

**SPECIAL TOWN BOARD MEETING**

**October 8, 2020**

**4:00 PM**

**AGENDA**

10-07-2020

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

**ITEM FOR BOARD ACTION**

**10STB2020-1** Resolution Authorizing Amendments to Community Choice Aggregation Agreements

**EXTRACT OF MINUTES OF MEETING OF THE TOWN BOARD ADOPTING  
A RESOLUTION AUTHORIZING AMENDMENTS TO COMMUNITY CHOICE  
AGGREGATION AGREEMENTS**

At the special meeting of the Town Board of the Town of Irondequoit, Monroe County, New York held at the Town Hall, 1280 Titus Avenue, in said Town of Irondequoit, on the 8th of October, 2020, at 4:00 P.M. local time; there were:

David Seeley	Town Supervisor
Patrina Freeman	Town Board Member
John Perticone	Town Board Member
Kimie Romeo	Town Board Member
Peter Wehner	Town Board Member

Harter Secrest & Emery LLP	Attorney for the Town
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Town Board Member \_\_\_\_\_ offered the following resolution and moved its adoption:

**WHEREAS**, by Local Law No. 8-2018, the Town enabled the creation of a Community Choice Aggregation Program (“Program”) pursuant to § 10(1)(ii)(a)(12) of the New York Municipal Home Rule Law and consistent with State of New York Public Service Commission Case No. 14-M-0224; and

**WHEREAS**, pursuant to Resolution No. 2019-207, the Town Board resolved to engage Joule Assets, Inc. (“Joule”) to, among other things, act as Program Administrator on behalf of the Town for the Program; and

**WHEREAS**, on March 6, 2020, the Town, Joule, and Roctricity LLC entered into that certain Community Choice Aggregation Agreement (“CCA Agreement”), whereby Joule agreed to, among other things, pre-qualify prospective energy suppliers to provide Town residents with 100% renewable energy at a net savings compared to the 12-month historic average, measured from the bid issuance date, of the Rochester Gas & Electric residential rate for electricity charged to residential customers; and

**WHEREAS**, pursuant to a resolution dated June 16, 2020, the Town Board authorized Joule to issue a request for proposals seeking electricity suppliers to supply renewable electricity to Town residents on a 100% renewable energy basis and at a net savings compared to the 12-month historic average, measured from the bid issuance date, of the Rochester Gas & Electric residential rate for electricity charged to residential customers, and further authorized entry into an Electricity Supply Agreement (the “Electricity Supply Agreement”), responsive to the foregoing requirements (among others) with a qualifying supplier of renewable electricity; and

**WHEREAS**, Joule has sought to locate suppliers to provide electricity on a 100% renewable basis and providing a net savings compared to the 12-month historic average, as described more fully above, but given market conditions, has not received fully responsive and compliant quotes from potential suppliers; and

**WHEREAS**, on October 1, 2020, Joule received electricity quotes from several potential electricity suppliers, which would come near to providing a net savings compared to the 12-month historic average and which would provide Town residents with 100% renewable energy at a net savings compared to the 24-month historic average, measured from the bid issuance date, of the Rochester Gas & Electric residential rate for electricity charged to residential customers; and

**WHEREAS**, the Town wishes to authorize amendments to the CCA Agreement and the Electricity Supply Agreement to allow Joule to pre-qualify prospective suppliers who provide Town residents with 100% renewable energy at a net savings compared to the 24-month historic average, measured from the bid issuance date, of the Rochester Gas & Electric residential rate for electricity charged to residential customers, among other changes; and

**WHEREAS**, the Amended and Restated Community Choice Aggregation Agreement, in the form attached hereto as **Exhibit A**, and the revised Electricity Supply Agreement (in the form attached hereto as **Exhibit B**, have been reviewed and approved by the Attorney for the Town, and have been deemed to provide benefits, adequate protections, and a minimization of risk to the Town.

**NOW, THEREFORE, BE IT RESOLVED**, that the Town Board authorizes the Supervisor to execute the Amended and Restated Community Choice Aggregation Agreement, substantially in the form attached hereto as Exhibit A or as may be approved by the Attorney for the Town.

**AND, THEREFORE, BE IT FURTHER RESOLVED**, that the Town Board authorizes Joule, in its capacity as program manager, to issue a Supply RFP consistent with the provisions of this Resolution and the resolutions described more fully above, with bids to be evaluated based upon compliance with the specifications of the Supply RFP including, without limitation, price and tenor parameters, and the Supplier's acceptance of all material terms of the revised Electricity Supply Agreement, substantially in the form attached hereto as Exhibit B or as may be approved by the Attorney for the Town.

**AND, THEREFORE, BE IT FURTHER RESOLVED**, that the Town Board approves the revised Electricity Supply Agreement in substantially the form attached to this Resolution as Exhibit B, or as may be approved by the Attorney for the Town, such form to be included in the Supply RFP.

**AND, THEREFORE, BE IT FURTHER RESOLVED**, that Joule in its role as Program Administrator for the Program shall, among other things, manage the energy

procurement process, prepare and issue the Supply RFP, and make recommendations for award to the Town; provided however, that the Town will, through the Supervisor, make the final award decision.

**AND, THEREFORE, BE IT FURTHER RESOLVED**, that subject to the conditions that the awarded Supplier has been pre-qualified as required by Program Administrator and that the awarded bid meets the specifications established in the Supply RFP, the Town Supervisor shall execute an Electricity Supply Agreement, as revised, on behalf of Town, in substantially the form attached hereto as Exhibit B, as may be revised by the Attorney for the Town, with the awarded Supplier and Program Administrator in a timely fashion; provided, however, that the Town is under no obligation to award the Supply RFP should these conditions not be met.

This resolution shall take effect immediately upon its adoption.

Seconded by the Town Board Member \_\_\_\_\_ and duly put to vote, which resulted as follows:

Town Board Member	Wehner	voting	_____
Town Board Member	Perticone	voting	_____
Town Board Member	Freeman	voting	_____
Town Board Member	Romeo	voting	_____
Town Supervisor	Seeley	voting	_____

# Exhibit A

(Amended and Restated Community Choice  
Aggregation and Agreement)

# Exhibit B

(Revised Electricity Supply Agreement)

**AMENDED AND RESTATED  
COMMUNITY CHOICE AGGREGATION AGREEMENT**

This Amended and Restated Community Choice Aggregation Agreement (the “**Agreement**”) is entered into as of October \_\_, 2020 (the “**Effective Date**”) by and between the **TOWN OF IRONDEQUOIT**, a municipal corporation of the State of New York, having its principal offices at 1280 Titus Avenue, Rochester, New York 14617 (“**Municipality**”), **JOULE ASSETS INC.**, a Delaware corporation having its principal offices at 22 Edgemont Drive, Katonah, New York 10536 (“**Joule**”) and **ROCTRICITY LLC**, a New York limited liability company having its principal offices at 758 South Ave, Rochester, New York 14620 (“**Roctricity**”) (Municipality, Joule, and Roctricity are referred to individually as a “**Party**” and collectively as the “**Parties**”).

**RECITALS**

WHEREAS, Joule is in the business of providing consulting and program administration services in connection with an energy procurement program known as Community Choice Aggregation, which replaces the incumbent utility as the default supplier for all eligible customers within the Municipality (“**CCA**”); and

WHEREAS, Roctricity is a CCA organization formed to bring Community Choice Aggregation to Rochester and surrounding areas; and

WHEREAS, the New York State Public Service Commission has authorized municipalities to participate in CCA pursuant to the CCA Order (as defined below); and

WHEREAS, Municipality desires to engage Joule and Roctricity to provide 100% renewable energy through CCA at a net savings to its residents in accordance with the Response Documents;  
and

WHEREAS, the parties entered into that certain Community Choice Aggregation Agreement, dated March 6, 2020, setting forth their agreement concerning the Community Choice Aggregation energy procurement program (the “**Original Agreement**”), but now desire that this Agreement replace, amend, and restate all of the terms and provisions of the Original Agreement in its entirety.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the Parties hereto agree as follows:

**ARTICLE 1. DEFINITIONS**

1.1 The following terms shall have the meanings ascribed below:

(a) “**Applicable Law**” means the CCA Order and all applicable local, state, and federal statutes, ordinances, laws, rules and regulations.

(b) “**CCA Administrative Fee**” has the meaning set forth in Section 7.1.

(c) “**CCA Order**” means the April 21, 2016 “Order Authorizing Framework For Community Choice Aggregation Opt-Out Program” issued by the PSC in Case 14-M-0224, “Proceeding on Motion of the Commission to Enable Community Choice Aggregation Programs” as may be amended or supplemented from time to time by the PSC.

(d) “**Default Service**” means the energy supply service provided by the Distribution Utility to customers who are not currently receiving electric service from an ESCO.

(e) “**Distribution Utility**” means the owner or controller of the means of distribution of the natural gas or electricity that is authorized to be the distribution utility regulated by the Public Service Commission for a particular service area.

(f) “**Electricity Supply Agreement**” or “**ESA**” means the Electricity Supply Agreement that may be entered into by and between Municipality and the Selected Supplier that contains the terms and condition concerning electricity supply procurement.

(g) “**Original Agreement**” means that certain Community Choice Aggregation Agreement among the parties, dated March 6, 2020.

(h) “**Participating Customer**” means a customer who participates in the CCA Program in accordance with Applicable Laws including without limitation a customer who is eligible to participate on an opt-out basis and has not opted out, and customer who is eligible to participate on an opt-in basis and has opted-in.

(i) “**Public Service Commission**” or “**PSC**” means the New York State Public Service Commission or the New York State Department of Public Service acting as staff on behalf of the Public Service Commission.

(j) “**RFP**” means the Request for Proposals for Community Choice Aggregation (CCA) Administrator issued on behalf of the Town of Irondequoit, Town of Brighton, Town of Pittsford, and Village of Pittsford issued March 1, 2019.

