 and Municipality agree not to use, whether directly or through any of its Associated Entities, the name of the other Party, or make any reference to the other Party in any advertising or other information to be distributed publicly for marketing or educational purposes, unless the other Party expressly agrees to such usage; provided, however, that this prohibition shall not prevent Competitive Supplier or Municipality from identifying the other Party as required under the CCA Orders. Any proposed use of the name of a Party 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 joint review and approval prior to issuance of all media press releases regarding this Agreement. Approval of press releases will not be unreasonably withheld. 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.

#### 18.16 INTERPRETATION

The schedules and exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein. All references to "\$" or "dollars" mean the lawful currency of the United States of America.

### **ARTICLE 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 OF LIABILITY

NO PARTY HERETO SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, CONNECTED WITH OR RESULTING FROM PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER SUCH CLAIMS ARE 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.

#### 19.3 DISCLAIMER

COMPETITIVE SUPPLIER MAKES NO WARRANTIES HEREUNDER, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

*//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

COMPETITIVE SUPPLIER –

By:

Name:

Title:

Address:

Dated:

MUNICIPALITY –

By:

Name: Bryan Healy

Title: Village Manager

Address: Croton-on-Hudson, NY 10520

Dated:

PROGRAM MANAGER – Sustainable Westchester

By:

Name: Noam Bramson

Title: Executive Director

Address: 40 Green Street, Mount Kisco, NY 10549

Dated:

**EXHIBIT A – PRODUCTS, PRICES AND TERMS**

- 1. DEFAULT PRODUCT and PRICE. Competitive Supplier shall offer to Eligible Consumers and provide to Participating Customers the following “Default Product” at the prices indicated below.**

**50% Renewable Clean Power Product at the following fixed prices:**

Service Class	Fixed price per kWh
Residential & Small Commercial	\$0.12178*

\* Villages and cities in Westchester assess Gross Receipts Tax (“GRT”) on energy sales. The price in the table above does not include GRT. GRT is reflected in the rate billed by the Distribution Utility and will be remitted to the municipality by supplier as required under 8.4.4.

- 2. ALTERNATIVE PRODUCT AND PRICES. In addition to the Default Product described above, Participating Customers may choose the following product(s) as an alternative to the Default Product at the prices indicated below**

**100% Renewable Clean Power Product at the following fixed prices:**

Service Class	Fixed price per kWh
Residential & Small Commercial	\$0.13298*

\* Villages and cities in Westchester assess Gross Receipts Tax (“GRT”) on energy sales. The price in the table above does not include GRT. GRT is reflected in the rate billed by the Distribution Utility and will be remitted to the municipality by supplier as required under 8.4.4.

**3. FURTHER DEFINITIONS**

**“50% Renewable Clean Power Product”** means Firm Full-Requirements Power Supply matched with 50% New York Voluntary EDP Renewable RECs. This 50% Renewable Clean Power Product includes a voluntary purchase of Renewable Energy Certificates (“RECs”), supporting the NY Environmental Disclosure Program that are sourced from New York Voluntary EDP Renewable RECs in an amount equal to 50% of the Participating Customers’ electricity usage including any additional RECs required to account for line loss. This is in addition to Competitive Supplier’s obligation to make REC purchases associated with New York Clean Energy Standard requirements applicable to Competitive Supplier.

**“100% Renewable Clean Power Product”** means Firm Full-Requirements Power Supply matched with 100% New York Voluntary EDP Renewable RECs. This 100% Renewable Clean Power Product includes a voluntary purchase of Renewable Energy Certificates (“RECs”), supporting the NY Environmental Disclosure Program that are sourced from New York Voluntary EDP Renewable RECs in an amount equal to 100% of the Participating Customers’ electricity usage including any additional RECs required to account for line loss. This is in addition to Competitive Supplier’s obligation to make REC purchases associated with New York Clean Energy Standard requirements applicable to Competitive Supplier.

**“New York Voluntary EDP Eligible RECs”** means the voluntary purchase of Renewable Energy Certificates (“RECs”) which comply with the attribute delivery rules set forth in the New York Generation Tracking System (“NYGATS”) Operating Rules, supporting the NY Environmental Disclosure Program that are sourced from NY EDP Eligible Renewable Resources.

**“NY Public Policy Transmission Project Costs”** means costs or charges imposed by the NYISO (including without limitation, Work in Progress charges or other related transmission costs not including charges under NY TOTS Project Costs or Ancillary Services And Other ISO Costs) associated with the development of the transmission facilities under the NYISO’s Public Policy Transmission Planning Process and in compliance with FERC Order No.1000 (Stats. & Regs 31,323 issued July 2011, as may be amended or modified from time to time during the term of this ESA).