(k) “**Response Documents**” means the Proposal: CCA Administrator dated April 5, 2019 submitted by Joule Assets, Inc. to the Town of Irondequoit, Town of Brighton, Town of Pittsford, and Village of Pittsford, together with the Appendices attached thereto.

(l) “**Selected Supplier**” means, in accordance with the Response Documents the supplier selected by the Municipality to provide 100% renewable energy at a net savings compared to the 24-month historical average, measured from the bid issuance date, of the Rochester Gas & Electric residential rate for electricity charged to residential customers.

## ARTICLE 2. RIGHTS AND RESPONSIBILITIES OF JOULE

2.1 Joule shall perform all of the activities designated or assigned to Joule in accordance with the RFP and Response Documents, both of which are hereby incorporated by reference as if restated in their entirety, including but not limited to:

- (a) Create an implementation and data protection plan;
- (b) Educate and notify the public;

(c) Lawfully and securely procure, transfer, and store anonymized and customer-specific Program data received by a utility as confidential information on behalf of the Municipalities, pursuant to an approved data protection plan;

(d) Analyze and report data;

(e) Conduct an analysis and report to Municipality on market conditions, pricing, and estimated cost savings based on projected bid and launch timeline;

(f) Procure local clean energy generation;

(g) Integrate distributed energy resources;

(h) Pre-qualify prospective energy suppliers;

(i) Draft and negotiate requests for proposals for 100% renewable energy commodity supply contracts and renewable energy credits;

(j) Comply with legal and regulatory requirements for the CCA Program;

(k) If Municipality enters into an ESA, process customer enrollment and opt-outs; and

(l) Provide continued support throughout the term of this Agreement.

2.2 In accordance with the Response Documents and subject to the request and approval of the Municipality, Joule shall develop proposals and provide consulting services in connection with other municipal energy programs, including but not limited to demand response, demand management, microgrids, distributed energy resources, and/or community distributed generation. Regardless of whether Municipality elects to implement a CCA Program, in the event that Municipality desires to implement other Municipal Energy Programs and engage Joule's assistance in connection with such implementation, the Parties may, but are not required to, enter into a subsequent agreement describing the scope of Joule's services and the payment to Joule in connection therewith.

2.3 Unless otherwise agreed to by the Parties in writing, and without limiting Joule's ability to communicate with the public, Joule shall only communicate with the Municipality through the Municipality's town board members, the Municipality's supervisor, and/or their designee(s).

2.4 Joule shall comply with all Applicable Laws.

### ARTICLE 3. RIGHTS AND RESPONSIBILITIES OF ROCTRICITY

3.1 Roctricity shall perform all of the activities set forth in Response Documents, which is hereby incorporated by reference as if restated in its entirety, that are assigned or otherwise delegated to Roctricity by Joule. Notwithstanding the foregoing, Joule shall be jointly and severally liable with Roctricity for any activities assigned or otherwise delegated to Roctricity, and Joule shall undertake any or all such assigned or delegated tasks if Roctricity is unable or unwilling to do so.

3.2 Unless otherwise agreed to by the Parties in writing, and without limiting Roctricity's ability to communicate with the public, Roctricity shall only communicate with the Municipality through the

Municipality's town board members, the Municipality's supervisor, and/or their designee(s).

3.3 Roctricity shall comply with all Applicable Laws.

#### ARTICLE 4. ROLE OF PROGRAM ORGANIZER FOR CCA PROGRAM

4.1 The Parties acknowledge and agree that Joule has entered into an agreement with Roctricity to act as Program Organizer in connection with the CCA Program in accordance with the Response Documents (the "Program Organizer Agreement"). Joule shall be solely responsible for any fees or payments due for services provided by the Program Organizer.

4.2 Notwithstanding the foregoing, Joule shall be responsible for delivering all services and fulfilling all obligations as set forth in the Response Documents. Joule agrees that it will not terminate the Program Organizer Agreement without the consent of the Municipality, nor shall it enter into a new Program Organizer Agreement with any other entity without the consent of the Municipality, which consent shall not be unreasonably withheld.

#### ARTICLE 5.

#### INTENTIONALLY OMITTED

#### ARTICLE 6. RIGHTS AND RESPONSIBILITIES OF MUNICIPALITY

6.1 Municipality shall have the right to determine, in its sole discretion, when Joule and Roctricity will begin its outreach to the public; it being understood that outreach to the public has commenced.

6.2 Municipality will cooperate with Joule to identify price benchmarks, pre-approved contract structures, sourcing requirements and other standards for acceptance of a compliant bid to solicit and procure potential suppliers.

6.3 Municipality:

(a) Will support Joule and Roctricity's communication through traditional town channels (e.g. web-site, e-mail, lists), and provide public space for educational and decision-making meeting.

(b) Shall assist Joule by reasonably promoting such Municipal Energy Program(s) to the public with Joule's guidance and input; and

(c) Authorizes Joule to act on behalf of the Municipality to secure release of data applicable to potential or actual Municipal Energy Programs that is held by others, including but not limited to residential and small commercial customer account and load information under the authority granted by the respective PSC Orders. Municipality further agrees to furnish Joule such information, to execute and deliver such additional documents, and to take such other actions as may be reasonably necessary for Joule to secure release of such data.

6.4 Municipality shall comply with all Applicable Laws.

## ARTICLE 7. PAYMENT.

7.1 Upon commencement of an ESA, the Parties acknowledge that Joule will be paid by the Selected Supplier per kWh (volumetrically) for electricity purchased for all Participating Customers during the duration of the ESA a fee of \$0.0008/kWh (8/100<sup>ths</sup> of one cent/kWh) per ESA contract year, or another fee agreeable in writing to both Parties (the “**CCA Administrative Fee**”);

7.2 The Parties hereby acknowledge that, in the event the Distribution Utility requires a payment for records related to electricity usage of potential Participating Customers, Joule is authorized to pay the Distribution Utility up to \$0.16 (16 cents) per record, or such other amount authorized by the Public Service Commission, and may seek reimbursement of such payment from the Selected Supplier as part of an ESA (apart from the CCA Administrative Fee). In no event shall Municipality be liable for this or any other amounts due Joule, Roctricity, and/or the Distribution Utility. In no event shall Participating Customer be liable for the above charge for records related to electricity usage, or any other amounts due Joule or Roctricity. The Parties hereby acknowledge that Joule, and not Municipality or any Participating Customer, shall be responsible for making payments, if any, to Roctricity.

## ARTICLE 8. TERM AND TERMINATION

8.1 This Agreement shall commence on the Effective Date and shall terminate:

(a) If no ESA is executed within six (6) months from the Effective Date, terminate upon written notice from Municipality to Joule; or

(b) If one or more ESAs are executed or other agreements are entered into between the Parties in relation to municipal energy services, this Agreement shall expire or terminate the later of: (i) five (5) years after the Effective Date; and (ii) at the expiration or termination of such ESA that is last in effect. Before the date on which this Agreement would expire by its terms, Municipality shall have the right to extend this contract for one (1) additional term of up to three (3) years by providing written notice thereof to Joule; and thereafter for two additional terms of up to three (3) years each thereafter subject to the written approval of Joule.

8.2 Termination for Cause. This Agreement may be terminated for cause by either Party (the “**Non-breaching Party**”) upon a material breach of the other Party (the “**Breaching Party**”) if such Breaching Party has failed to cure such material breach within thirty (30) days of receiving written notice of such breach from the Non-breaching Party.

8.3 In the event of any termination or expiration of this Agreement:

(a) Joule shall deliver to Municipality copies of all files and documents pertaining to any Program; and

(b) Except as expressly provided herein, all obligations of the Parties hereto pursuant to this Agreement shall terminate.

## ARTICLE 9. INSURANCE AND INDEMNIFICATION

9.1 Joule shall secure and maintain, at its own expense, errors and omissions insurance in an amount not less than one million dollars (\$1,000,000.00) per claim/annual aggregate for claims arising out of the performance of professional services and caused by negligent acts or omissions, with a deductible not to exceed \$20,000 without prior written approval.

9.2 Joule shall require the Program Organizer to secure and at its own expense, automobile insurance in an amount not less than \$100,000 per person, \$300,000, per accident, and \$500,000 for property damage per accident.

9.3 In addition to any other remedies available to the Municipality at law or equity, and notwithstanding any other provision contained herein, Joule shall indemnify, defend and hold harmless the Municipality and the Municipality's elected officials, officers, employees, agents, representatives and independent contractors (the "**Municipality's Indemnified Parties**"), 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 Municipality's Indemnified Parties to the extent arising directly from or in connection with a claim by a third-party (i.e. a person other than the Municipality's Indemnified Parties) arising out of: (i) any material breach of this Agreement by Joule (including its obligations, covenants, representations or warranties), except to the extent caused by the actions (or omissions where there is a duty to act) of the Municipality or its elected officials, officers, employees or agents; or (ii) any material action or omission taken or made by Joule in connection with Joule's performance of this Agreement, except to the extent caused by the actions (or omissions where there is a duty to act) of the Municipality or its elected officials, officers, employees or agents.

## ARTICLE 10. EQUAL OPPORTUNITY

10.1 Joule and Roctricity shall comply with all of the following provisions of article:

(a) Joule and Roctricity shall not discriminate on the basis of age, race, creed, color, national origin, sex, sexual orientation, disability, marital status, or handicap status in the performance of services or programs pursuant to this Agreement.

(b) Joule and Roctricity agrees to make a good faith effort to employ minority group persons and females and that in hiring employees and performing work under this Agreement or any subcontract hereunder, Joule, Roctricity, and their subcontractors, if any, shall not, by reason of age, creed, race, color, national origin, sex, sexual orientation, disability, marital status, or handicap, discriminate against any person who is qualified and available to perform the work to which the employment relates.

(c) Joule and Roctricity agree to ensure that applicants are employed and that employees are treated during their employment without regard to their race, color, religion, sex, age or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotions or transfers, recruitment and recruitment advertising, layoffs, terminations, rates of pay

and other forms of compensation, and selection for training, including apprenticeship.

(d) If Joule and/or Rocricity is found to have engaged in discrimination in employment on the grounds of age, race, creed, color, national origin, sex, sexual orientation, disability, marital status, or handicap status, by any court or administrative agency that has jurisdiction pursuant to any State or Federal Equal Opportunity Laws and regulations, such determination will be deemed to be a breach of contract and this Agreement will be terminated in whole or part without any penalty or damages to the Town on account of such cancellation or termination.

(e) Joule shall cause the foregoing provisions to be inserted in all subcontracts, if any, for any work covered by this Agreement so that such provisions will be binding upon each subcontractor.

#### ARTICLE 11. CONFIDENTIAL INFORMATION.

11.1 During the Term, a Party (as the “**Disclosing Party**”) may disclose or make available to the other Party (as the “**Receiving Party**”) proprietary information in writing, trade secrets, or third-party confidential information (including utility confidential information) that is marked or identified as “confidential” (collectively, “**Confidential Information**”). Confidential Information shall not include oral information or other information that, at the time of disclosure: (i) is or becomes generally available to and known by the public other than as a result of, directly or indirectly, any breach of this Section 11.1 by the Receiving Party or any of its representatives; (ii) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (iii) was known by or in the possession of the Receiving Party or its representatives prior to being disclosed by or on behalf of the Disclosing Party as demonstrated by written records; (iv) was or is independently developed by the Receiving Party without reference to or use of, in whole or in part, any of the Disclosing Party's Confidential Information as demonstrated by written records; or (v) is required to be disclosed pursuant to applicable federal, state or local law, regulation or a valid order issued by a court or governmental agency of competent jurisdiction (the “**Order**”), provided that in such event the Receiving Party shall give the Disclosing Party prompt written notice of the Order and shall reasonably cooperate with the Disclosing Party prior to disclosure to provide the Disclosing Party with the opportunity, at Disclosing Party’s expense, to interpose any and all objections it may have to disclosure of the information required by the Order, or to otherwise limit any disclosure required by the Order to the maximum extent permitted by law and all information disclosed shall otherwise remain Confidential Information until another exception exists described in this Section 11.1. The Receiving Party shall: (A) protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (B) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and (C) not disclose any such Confidential Information to any third party, except to the Receiving Party's representatives, or approved subcontractors, who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under the Agreement, and who are under confidentiality obligations at least as protective as this Agreement. The Receiving Party shall be responsible for any breach of this Section 11.1 caused by any of its

representatives or subcontractors. In the event that a request is known to have been made by anyone seeking a court order disclosing any Confidential Information, the Receiving Party will provide (if permitted by the court order) the Disclosing Party with at least fifteen (15) days notice identifying the information sought to be disclosed, the name, address and telephone number of the third party seeking disclosure, the reason for the requested disclosure, the case style, case number and court having jurisdiction over the action, if any, in which disclosure is sought, and will provide copies of the request for disclosure.

11.2 The Parties agree that any Confidential Information disclosed by Disclosing Party shall only be disclosed to those officials, employees, representatives, and agents of the Receiving Party that have a need to know in order to administer the Agreement.

11.3 Compliance by the Municipality with the New York State Freedom of Information Law ("**NY FOIL**") shall not be a violation of this Article and Municipality shall have no duty to litigate or defend any action against it under the NY FOIL; provided, however, if legally permitted Municipality shall provide notice to Joule of any such compliance prior to disclosure which results in the disclosure of information otherwise prohibited by this Agreement.

11.4 Notwithstanding the foregoing, the Municipality is permitted to share Confidential Information that is not utility confidential information with other municipal corporations that have authorized the entering into a contract with Joule.

11.5 The obligations under this Article 11 shall survive the termination or expiration of this Agreement for two (2) years.

## ARTICLE 12. MISCELLANEOUS

12.1 The Parties acknowledge and agree that Joule and Roctricity is an independent contractor and is not an agent or employee of Municipality. Nothing in this Agreement shall be construed to create a relationship between Joule and Municipality of a partnership, association, or joint venture.

12.2 Joule and Roctricity covenants that the individuals engaged by Joule and Roctricity in any capacity, including but not limited to, employees, subcontractors and independent contractors, are authorized to work in the United States as required by Applicable Law. Joule and Roctricity each represent and covenant that it has completed the I-9 verification process for all persons who perform services for Municipality as required by Applicable Law.

12.3 No Party may assign this Agreement without obtaining express, written consent from the other Parties prior to assignment, which may be granted or withheld in the consenting Party's sole discretion.

12.4 This Agreement, the RFP, and Response Documents together constitute the entire understanding of the Parties with respect to the subject matter hereof and supersede all prior negotiations, discussions, undertakings and agreements between the Parties. This Agreement may be amended or modified only by a writing executed by the duly authorized officers of the Parties. It is understood and agreed that this Agreement may not be changed, modified, or altered except by an instrument, in writing, signed by the Parties. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument.

This Agreement may be executed by facsimile or digital signature (including DocuSign).

12.5 Any controversy or claim, whether based upon contract, statute, tort, fraud, misrepresentation or other legal theory, related directly or indirectly to this Agreement, whether between the Parties, or of any of the Parties' employees, agents or affiliated businesses, will be resolved under the laws of the State of New York without regard to conflict of laws principles, in any court of competent jurisdiction in the county in which the Municipality is located.

12.6 If any provision of this Agreement is held invalid or unenforceable, such provision shall be deemed deleted from this Agreement and the remaining provisions of this Agreement shall continue in full force and effect.

12.7 Section headings are inserted in this Agreement for convenience only and are not to be used in interpreting this Agreement.

12.8 As of the Effective Date, the Original Agreement shall terminate in its entirety and shall be amended, restated and replaced in its entirety by this Agreement.

[Signature page to follow]

**IN WITNESS WHEREOF**, the Parties have caused this Agreement 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 date and year first above written.

Joule Assets Inc.

Town of Irondequoit

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Michael Gordon

Name: David A. Seeley

Title: CEO

Title: Supervisor

Roctricity LLC



By: \_\_\_\_\_

Name: Susan K. Hughes-Smith

Title: Member

**Electricity Supply Agreement**

**between Supplier, Joule Assets, Inc. and [City/Town/Village] [Name of Municipality]**

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**TABLE OF CONTENTS**

PREAMBLE .....	6
RECITALS .....	6
ELECTRICITY SUPPLY AGREEMENT .....	9
ARTICLE 1 DEFINITIONS.....	9
ARTICLE 2 RIGHTS GRANTED .....	14
2.1    GENERAL DESCRIPTION AND LIMITATIONS.....	14
2.2    NO THIRD PARTY BENEFICIARIES .....	15
2.3    COMPLIANCE WITH LAWS .....	15
2.4    CONDITIONS PRECEDENT .....	15
2.5    OWNERSHIP AND USE OF ELIGIBLE CONSUMER DATA.....	15
2.6    ENVIRONMENTAL DISCLOSURE PROGRAM.....	16
ARTICLE 3 CONSUMER CHOICE, NOTIFICATION OF RIGHTS, ENROLLMENT.....	17
3.1    CONSUMER CHOICE.....	17
3.2    NOTIFICATION TO NEW CONSUMERS OF OPT-OUT RIGHTS .....	17
3.3    CONSUMER AWARENESS .....	18
3.4    ENROLLMENT.....	18
ARTICLE 4 TERM OF CONTRACT AND TERMINATION .....	19
4.1    TERM.....	19
4.2    TERMINATION .....	19
4.3    OBLIGATIONS UPON TERMINATION .....	20
4.4    EXTENSION .....	20
ARTICLE 5 CONTINUING COVENANTS .....	20
5.1    STANDARDS OF MANAGEMENT AND OPERATIONS .....	20
5.2    CUSTOMER SERVICE ACCESS .....	21
5.3    RESPONDING TO REQUESTS FOR INFORMATION .....	21
5.4    ARRANGING FOR FIRM FULL-REQUIREMENTS POWER SUPPLY .....	21
5.5    NON-DISCRIMINATORY PROVISION OF SERVICE .....	22
5.6    APPROVAL OF GENERAL COMMUNICATIONS.....	23
5.7    COMMUNICATION OF INSERTS AND MESSAGES.....	23
5.8    PARTICIPATING CONSUMER LISTS.....	24

5.9 COMPLIANCE WITH LAWS .....	24
5.10 CONSENT .....	24
5.11 CREDITWORTHINESS.....	24
5.12 COMPLIANCE WITH RFP .....	24
ARTICLE 6 ROLE OF THE MUNICIPALITY .....	25
ARTICLE 7 ROLE OF PROGRAM ADMINISTRATOR .....	25
7.1 PROGRAM ADMINISTRATOR RIGHTS AND DUTIES.....	25
7.2 PROGRAM ADMINISTRATOR FEE.....	26
7.3 PAYMENT OF FEE .....	26
7.4 INDEPENDENT CONTRACTOR.....	26
ARTICLE 8 PRICES AND SERVICES; BILLING .....	27
8.1 SCHEDULE OF PRICES AND TERMS .....	27
8.2 OBLIGATION TO SERVE .....	27
8.3 METERING .....	27
ARTICLE 9 ADDITIONAL COMPLIANCE BY COMPETITIVE SUPPLIER .....	28
ARTICLE 10 SERVICE PROTECTIONS FOR CONSUMERS.....	29
10.1 UNIFORM BUSINESS PRACTICES COMPLIANCE.....	29
10.2 DESCRIPTION OF SUPPLIER’S PROCEDURES AND SERVICES .....	29
10.3 DISPUTE RESOLUTION .....	29
ARTICLE 11 NON-DISCRIMINATION IN HIRING AND EMPLOYMENT.....	30
ARTICLE 12 POWER SUPPLY INFORMATION AND ACCESS TO INFORMATION .....	30
12.1 POWER SUPPLY INFORMATION.....	30
12.2 POWER SUPPLY REPORT.....	30
12.3 BOOKS AND RECORDS .....	31
12.4 COPIES OF REGULATORY REPORTS AND FILINGS .....	31
ARTICLE 13 RESOLUTION OF DISPUTES; CHOICE OF LAW AND FORUM.....	31
13.1 CHOICE OF LAW AND FORUM.....	31
13.2 DISPUTE RESOLUTION .....	31
ARTICLE 14 INDEMNIFICATION.....	32
14.1 INDEMNIFICATION BY THE COMPETITIVE SUPPLIER .....	32
14.2 NOTICE OF INDEMNIFICATION CLAIMS .....	32