**“NY CFC Transmission Costs”** means any statewide allocation of costs or charges imposed by the NYISO associated with the development of approved local transmission facilities under the Climate Leadership and Community Protection Act pursuant to the “Order Approving Phase 2 Areas Of Concern Transmission Upgrades” issued by the PSC on February 16, 2023 in Case No. 20-E-0197, as may be amended or modified from time to time during the term of this ESA.

**“NY EDP Eligible Renewable Resource”** means any electric power generator meeting the NY Environmental Disclosure Program eligibility criteria of a NY renewable energy generating source which comply with the attribute delivery rules set forth in the NYGATS Operating Rules, supporting the NY Environmental Disclosure Program, as of the Effective Date of this Agreement. RECs will be retired for all participants collectively at the Program level.

**“NY Environmental Disclosure Program” (also referred to as the "NY EDP Program")** means the environmental disclosure program administered by the New York State Department of Public Service, through which load serving entities periodically inform their customers of the fuel source, emissions and other characteristics of the electricity resources supplied to them.

#### 4. TERMS FOR SUPPLY SERVICE

- 4.1. **Period of Delivery.** The period of delivery shall be consistent with the provisions of Article 4 and Exhibit A of this ESA.
- 4.2. **Service Commencement Date.** Firm Full-Requirements Power Supply will commence at the prices and terms stated in this Exhibit A herein as of each Participating Customer’s first meter read dates on or after November 1, 2024. Service shall continue until the first customer meter read date on or after December 1, 2024 for each Participating Customer unless this ESA is sooner terminated in accordance with Article 4.2 of this ESA.
- 4.3. **Eligible Customer Opt-In or Opt-Out.** Eligible Customers are free to opt-in or opt-out of the Program, or change their product selection. Competitive Supplier shall process such requests by notifying Distribution Utility of such change utilizing established EDI protocols within five (5) business days. There are no fees or charges for Participating Customers to opt-in, opt-out, or change their product selection.

- 4.4. **Service of Newly Opt-out Eligible Customers.** Supplier shall serve Newly Opt-out Eligible Customers, as well as Eligible Customers who opt-in to the Program, who enroll and are enrolled into the Program after the first customer meter-read date referred to above at the prices set forth herein.
- 4.5. **New Customer Refreshes During the Term.** December, March, and July during the term of this ESA, Competitive Supplier shall perform a refresh or new customer sweep to create a list of Newly Opt-Out Eligible Customers. As a result of any such refresh or sweep performed, Newly Opt-Out Eligible Customers will be automatically enrolled in the Program unless a customer opts out of the Program; provided, however, that no refresh, sweep or enrollment of such Newly Opt-Out Eligible Customers that are part of any refresh or sweep shall occur less than four (4) months prior to the End Date or in the event of termination of this ESA. Competitive Supplier may perform a refresh and enroll Newly Opt-out Eligible Customers outside of the December, March and July periods if mutually agreed to by all the Parties hereunder.
- 4.6. **Competitive Supplier's Standard Credit Policy.** The Competitive Supplier will not require a credit review for any customer participating in the Program, nor will Competitive Supplier require any customer to post any security deposit as a condition for participation in the Program. The Competitive Supplier may terminate service to a Participating Customer and return such customer to Default Service in the event that the customer fails to pay to Competitive Supplier amounts past due greater than sixty (60) days.
- 4.7. **Purchase of Renewable Energy Certificates; NYGATS Recording.** Competitive Supplier shall identify the technology and location of the renewable generators that are the sources of the Voluntary RECs for the Default and Alternative Products, as applicable. All New York Voluntary EDP Eligible RECs shall be created and recorded as such in the NYGATS.
- 4.8. **Modifications Due to Regulatory Events:** For the avoidance of doubt, the Parties acknowledge and agree that the following shall be treated as Regulatory Events as set forth herein.
- 4.8.1. **Adjustment in the Event of a Subsidy.** In the event that New York State institutes a subsidy for CCA purchase of RECs after the signing of this ESA that is applicable to all or any portion of the Competitive Suppliers obligations under this ESA, Competitive Supplier shall pass through the full subsidy to Participating Customers in the form of a rate reduction.
- 4.8.2. **Adjustment for NY State Transmission Costs.** Municipality understands that the Fixed Price set forth above Costs includes transmission related charges under the NY TOTS Project Costs, NYPA Transmission Adjustment Cost, and Ancillary Services and other ISO Costs, and that these shall not be subject to pass through adjustments. Municipality further understands that the Fixed Price includes NY Public Policy Transmission (NYPPT) Costs at a rate of \$0.00440/kWh, and that other NY CFC Transmission Costs are unknown at the time of bidding and therefore are

not included in the Fixed Price. Competitive Supplier will pass through to Participating Customers any changes relative to the price adjust rate of \$0.00440/kWh, (upward or downward) to NYPPT and NY CFC Transmission costs not excluded from pass through adjustment in this 4.8.2, based on changes in such costs accruing from the Service Commencement Date forecasted through the remainder of term of this ESA, and which will be reflected in a future adjustment. Any such adjustments shall occur once during any calendar year and Competitive Supplier will provide sufficient documentation, as determined in Competitive Supplier's reasonable discretion, evidencing the factual and regulatory basis for the proposed price change resulting from a change in NY State Transmission Costs; provided, however, that Competitive Supplier shall not be required to disclose non-public, proprietary business information to comply with this requirement.