14.3 SURVIVAL.....32

14.4 DUTY TO MITIGATE .....32

ARTICLE 15 REPRESENTATIONS AND WARRANTIES.....33

15.1 BY THE COMPETITIVE SUPPLIER .....33

15.2 BY THE MUNICIPALITY.....33

15.3 BY THE PROGRAM ADMINISTRATOR.....34

ARTICLE 16 INSURANCE.....34

ARTICLE 17 REGULATORY EVENT/NEW TAXES .....35

17.1 REGULATORY EVENT.....35

17.2 QUALIFYING REGULATORY EVENT .....35

17.3 NEW TAXES .....35

ARTICLE 18 MISCELLANEOUS .....35

18.1 OPTION FOR ALTERNATIVE SUPPLY OF POWER.....35

18.2 NO ASSIGNMENT WITHOUT PERMISSION .....35

18.3 DIRECT MARKETING .....36

18.4 NOTICES .....36

18.5 CHANGES IN EMERGENCY AND SERVICE CONTACT PERSONS .....37

18.6 ENTIRE AGREEMENT; AMENDMENTS.....37

18.7 FORCE MAJEURE .....37

18.8 EXPENSES .....38

18.9 NO JOINT VENTURE .....38

18.10 NO RULE OF STRICT CONSTRUCTION.....38

18.11 COUNTERPARTS .....38

18.12 DIGITAL SIGNATURES.....38

18.13 WAIVER.....38

18.14 ADVERTISING LIMITATIONS .....38

18.15 PRESS RELEASES .....39

18.16 HEADINGS AND CAPTIONS .....39

18.17 SURVIVAL OF OBLIGATION.....39

ARTICLE 19 REMEDIES.....39

19.1 GENERAL .....39

19.2 LIMITATIONS .....39  
Exhibit A - PART 1 PRICES AND TERMS.....41  
Exhibit A - PART 2 PRICES AND TERMS (continued) .....43  
Exhibit B - CONTACT, NOTICE AND PAYMENT INFORMATION .....44  
Exhibit C - OPTION FOR ALTERNATIVE SUPPLY OF POWER .....45

## PREAMBLE

This Community Choice Aggregation Electricity Supply Agreement (“**ESA**” or “**Agreement**”) is made as of [AGREEMENT DATE] (the “**Execution Date**”) between:

The [City/Town/Village] of [NAME OF MUNICIPALITY], a municipal corporation in the State of New York, with a principal place of business at [MUNICIPALITY ADDRESS] (the “**Municipality**”);

[NAME OF SUPPLIER], a [TYPE OF ENTITY] [organized/incorporated] in the State of [STATE OF ORGANIZATION/INCORPORATION] duly authorized to do business in the State of New York with a principal place of business at [SUPPLIER ADDRESS] (“**Competitive Supplier**” or “**Supplier**”); and

Joule Assets, Inc., a corporation incorporated in the State of Delaware duly authorized to do business in the State of New York, with a principal place of business at 22 Edgemont Road, Katonah, New York 10536 (“**Joule**” or “**Program Administrator**”).

## RECITALS

WHEREAS, Joule Assets sought approval of a community choice energy aggregation (“**Community Choice Aggregation**” or “**CCA**”) program through the Public Service Commission of the State of New York (“**PSC**”), that would allow local governments to participate in a program managed by Joule to procure energy supply from an Energy Services Company for the Eligible Consumers of participating municipalities;

WHEREAS, by Order effective March 16, 2018 (Case 14-M-0224: <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=14-m-0224>), the PSC approved and authorized Joule to implement its CCA program;

WHEREAS, the Joule CCA program is intended to include Eligible Consumers, and to permit the aggregation of electric purchases within the communities that elect to participate;

WHEREAS, the Municipality has adopted a Local Law to participate in the Joule Community Choice Aggregation Program (the “**Program**”) to aggregate consumers located within the Municipality and to negotiate competitive rates for the supply of electricity for such consumers;

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

WHEREAS, on March 1, 2019, the Towns of the Irondequoit, Brighton and Pittsford, and the Village of Pittsford issued a Request for Proposals for a Program Administrator;

WHEREAS, on April 5, 2019, Joule responded to such RFP, and on June 28, 2019 submitted a Response to Supplemental Questions, where Joule, among other things, committed to provide

municipalities with (a) the option of providing customers a 100% renewable energy product using renewable energy certificates (RECs); and (b) if multiple supply product options were to be offered, municipalities would select which would be the “default” option, with customers having the freedom to choose among all available product options, regardless of the municipally selected default.

WHEREAS, the Municipality has indicated that it desires to offer a 100% renewable supply option to customers as a “default” option (the "CCA Renewable Electricity Product," as defined below);

WHEREAS, the aforementioned RFP was awarded to Joule as Program Administrator;

WHEREAS, Joule and Municipality have entered into a Community Choice Aggregation Agreement (the “CCA Agreement”) pursuant to which Joule and Municipality agreed, among other things, that:

- (a) Joule would provide certain energy services to Municipality in relation to a CCA Program including acting as Program Administrator; and
- (b) If the Municipality entered into an Electricity Supply Agreement relating to procurement of electricity supply, it would be with a “Selected Supplier” in accordance with the RFP “Response Document (each, as defined in the CCA Agreement) “to provide 100% renewable energy at a net savings compared to the 24-month historical average, measured from the bid issuance date, of the Rochester Gas & Electric residential rate for electricity charged to residential customers”;

WHEREAS, Municipality desires to implement a CCA Program with Joule serving as Program Administrator;

WHEREAS, the Municipality has resolved, among other things: (a) to authorize Joule to issue an electricity supply RFP to suppliers to provide electricity to Participating Consumers (as defined below); (b) to authorize Joule to award an electricity supply contracts in accordance with such RFP; (c) to approve the form of this ESA; and (d) to authorize execution of an ESA with the awarded supplier provided that the bid met the specifications set forth in the RFP;

WHEREAS, Competitive Supplier desires to provide Full-Requirements Power Supply to Eligible Consumers located within the Municipality, pursuant to the terms and conditions of the Program and this ESA;

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

WHEREAS, Competitive Supplier has submitted an offer to provide a single electric supply products with a corresponding pricing level CCA Renewable Electricity Product and price;

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

WHEREAS, Municipality desires Competitive Supplier to collect and remit the fees due the Program Administrator;

WHEREAS, the municipalities that participate in the Joule Community Choice Aggregation 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 Administrator, and the Competitive Supplier hereby enter into this ESA subject to the terms and conditions below.

## ELECTRICITY SUPPLY AGREEMENT

### ARTICLE 1 DEFINITIONS

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

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

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

1.2 **Basic Utility Supply Service**— Electricity supply service provided by the Distribution Utility to consumers who do not receive service from a Competitive Supplier or from the CCA Program. Eligible Consumers within the Municipality who receive Basic Utility Supply Service, and do not opt out, will be enrolled in the Program as of the Effective Date.

1.3 **Clean Energy Standard** - the clean energy standard for electric power for load serving entities established by New York State (including without limitation those mandated by the 2015 New York State Energy Plan as amended, New York's Climate Leadership and Community Protection Act (CLCPA), and the Order of the New York State Public Service Commission Adopting a Clean Energy Standard (Case 15-E-0302)(Issued August 1, 2016).

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

1.5 **Community Choice Aggregation or CCA** – Municipal electricity procurement program, purchasing supply for the aggregated demand for all Participating Consumers within the Municipality.

1.6 **CCA Renewable Electricity Product** — 100% renewable energy supply product offered to Participating Consumers that consists of (a) 100% renewable energy supply that is composed of solar, hydro and/or wind power bundled with 100% voluntary Renewable Energy Certificates; and/or (b) energy supply that meets the minimum Clean Energy Standard sold together with 100% voluntary Renewable Energy Certificates from solar, hydro and/or wind energy generating facilities, as further described and defined in Exhibit A (Prices and Terms).

1.7 **[Intentionally Omitted]**

1.8 **Competitive Supplier or Energy Services Company or ESCO**– A load serving entity duly authorized to (a) serve Eligible Consumers within the service territory of the Distribution Utility and (b) conduct business in the State of New York as an Energy Services Company. With regard to this Agreement, Competitive Supplier is identified in the preamble above.

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

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

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

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

**1.13 Effective Date** - The day after the Execution Date that is immediately following the final day of the rescission period, which immediately follows the opt-out period, which occurs after notifications have been sent to Eligible Consumers.

**1.14 Eligible Consumer** – a consumer who:

- (a) is a part of an opt-out eligible service class and rate class in accordance with the Framework Order and all other applicable Orders of the PSC and Governmental Rules; and
- (b) who receives Basic Utility Supply Service from the Distribution Utility as of the Effective Date, or is a New Consumer (as defined below) at one or more locations within the geographic boundaries of the Municipality; but
- (c) excluding consumers who receive Basic Utility Supply Service and have requested not to have their account information shared by the Distribution Utility.

For the avoidance of doubt, an Eligible Consumer must reside or be otherwise located at one or more locations within the geographic boundaries of the Municipality, as such boundaries exist on the Execution Date of this ESA.

**1.15 ESA** - This Electricity Supply Agreement.

**1.16 Environmental Disclosure Program** -- The current and future rules and requirements applicable in New York State to the labelling and disclosures of electric supply including without limitation the Opinion and Order Adopting Environmental Disclosure Requirements and Establishing a Tracking Mechanism, NY Public Service Commission, Opinion 98-19 (December 15, 1998), and the rules relating the New York Generation Attribute Tracking System (NYGATS).

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

**1.18 Firm Full-Requirements Power Supply** - The service under which the Competitive Supplier provides all of the electrical energy, capacity, reserves, and ancillary services, transmission services, transmission and distribution losses, congestion management, and other such services or products necessary to provide firm power supply at a fixed contract price including all those components regardless of changes in kWh usage or customer grouping during this contract term to Participating Consumers at the Point of Sale.

**1.19 Force Majeure** - Any cause not within the reasonable control of the affected Party which precludes that party from carrying out, in whole or in part, its obligations under this ESA, including, but not limited to, Acts of God; winds; hurricanes; tornadoes; fires; landslides; earthquakes; floods; other natural catastrophes; strikes, lock-outs or other industrial disturbances; acts of public enemies; acts, failures to act or orders of any kind of any governmental authorities acting in their regulatory or judicial capacity, provided, however, that any such discretionary acts, failures to act or orders of any kind by the Municipality may not be asserted as an event of Force

Majeure by the Municipality; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil or industrial disturbances or explosions. Nothing in this provision is intended to excuse any Party from performing due to any governmental act, failure to act, or order, where it was reasonably within such Party's power to prevent such act, failure to act, or order. Economic hardship of any Party shall not constitute an event of Force Majeure.

**1.20 Framework Order** -- The PSC Order establishing the framework for municipal CCA programs (Case 14-M-0224,, Order Authorizing Framework for Community Choice Aggregation Opt-Out Program (issued April 21, 2016)), as may be amended from time to time.

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

**1.22 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, including without limitation the New York Public Service Commission and the New York Department of Public Service excluding the Municipality.

**1.23 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 including without limitation the Joule Order, the Framework Order and all other Orders of the PSC, all as may be amended from time to time.

**1.24 Joule Order** – the PSC Order approving the Joule CCA Program (Case 14-M-0224, Order Approving Joule Assets’ Community Choice Aggregation Program with Modifications” (issued March 16, 2018)), all as may be amended from time to time.

**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 Joule Community Choice program.

**1.27 New Consumer** – An Eligible Consumer as of or after the Effective Date, including one that opts in to the Program or moves into Municipality.

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

**1.29 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.

1.30 **Participating Consumer** – an Eligible Consumer who is enrolled in the Program, either because consumer receives Basic Utility Supply Service from the Distribution Utility as of the Effective Date and has not opted out, or is a New Consumer.

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

1.32 **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.

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

1.34 **Program** - Joule Community Choice Aggregation Program.

1.35 **Program Administrator** – Joule, authorized by PSC to put out for bid the total amount of electricity being purchased by Participating Consumers.

1.36 **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.

1.37 **Qualifying Regulatory Event**— A Regulatory Event that impacts or provides opportunity for substantially all consumers in the same rate class, but not including a Regulatory Event that applies uniquely to Competitive Supplier's consumers.

1.38 **Regulatory Event**-- Implementation of a new, or changes to an existing, Governmental Rule by a Governmental Authority, including without limitation the Distribution Utility's tariffs, market rules, operating protocols and definitions, which have a material effect on the services and transactions contemplated by this ESA. A "change" as used herein includes without limitation any amendment, modification, nullification, suspension, repeal, finding of unconstitutionality or unlawfulness, or any change in construction or interpretation.

1.39 **Renewable Energy Certificate** –A renewable energy certificate, which may be registered in, and fully compliant with, the New York (State) Generation Attribute Tracking System ("NYGATS") or which may be registered in and fully compliant with a national generation attribute tracking system, notwithstanding anything to the contrary herein or in the RFP, as may be amended from time to time.

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

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

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

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

## **ARTICLE 2 RIGHTS GRANTED**

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

Competitive Supplier is hereby granted the exclusive right to be the default provider of Firm Full-Requirements Power Supply to Participating Consumers pursuant to the terms of this ESA. For the avoidance of doubt, Competitive Supplier shall be authorized to supply Firm Full-Requirements Power Supply only to Participating Consumers enrolled in the plan or plans managed by the Program Administrator, and the Distribution Utility will continue to have the right and obligation to supply electricity to Eligible Consumers who opt-out of the Program and remain on, or return to, Basic Utility Supply Service, until changes in law, regulation or policy may allow otherwise.

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

The Municipality specifically authorizes the Distribution Utility to provide, and Competitive Supplier the right to obtain and utilize as required, all billing and energy consumption information for Participating Consumers as is reasonably available from the Distribution Utility. Competitive Supplier shall request consumption data for individual Participating Consumers from the Distribution Utility via EDI or via other adopted standards such as secure ftp. If further action is required by the Distribution Utility to authorize Competitive Supplier to receive such consumption and billing data, the Program Administrator, on behalf of the Municipality agrees to use Commercially Reasonable efforts, at Competitive Supplier's cost, to assist Competitive Supplier, if so requested by it, in obtaining such information for Participating Consumers, including, without limitation, assisting Competitive Supplier in obtaining permission from such Eligible Consumers and/or the PSC, where necessary as a prerequisite to the provision of such information. Competitive Supplier shall not be responsible for any errors that Competitive Supplier or any of its Associated Entities makes in the provision of Firm Full-Requirements Power Supply only to the extent both that: 1) such errors are caused by errors or omissions in the information provided to it by the Distribution Utility; and 2) it was reasonable for the Competitive Supplier to rely upon that provided information. The Municipality shall not be responsible for any such errors by the Competitive Supplier in any event.

## 2.2 NO THIRD PARTY BENEFICIARIES

Except as specifically provided in Article 18.12, 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 Joule Order and Local Law for Eligible Consumers to purchase electricity from the Competitive Supplier in accordance with this ESA. The Municipality, or Program Administrator in support of the Municipality, has the right, but not the obligation, to advocate on behalf of the Eligible Consumers interested in contracting for electric supply and on behalf of all Participating Consumers, unless otherwise prevented by law.

## 2.3 COMPLIANCE WITH LAWS

The Municipality represents and covenants that the Local Law has been duly adopted and will remain in effect for the term of this ESA.

## 2.4 CONDITIONS PRECEDENT

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

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

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

## 2.5 OWNERSHIP AND USE OF ELIGIBLE CONSUMER DATA

Competitive Supplier acknowledges that: 1) all Eligible Consumer data (including addresses, telephone numbers or other identifying information) made available to Competitive Supplier on behalf of Municipality for such data must be protected by the Competitive Supplier and its Associated Entities to the fullest extent possible under the law and all PSC Orders; 2) the Competitive Supplier does not hold any permanent right, title or interest in this data; and 3) this data is to be obtained, retained and used by the Competitive Supplier and its Associated Entities solely to provide Firm Full-Requirements Power Supply to Participating Consumers and to render other services expressly required or permitted under this ESA. Any other use of Eligible Consumer data other than for purposes directly related to this ESA is not permitted without the prior written consent of the Municipality. Competitive Supplier may share such Eligible Consumer data with third-party vendors as reasonably necessary to accommodate Competitive Supplier's provision of

Firm Full-Requirements Power Supply or other performance pursuant to this ESA (including, without limitation, collection of receivables), provided that Competitive Supplier will take reasonable measures to secure the confidential nature of such data and the restrictions set forth in this Article 2.5 and elsewhere in this ESA, and that any vendor or subcontractor is also bound by the terms and conditions of this ESA, especially those regarding data confidentiality and prohibition on non-permitted uses of data through a signed non-disclosure agreement, a copy of which will be provided to the Municipality. Except as expressly provided in this ESA, and as otherwise permitted by law, Competitive Supplier and its Associated Entities shall not disclose any Eligible Consumer data to any third-party and Competitive Supplier and its Associated Entities shall take all Commercially Reasonable measures to protect Eligible Consumer data from access by, or beneficial use for, any third-party. To the extent that the provision of Firm Full-Requirements Power Supply or other services under this ESA requires that Competitive Supplier and its Associated Entities have access to or make use of any Eligible Consumer data, Competitive Supplier and its Associated Entities shall treat such Eligible Consumer data as confidential information. Competitive Supplier may use Eligible Consumer data to engage in direct marketing only during the term of this ESA and subject to the terms set forth in Article 18.3. 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.

Without limiting the foregoing, Competitive Supplier agrees to comply with all data security requirements of, including without limitation the terms of any data security agreement required by, the PSC, the DPS and any Distribution Utility in relation to the CCA and any confidential utility information disclosed to Competitive Supplier in performance of this Agreement. Competitive Supplier further agrees to execute any agreement in relation thereto as required by the PSC, the DPS and any Distribution Utility.

Additionally, Competitive Supplier agrees that it shall be fully and solely responsible for payment of all fees (including reimbursement of any such fees paid for by Program Administrator) in connection with acquisition of customer data from the applicable Distribution Utility in relation to the performance of this ESA; provided, however, that this provision shall not apply to the acquisition of aggregated data by Program Administrator or Municipality prior to the execution of this Agreement,

## 2.6 ENVIRONMENTAL DISCLOSURE PROGRAM

Competitive Supplier agrees to comply with any current and/or future rules and regulations related to Environmental Disclosure Program in the State of New York including without limitation all rules and regulations concerning labelling.