- 4.8.3. **Adjustment for Changes to Clean Energy Standard.** The Parties agree and acknowledge that the Fixed Price set forth above excludes costs and charges associated with changes to the obligations of New York's Clean Energy Standard ("CES"), including but not limited to CES Tier 4 program costs as described in the "Order Adopting Modifications to the Clean Energy Standard" in case 15-E-0302 dated October 15, 2020, as may be amended or modified from time to time during the term of this Agreement. In the event that changes to such regulations/orders are finalized, such changes shall be deemed a Regulatory Event as that term is defined in this ESA and the Parties agree to amend this Exhibit A to reflect the cost impact of such Regulatory Event. For the avoidance of doubt, adjustments for Tier 1 REC Purchase Obligations are governed by Article 4.9.4, below.
- 4.8.4. **Adjustment for Clean Energy Standard Tier 1 REC Purchase Obligations.** The Parties agree and acknowledge that the Fixed Price set forth above includes Tier 1 REC purchases at a rate of \$0.0030/kWh in anticipation of compliance obligations under the Clean Energy Standard (CES) Tier 1 Renewable Energy Standard. In the event that final obligations established by the State result in a material change to this rate, upward or downward, such changes shall be deemed a Regulatory Event as that term is defined in this ESA and the Parties agree to amend this Exhibit A to reflect the cost impact of such Regulatory Event.
- 4.8.5. For the avoidance of doubt, the Parties agree and acknowledge that the Fixed Price set forth herein includes all costs and charges associated with the Clean Energy Standard, except as set forth in Articles 4.8.3 and 4.8.4, above.
- 4.8.6. The Parties agree and acknowledge that the costs associated with any mailings arising from a rate adjustment will be included in the adjusted rate and are excluded from the above fixed rates.
- 4.9. **Change in Default Supply by Mutual Agreement:** The Parties acknowledge and agree that, in the event that RECs become available in sufficient quantities for Competitive Supplier to offer the 100 Renewable Clean Power Product as the Default Product as set forth in this Exhibit A, the Parties may execute an



amendment to this Exhibit A to change the Default Product from the 50% Renewable Clean Power Product to the 100% Renewable Clean Power Product. The Parties further acknowledge and agree that any change in the price of the Default Product pursuant to this Article 4.9 shall reflect only the increased cost associated with the additional purchase of RECs as set forth herein and no other changes. Any such amendment shall be complete prior to the mailing of opt-out letters to Eligible Customers, such that the purchase of RECs will not alter the price paid by Participating Customers after the Nominal Start Date.

- 4.10. Competitive Supplier anticipates that the RECs provided hereunder will be generated primarily by hydroelectric facilities, but some portion of the RECs may be generated by wind, solar or other facilities, and except as set forth herein, Competitive Supplier reserves the right to source the RECs from any qualifying NY EDP Eligible Renewable Resource. Each REC represents environmental attributes associated with one MWh of electricity generated by a renewable fuel type defined by NYGATSS Operating Rules, last updated June 2, 2023, but does not include any tax credits, depreciation allowances or third-party subsidies of any kind. Competitive Supplier does not represent or warrant that the RECs purchased hereunder can be used as offsets or otherwise for compliance with any emission reduction or similar program.
- 4.11. In the event that the DPS or other governmental authority determines that a 50% or 100% Renewable Clean Power Product may be provided through the voluntary purchase of New York Voluntary EDP Eligible RECs in an amount equal to 50% or 100% of the Participating Customers' electricity usage less any then-current Tier 1 REC purchase associated with the Clean Energy Standard requirements applicable to Competitive Supplier in New York, such change shall be deemed a Regulatory Event as that term is defined in this ESA and the Parties agree to amend this Exhibit A to reflect the cost impact of such Regulatory Event.



## EXHIBIT C - DATA REQUIREMENTS

In order for Program Manager 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.