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

### 3.1 CONSUMER CHOICE

The Parties acknowledge and agree that all Participating Consumers have the right, pursuant to Joule Order, Local Law, and the Program, to change their source of electricity supply, as set forth in Article 2.1. The Parties represent, warrant and covenant to each other that they shall not interfere with the right of Participating Consumers to opt-out of the Program, and shall comply with any rules, regulations or policies of PSC, the Distribution Utility and/or other lawful Governmental Authority regarding the procedures for opting out or of switching from one source of electric supply to another. Not inconsistent with the above, however, the Parties may take Commercially Reasonable measures to encourage Participating Consumers to affirmatively agree to remain in the Program, consistent with any Governmental Rules.

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

Consistent with the requirements of any applicable Governmental Rules, and within a reasonable time after the Distribution Utility notifies Competitive Supplier of the existence of a New Consumer and has provided to Competitive Supplier such New Consumer's account number, service and billing address, and other pertinent contact information, Competitive Supplier shall notify such New Consumer (i) of the date on which such New Consumer will be automatically enrolled in the Program, and (ii) that the Competitive Supplier will be providing Firm Full-Requirements Power Supply to such New Consumer as of the same date, subject to the opt-out provisions of the Joule Order, Local Law, and the Program ("**Opt-Out Notice**"). The Opt-Out Notice shall be mailed to each such New Consumer prior to the date of automatic enrollment and shall: (i) prominently state all charges to be assessed by the Competitive Supplier; (ii) at a minimum, provide a summary of the prices and terms included in Exhibit A as well as fully disclose the prices and terms then being offered for Basic Utility Supply Service by the Distribution Utility; (iii) state how such New Consumer may opt-out of the Program prior to enrollment and remain on Basic Utility Supply Service from the Distribution Utility; and (iv) state how all Participating Consumers, subsequent to enrollment, will also have the right to opt-out at any time and return to Basic Utility Supply Service or choose a new Competitive Supplier without paying a fee or penalty to Competitive Supplier. All forms of such notices must be approved in advance by the Municipality.

In providing the notifications set forth in this Article 3.2, and in otherwise conducting the activities in Article 3.4 below, the Competitive Supplier must rely upon information provided to it by the Distribution Utility for the purpose of performing its obligations. Competitive Supplier will not be responsible for any errors in connection with notification of Eligible Consumers only to the extent both that: 1) such errors are caused by errors or omissions in the information provided to it by the Distribution Utility; and 2) it was reasonable for the Competitive Supplier to rely upon that provided information. The Municipality shall not be responsible for any such errors by the Competitive Supplier in any event.

### 3.3 CONSUMER AWARENESS

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

### 3.4 ENROLLMENT

#### 3.4.1 Participating Consumers

All Eligible Consumers as of the Effective Date will be enrolled in the Program, thus becoming Participating Consumers, under the terms of this ESA unless they opt-out during the 33-day period following initial communication through the opt-out letter. Participating Consumers may dis-enroll 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 Administrator who has agreed in writing to a non-disclosure agreement, a copy of which will be provided to the Municipality, a list of Participating Consumers as of the Effective Date, as well as such Participating Consumer's service and billing addresses, and any other information necessary for Competitive Supplier to commence Firm Full-Requirements Power Supply to such Participating Consumers as of the Service Commencement Date.

#### 3.4.2 New Consumers

If New Consumers elect not to opt-out of the Program as provided in Article 3.2, such New Consumers will be automatically enrolled by Competitive Supplier in the Program. These New Consumers electing not to opt out of the Program as provided in Article 3.2 shall be enrolled in the Program at the rates reflected in Exhibit A that refer specifically to New Consumers. Competitive Supplier shall enroll such New Consumers in accordance with applicable PSC and Distribution Utility rules.

#### 3.4.3 Eligible Consumers Opting Out

At any time during the Term of this ESA, Eligible Consumers who have previously opted out of the Program may request that they be enrolled or re-enrolled in the Program. Competitive Supplier shall provide Firm Full-Requirements Power Supply to such Eligible Consumers at a price determined by the then-prevailing market conditions, as defined in Exhibit A. Following mutually agreed upon procedures, the Competitive Supplier is responsible for accurately and promptly transmitting information regarding Eligible Consumers, to the Distribution Utility. The Competitive Supplier shall be responsible for enrolling all Participating Consumers through data (e.g. EDI or secure ftp) transactions submitted to the Distribution Utility for initial enrollment in the aggregation and all enrollments thereafter.

### 3.4.4 Consumers Served by Third-Parties

Consumers being served under other competitive supply programs offered by third-parties will not be automatically enrolled as Participating Consumers under this ESA when such program terminates or is otherwise completed. Competitive Supplier agrees that consumers under such third-party competitive supply programs may affirmatively opt-in at any time and receive Firm Full-Requirements Power Supply, thereby becoming Participating Consumers. New Consumers who opt-in as provided in this Article 3.4.4 shall be enrolled in the Program at the rates reflected in Exhibit A that refer specifically to New Consumers.

### 3.4.5 Termination Fees

There shall be no termination fees for any Participating Consumers to disenroll from the Program.

## ARTICLE 4 TERM OF CONTRACT AND TERMINATION

### 4.1 TERM

This ESA shall commence on the Execution Date, provided, however, that Competitive Supplier's obligation to provide Firm Full-Requirements Power Supply shall commence on the Service Commencement Date, and shall terminate with the Participating Consumers' "Final Meter Read Date" determined by the Parties and set forth in Exhibit A Part 1 in the paragraphs with the heading "Term", unless terminated earlier under Article 4.2 below.

### 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 PSC exercises any lawful jurisdiction so as to invalidate or disapprove this ESA in whole or in significant part; or
- (c) by the Municipality, if a Regulatory Event that is not a Qualifying Regulatory Event affects the Competitive Supplier and Competitive Supplier incurs costs and chooses to allocate and collect excess costs from Participating Consumers; or
- (d) by the Municipality, if a court, PSC or other lawful authority makes an adjudication that nullifies or materially alters any of the provisions of ARTICLE 6; or
- (e) by the Municipality, i) if an order is entered against the Competitive Supplier approving a petition for an arrangement, liquidation, dissolution or similar relief relating to Bankruptcy or insolvency and such order remains unvacated for thirty (30) days; or (ii) immediately if

the Competitive Supplier shall file a voluntary petition in Bankruptcy or any petition or answer seeking any arrangement, liquidation or dissolution relating to Bankruptcy, insolvency or other relief for debtors or shall seek, consent to, or acquiesce in appointment of any trustee, receiver, or liquidation of any of Competitive Supplier's property; or

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

#### 4.3 OBLIGATIONS UPON TERMINATION

Following termination of this ESA, the Parties shall each discharge by performance all obligations due to any other Party that arose up to the date of termination of the ESA and Competitive Supplier shall continue to have the right to collect all monies due for services rendered to that date.

Upon termination, Competitive Supplier shall have all Participating Consumers switched back to obtaining supply from the Distribution Utility, or support the Distribution Utility as reasonably possible to switch to another supplier selected by Municipality, by submitting all consumer drops via EDI or alternative data protocol to the Distribution Utility, or such other supplier, in a form acceptable to the Distribution Utility, or such other supplier.

#### 4.4 EXTENSION

The ESA may be extended beyond the termination date established in Article 4.1 by mutual written agreement of the Parties. Any new pricing terms shall be added to and replace Exhibit A as Exhibit A Extension. Upon any such extension, this ESA shall continue to be in effect, and all provisions of the ESA shall retain the same force and effect as before the extension, unless it is terminated by any Party pursuant to the provisions of Article 4.2 or until the date stated in such extension.

### ARTICLE 5 CONTINUING COVENANTS

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

#### 5.1 STANDARDS OF MANAGEMENT AND OPERATIONS

In performing its obligations hereunder, during the term of this ESA, the Competitive Supplier shall exercise reasonable care to assure that its facilities are prudently and efficiently managed; that it employs an adequate number of competently trained and experienced personnel to carry out its responsibilities; that it delivers or arranges to deliver an uninterrupted supply of such amounts

of electricity to the Point of Delivery as are required under this ESA; that it complies with all relevant industry standards and practices for the supply of electricity to Participating Consumers; and that, at all times with respect to Participating Consumers, it exercises good practice for a Competitive Supplier and employs all Commercially Reasonable skills, systems and methods available.

## 5.2 CUSTOMER SERVICE ACCESS

The Competitive Supplier agrees to provide, or cause to be provided, certain customer services to Participating Consumers. Such services shall be reasonably accessible to all Participating Consumers, shall be available during normal working hours, shall allow Participating Consumers to transact business they may have with the Competitive Supplier, and shall serve as a communications liaison among the Competitive Supplier, the Municipality, and the Distribution Utility. A toll-free telephone number will be established by Competitive Supplier and be available for Participating Consumers to contact Competitive Supplier during normal business hours (9:00 A.M.- 6:00 P.M. Eastern Time, Monday through Friday), as well as 9:00am-1:00pm on Saturday, to resolve concerns, answer questions and transact business with respect to the service received from Competitive Supplier. To the extent practicable, the Municipality will post program-related information on the Municipality's website which will be available to Participating Consumers for general information, comparative pricing, product, and service information, and other purposes.

## 5.3 RESPONDING TO REQUESTS FOR INFORMATION

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

Whenever necessary to comply with this Article 5.3, the Service Contacts shall call upon other employees or agents of the Competitive Supplier to obtain such information or explanation as may be reasonably requested. Nothing in this Article 5.3 shall be interpreted as limiting the obligation of the Competitive Supplier to respond to complaints or inquiries from Participating Consumers, or to comply with any regulation of PSC regarding customer service.

## 5.4 ARRANGING FOR FIRM FULL-REQUIREMENTS POWER SUPPLY

Competitive Supplier shall participate in or make appropriate arrangements with NYISO, any relevant regional transmission organization, wholesale suppliers or any other entity to ensure an uninterrupted flow of Firm Full-Requirements Power Supply to the Distribution Utility for delivery to Participating Consumers, and exercise all Commercially Reasonable efforts to cooperate with NYISO or any other entity to ensure a source of back-up power in the event that

Competitive Supplier is unable to deliver Firm Full-Requirements Power Supply to the Point of Delivery. In the event the Competitive Supplier is unable to deliver sufficient electricity to the grid to serve Participating Consumers, the Competitive Supplier shall utilize such arrangements and exercise all Commercially Reasonable efforts as may be necessary to continue to serve Participating Consumers under the terms of this ESA, and shall bear any costs it may incur in carrying out these efforts and obligations. Competitive Supplier shall not be responsible to the Municipality or any Participating Consumers in the event that, through no fault of the Competitive Supplier or its Associated Entities, the Distribution Utility disconnects, curtails or reduces service to Participating Consumers (notwithstanding whether such disconnection is directed by NYISO).

#### 5.5 NON-DISCRIMINATORY PROVISION OF SERVICE

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

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

Should either Program Administrator or Municipality actively achieve reduction in buying requirements for other mandated purchases, Competitive Supplier will liquidate resources it has purchased to serve this contract, through the NYISO platform and pay or distribute benefits to Participating Consumers, from this reduction in buying requirements that Competitive Supplier receives when Supplier liquidates these purchased resources.

## 5.6 APPROVAL OF GENERAL COMMUNICATIONS

Competitive Supplier shall cooperate with the Municipality in the drafting and sending of messages and information to Eligible or Participating Consumers concerning the Program or any matter arising under or related to this ESA. Competitive Supplier shall, prior to sending, whether directly or through its Associated Entities, any direct mail, advertising, solicitation, bill insert, electronic mail, or other similar written or electronic communication (collectively, "**General Communications**") to Eligible or Participating Consumers (but excluding individually drafted or tailored communications responding to the specific complaint or circumstance of an individual consumer), provide a copy of such General Communication to the Municipality and to Program Administrator for its review to determine whether it is consistent with the purposes and goals of the Municipality and Program Administrator. The Municipality or Program Administrator shall have the right to disapprove such General Communications and suggest revisions within seven (7) calendar days (not including weekends and holidays) of receiving a copy thereof if it finds the communication inconsistent with the purposes and goals of the Municipality, factually inaccurate or likely to mislead; provided, however that there shall be no such right of disapprove 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, with regard to any bill insert or message included at the bottom of such bill not within the scope of (a) above, Municipality or Program Administrator shall have such right of disapproval. If the Municipality objects to any General Communication on the grounds it is inconsistent with the purposes and goals of the Municipality, the Competitive Supplier, after consultation as provided in this Article 5.6, may nevertheless elect to send such General Communication provided that it: (i) clearly indicates on such communication that it has not been endorsed by the Municipality, and (ii) has previously provided all Participating Consumers a meaningful chance to opt not to receive such General Communications. The Municipality may reject or exclude any proposed General Communication that, in its reasonable judgment, is contrary to the interests and objectives of the Program or the Municipality, provided, however, any such right of rejection or exclusion shall not apply to Competitive Supplier's notice to exercise or enforce its rights under the ESA or any agreement with customer, including but not limited to any notice of Force Majeure or change in law.

## 5.7 COMMUNICATION OF INSERTS AND MESSAGES

Competitive Supplier agrees that if it communicates with Participating Consumers directly (or if it is provided a certain number of characters on the regular bill for discretionary communication), and unless prevented for regulatory or other such reasons from doing so, it shall allow the Municipality or Program Administrator to include no less than three (3) inserts per year into such communications, provided that the Program Administrator 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 (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 within seven (7) calendar days

after receipt (not including weekends and holidays) if it finds the communication inconsistent with its business interests, factually inaccurate or likely to mislead; provided, however that there shall be no such right of disapproval for any communication which has been ordered by PSC or any other Governmental Authority to be so communicated.

#### 5.8 PARTICIPATING CONSUMER LISTS

To the extent not prohibited by any Governmental Rule or expressly prohibited by any Participating Consumer(s), the Competitive Supplier shall, upon request of the Municipality or of Program Administrator, provide aggregate consumption information as the Municipality or Program Administrator may request to the extent such information is available to Competitive Supplier.

Competitive Supplier shall provide Participating Consumer lists in an electronic format reasonably acceptable to both Parties and with no more frequency than once a month, subject to non-disclosure agreement for consumers who have not requested that their personal information be denied to Program Administrator 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.

#### 5.11 CREDITWORTHINESS

Competitive Supplier represents, warrants and covenants that it is, and shall be, for the Term of this ESA, in compliance with all credit policies and requirements of the New York Independent System Operator, and comply with any credit requirements as set forth in the RFP.

#### 5.12 COMPLIANCE WITH RFP

Competitive Supplier represents and warrants that Competitive Supplier's response to the Energy Procurement Request for Proposals is compliant with the terms and conditions set forth in the RFP.

## 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 Joule Order and Local Law and may include negotiating the terms and conditions under which Firm Full- Requirements Power Supply will be provided by the Competitive Supplier under this ESA. It is the sole obligation of the Competitive Supplier to arrange for delivery of Firm Full- Requirements Power Supply to Participating Consumers. The Parties agree that, with regards to electricity, Municipality is not a “public utility company” or providing any “public utility service” within the meaning of GML 360 and Article 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 Article 4.2 (a) shall apply. However, the Municipality may be considered to be operating a municipal load aggregation plan pursuant to Joule Order and Local Law. The Competitive Supplier hereby agrees that it will take no action, whether directly or through its Associated Entities, that would make the Municipality liable to any Participating Consumer due to any act or failure to act on the part of the Competitive Supplier or its Associated Entities relating to the delivery or supply of Firm Full-Requirements Power Supply.

Municipality shall conduct outreach to the community in addition to the initial program notification letter as required by the Public Service Commission, which will be delivered at the Competitive Supplier’s expense, with a Business Reply Mail insert to allow Eligible Consumers to opt out without postage expense. As required by the Public Service Commission, Municipality will report on their endeavors to Program Administrator 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 ADMINISTRATOR

### 7.1 PROGRAM ADMINISTRATOR RIGHTS AND DUTIES

Program Administrator is responsible for Program organization, administration, procurement, and communications, unless otherwise specified herein or agreed in writing.

Program Administrator, 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 Administrator 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 Joule Order, including but not limited to the following: file final versions of customer opt-out letters, after the supply procurement is finalized, that provide details on Program contracts.
- (d) File any request for proposals or similar solicitation seeking electricity supply or other energy services and any draft correspondence on such services with DPS Staff for review.
- (e) Provide the Municipality with timely communications content to effect customer notification requirements for approval, such approval not to be unreasonably withheld, given the projected schedule of Program's implementation; and
- (f) Fulfill any other responsibilities as may reasonably adhere to facilitating the implementation of the Program; and
- (g) Fulfill any other responsibilities as set forth in this agreement herein.

## 7.2 PROGRAM ADMINISTRATOR FEE

Competitive Supplier shall pay Program Administrator \$0.0008 for each kWh delivered, invoiced and paid for by Participating Consumers during the Term ("**Program Administrator Fee**" or "**Fee**"). The Parties agree that Competitive Supplier will remit the Program Administrator Fee to the Program Administrator, pursuant to the terms of this ESA. Competitive Supplier shall pass through such payments to Program Administrator 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 Administrator will be made monthly by Automated Clearing House ("**ACH**") (an electronic network for financial transactions) to the account set forth in Exhibit B hereto, provided that Competitive Supplier has received payment with respect to the electricity used by the Participating Consumers. The Program Administrator Fee shall be paid by the last business day of the month based on revenue collected by Competitive Supplier with respect to each Participating Consumer during the calendar month two months prior. For example, full payments received in January will be paid by the end of March. If Competitive Supplier has paid a past Fee in error (or the payment was based on information subsequently determined invalid), it may deduct from or add to future payments due under this ESA and provide explanation of the error in sufficient detail.

Program Administrator shall provide the Municipality with a reasonably detailed accounting not less than annually of the program impact (e.g., rates paid vs utility rate), financial and other, including revenues received and expenses incurred on communication, administration and legal expenses.

## 7.4 INDEPENDENT CONTRACTOR

The Parties agree that Program Administrator is not an agent or employee of Competitive Supplier for any purpose. All expenses which are incurred by Program Administrator in connection with

this ESA shall be borne wholly and completely by Program Administrator, except as otherwise agreed herein or in writing. Program Administrator shall be responsible for all state, federal, and local taxes, including estimated taxes and social security and employment reporting for Program Administrator or any employees or agents of Program Administrator.

## **ARTICLE 8 PRICES AND SERVICES; BILLING**

### **8.1 SCHEDULE OF PRICES AND TERMS**

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

### **8.2 OBLIGATION TO SERVE**

As between the Parties, Competitive Supplier has the sole obligation to obtain sources of supply, whether from generating facilities owned or controlled by its affiliates, through bilateral transactions, or the market, as may be necessary to provide Firm Full-Requirements Power Supply for all of the Participating Consumers under the Program. Competitive Supplier, except as explicitly limited by the terms included in Exhibit A, shall be obligated to accept all Participating Consumers, regardless of their location or energy needs provided such Participating Consumers are eligible under the applicable regulations and tariffs of the Distribution Utility.

### **8.3 METERING**

The Parties understand and acknowledge that the Distribution Utility will be responsible for any metering which may be required to bill Participating Consumers in accordance with the rules governing the supply of electricity in the service territory of the Distribution Utility.

#### **8.3.1 Title**

Title to Firm Full-Requirements Power Supply will transfer from Competitive Supplier to Participating Consumers at the Point of Sale. In accordance with the rules governing the supply of electricity in the service territory of the Distribution Utility, 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.