There are three file formats currently in use for this purpose which must be provided by Competitive Supplier to Program Manager:

1. Newly Opt-out Eligible Customer file - Competitive Supplier will obtain this data from the Utility as set out in 3.4.2 above and the notification mailing is made from the list following procedures described elsewhere in this ESA. The Program Manager requires a matching dataset as defined below in order to perform its duties for customer service during the opt out period.
2. Post-enrollment file\* – Weekly, and after the Competitive Supplier sends enrollments to the Utility, either at the beginning of this contract or after a Newly Opt-out Eligible Customer opt out period, the Competitive Supplier will send this file to the Program Manager to update its records.
3. Overnight file\* – basic status update for all transactions occurring since the last overnight file.
4. Commission file - Standard practice for aggregation suppliers.

\* Competitive Supplier shall use Commercially Reasonable effort to provide the files within the timeframe stated above to support Program Manager’s customer service needs, provided, however, that transmission frequencies for the Post-enrollment file and Overnight file may deviate from those in subsections 2 and 3 above until such time as Competitive Supplier has systems or processes that are fully automated and capable of creating such files.

The abovementioned files should, at minimum, contain the following information:

<b><u>Newly Opt-out Eligible Customer file</u></b>	<b><u>Post-enrollment file</u></b>	<b><u>Commission file</u></b>
Pre-Enrollment ID Customer Name Service Address Service City State Zip Mailing Address Mail City State Zip Customer Classification Rate Category	Pre-Enrollment ID Utility Account Number Meter Read Cycle Account Start Account End Enrollment Issue/Reason Code Municipality Name Contract Start Contract End Rate Class Annual kWh Capacity Tag Capacity Start Date Capacity End Date Billing Name Billing Address Billing State Billing City Billing Zip Enrollment Date (Contract Start Date) Load Zone	Customer Name Service Account Number Invoice Number Contract ID Municipality Customer Class Invoice Date Start Date End Date Earned Date Scheduled Payment Month Usage UDC Code Commission Rate/Amount Commission Payment Lag (Days)

File transfer between the Supplier and Program Manager, or a party designated by Program Manager, shall be by SFTP or other secure mode.

## **EXHIBIT D - OPTION FOR ALTERNATIVE SUPPLY OF POWER**

Competitive Supplier shall provide power to Participating Customers, including through the purchase of REC's, throughout the term of this ESA and from sources selected in Competitive Supplier's own discretion. However, Program Manager desires to build or contract with a third party to supply renewable sources of energy (a "Renewable Power Source") after the Effective Date of the Program for the benefit of the Participating Customers or a subset of Participating Customers within the Municipality, should the Municipality elect to do so. Upon completion of any such Renewable Power Source or identification of a third-party Renewable Power Source, the Program Manager may offer to procure or sell output from the Renewable Power Source to Competitive Supplier, either directly or through an Associated Entity, under a separate Power Purchase Agreement ("PPA"). Competitive Supplier may also propose alternative PPA opportunities for a Renewable Power Source, or Program Manager and Competitive Supplier may elect to solicit offers from the free market for like quantities of power, RECs, or capacity.

Program Manager understands and acknowledges that (i) Competitive Supplier shall have no obligation to enter into a PPA during the term of this ESA; and (ii) if Competitive Supplier agrees to enter into a PPA, then completion of a PPA is contingent upon (without limitation) Competitive Supplier's confirmation (in its sole determination) that (a) the terms are in compliance with all rules, laws and regulations; (b) it has internal senior management approval after completion of financial, credit, legal and operation due diligence; and (c) the Parties have executed an amended ESA to incorporate terms of the PPA, including any necessary pricing adjustments agreed to by all Parties. In the event that Competitive Supplier elects not to enter into a PPA as described above and Program Manager enters into a third-party agreement, then the terms of this ESA shall remain unmodified and in full force and effect.

In the event Program Manager identifies output from Renewable Power Source(s) that Program Manager desires to assign to or request that the Competitive Supplier use in the Program, Program Manager will describe whether each product is unit-contingent or smoothed, and Program Manager will describe the projected (if unit contingent) or committed quantity (if smoothed) for RECs, Capacity and/or kWh, including time blocks for the product, if appropriate.

In the event that the Parties elect to enter into a PPA, the Parties agree to negotiate, in a Commercially Reasonable manner, a rate adjustment to Participating Customers to (a) compensate Competitive Supplier (or an Associated Entity) for any losses should Competitive Supplier (or an Associated Entity) need to then sell off any of the original power purchased to supply the Program at a lower price than it purchased it for, or (b) compensate Participating Customers for any gains should Competitive Supplier (or an Associated Entity) then be able to sell off any of the original power purchased to supply the Program at a higher price than it purchased it for. Any such rate adjustment shall only amend or modify the ESA by a written instrument signed by all Parties hereto. For avoidance of doubt, the foregoing does not obligate the Parties to come to an agreement regarding a rate adjustment.