#### **8.3.2 Billing and Payment**

Unless otherwise specified in an exhibit to this ESA, all billing under this ESA shall be based on the meter readings of each Participating Consumer's meter(s) performed by the Distribution Utility. Competitive Supplier shall cause the Distribution Utility to prepare and mail bills to Participating Consumers monthly. The Competitive Supplier shall adopt the billing and payment terms offered by the Distribution Utility to its Eligible Consumers on Basic Utility Supply 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 over-charge or under-charge will be accounted for in the next billing period for which actual meter data is available.

### 8.3.3 Regional and Local Transmission

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

### 8.3.4 Taxes

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

## **ARTICLE 9 ADDITIONAL COMPLIANCE BY COMPETITIVE SUPPLIER**

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 Joule Order and any regulations, orders or policies adopted pursuant thereto.

In addition, Competitive Supplier specifically represents, warrants and agrees that it that it has reviewed and has fully complied and will fully comply with, all relevant regulations, requirements, and orders of the FERC, NYISO, and PSC.

Competitive Supplier shall comply with all requirements of the Request for Proposal issued in relation to this ESA.

## **ARTICLE 10 SERVICE PROTECTIONS FOR CONSUMERS**

### **10.1 UNIFORM BUSINESS PRACTICES COMPLIANCE**

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

### **10.2 DESCRIPTION OF SUPPLIER'S PROCEDURES AND SERVICES**

The Competitive Supplier shall, on or before the Effective Date, provide a written, detailed description of its billing and termination procedures, customer services, confidentiality and related practices and procedures for approval by the Municipality (which approval shall not be unreasonably withheld). Such written description shall also include the Competitive Supplier's plans for protecting the rights and protections of Participating Consumers under the Home Energy Fair Practices Act which requires that all utility customers be treated fairly with regard to application for service, customer billing, and complaint procedures. If the Participating Consumer(s) so permit(s) or to the extent such permission is required by law or the terms of any PSC order with respect to this ESA, the Competitive Supplier agrees to provide notice to the Municipality of any consumer complaints received from a Participating Consumer, and the Municipality shall have the right, but not the obligation, to participate (directly or through the Program Administrator) 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 by the Municipality or the Program Administrator, of such failure to the Competitive Supplier and allowing the Competitive Supplier sixty (60) days to cure such failure.

### **10.3 DISPUTE RESOLUTION**

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

## ARTICLE 11 NON-DISCRIMINATION IN HIRING AND EMPLOYMENT

Competitive Supplier agrees that it shall conduct its operations and activities under this ESA in accordance with all applicable state and federal laws regarding non-discrimination in hiring and employment of employees, and will require all Associated Entities to do the same.

## ARTICLE 12 POWER SUPPLY INFORMATION AND ACCESS TO INFORMATION

### 12.1 POWER SUPPLY INFORMATION

#### 12.1.1 Monthly Report of Sales

Competitive Supplier shall provide the Program Administrator with a monthly report of sales which will contain at a minimum: (i) the actual aggregate kWh sales, rate and commission due to Program Administrator for each meter read of the reporting period (with billing “from and to” date); (ii) account status (e.g., active or cancelled); (iii) the number of Participating Consumer accounts active in each meter read of the reporting period; and (iv) other information reasonably requested. In addition, the aggregate kWh sales and number of Participating Consumer accounts shall be listed in the report both by Service Class and rate. The monthly report will be due to the Program Administrator within thirty (30) days following the close of each month. This information shall be provided in electronic format, satisfactory to the Program Administrator.

#### 12.1.2 Consumer-Related Data

On and after the Service Commencement Date, Competitive Supplier will maintain consumer-related data in electronic form including utility account number, billing name, billing address, service address historical usage, demand, and ICAP (Installed Capacity) data. A violation of this Article 12.1.2 shall be grounds for termination under Article 4.2(a) unless such violation is due to a system or reasonable administrative error and the Competitive Supplier demonstrates to the Municipality’s satisfaction that such system or administrative error exists and that the Competitive Supplier is acting in good faith to resolve such issue.

#### 12.1.3 Standard of Care

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

### 12.2 POWER SUPPLY REPORT

Unless the Environmental Disclosure Program labeling requirement is waived by PSC, Competitive Supplier shall present a copy of the current Environmental Disclosure Program label as and when required by PSC of all Competitive Suppliers to be disclosed to their Participating

Consumers, which includes information pertaining to Competitive Supplier's power supply and a reasonably detailed description of the sources of Competitive Supplier's power supply used to serve Participating Consumers pursuant to this ESA, except to the extent such disclosure would violate any confidentiality obligations of Competitive Supplier.

### 12.3 BOOKS AND RECORDS

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

### 12.4 COPIES OF REGULATORY REPORTS AND FILINGS

Upon reasonable request, Competitive Supplier shall provide to the Municipality a copy of each public periodic or incident-related report or record relating to this ESA which it files with any New York or federal agency regulating rates, service, compliance with environmental laws, or compliance with affirmative action and equal opportunity requirements, unless the Competitive Supplier is required by law or regulation to keep such reports confidential. Competitive Supplier shall be reimbursed its reasonable costs of providing such copies, if only available in hard copy.

## **ARTICLE 13 RESOLUTION OF DISPUTES; CHOICE OF LAW AND FORUM**

### 13.1 CHOICE OF LAW AND FORUM

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

### 13.2 DISPUTE RESOLUTION

Unless otherwise provided for in this ESA, the dispute resolution procedures of this Article 13.2 shall be the exclusive mechanism to resolve disputes arising under this ESA. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this ESA. Any dispute that arises under or with respect to this ESA that cannot be resolved shall in the first instance be the subject of informal negotiations between the Parties involved in the dispute. The dispute shall be considered to have arisen when one Party sends the other Party(ies) involved in the dispute a written notice of dispute. The period for informal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless such time is modified by written agreement of the Parties involved in the dispute. In the event that the Parties involved in the dispute cannot

resolve a dispute by informal negotiations, the Parties may seek judicial relief or 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 Administrator ("**Indemnified Parties**") and the Indemnified Parties' elected officials, officers, owners, directors, 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, the Program Administrator or any of their elected officials, officers, owners, directors, r employees, representatives, independent contractors or agents, if any 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 Administrator 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 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 Execution Date of this ESA as follows:

- (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary for it to perform its obligations under this ESA;
- (b) it has all authorizations from any Governmental Authority necessary for it to legally perform its obligations under this ESA or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due;
- (c) the execution, delivery and performance of this ESA are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents or any contract to which it is a party or any Governmental Rule applicable to it;
- (d) subject to the conditions set forth in Article 2.4, this ESA constitutes a legal, valid and binding obligation of the Competitive Supplier enforceable against it in accordance with its terms, and the Competitive Supplier has all rights such that it can and will perform its obligations to the Municipality in conformance with the terms and conditions of this ESA, subject to Bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally and general principles of equity;
- (e) no Bankruptcy is pending against it or to its knowledge threatened against it;
- (f) none of the documents or other written information furnished by or on behalf of Competitive Supplier to or for the benefit of the Municipality pursuant to this ESA, contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading; and
- (g) all information furnished by Competitive Supplier in response to the Request for Proposals for competitive electric supply services is true and accurate.

**15.2 BY THE MUNICIPALITY**

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

- (a) this ESA constitutes the legal, valid and binding contract of the Municipality enforceable in accordance with its terms, subject to applicable law;
- (b) the execution, delivery and performance of this ESA are within the Municipality's powers, have been or will be duly authorized by all necessary action;
- (c) Municipality has all authorizations from local Governmental Authority necessary for it to legally perform its obligations under this ESA or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due; and

(d) no Bankruptcy is pending or threatened against the Municipality;

### 15.3 BY THE PROGRAM ADMINISTRATOR

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

- (a) this ESA constitutes the legal, valid and binding contract of Program Administrator enforceable in accordance with its terms, subject to applicable law
- (b) the execution, delivery and performance of this ESA are within Program Administrator's powers, have been or will be duly authorized by all necessary action;
- (c) Program Administrator has all authorizations from any local or state Governmental Authority necessary for it to legally perform its obligations under this ESA or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due; and
- (d) no Bankruptcy is pending or threatened against Program Administrator.

## ARTICLE 16 INSURANCE

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

16.2 With respect to any of the insurance policies provided by the Competitive Supplier pursuant to these requirements which are "claims made" policies, in the event at any time such policies are canceled or not renewed, the Competitive Supplier shall provide a substitute insurance policy with terms and conditions and in amounts which comply with these requirements and which provides for retroactive coverage to the date of the cancellation or non-renewal of the prior "claims-made" policy. With respect to all "claims made" policies which have been renewed, the Competitive Supplier shall provide coverage retroactive to the Effective Date under this ESA. All

said substitute or renewed “claims made” policies shall be maintained in full force and effect for not less than three (3) years after 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 both Program Administrator and Municipality agree that Competitive Supplier is incurring excess costs as a result thereof and agrees that Competitive Supplier may recover such costs, such amount shall be allocated to and collected from Participating Consumers on a per kWh basis through applicable monthly invoice(s).

### **17.2 QUALIFYING REGULATORY EVENT**

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

### **17.3 NEW TAXES**

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

## **ARTICLE 18 MISCELLANEOUS**

### **18.1 OPTION FOR ALTERNATIVE SUPPLY OF POWER**

The Parties agree that the terms of Exhibit C shall provide an option for the provision of an additional Renewable Power Product to the Program.

### **18.2 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 Administrator 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 Administrator 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 Administrator 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 Administrator 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.

### 18.3 DIRECT MARKETING

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

Competitive Supplier also agrees not to engage, whether directly or through any of its Associated Entities, in any direct marketing to any Participating Consumer that relies upon Competitive Supplier's unique knowledge of, or access to, Participating Consumers gained as a result of this ESA. For the purposes of this provision, "direct marketing" shall include any telephone call, mailing, electronic mail, or other contact between the Competitive Supplier and the Consumer.

Programs of the Competitive Supplier that do not rely on unique knowledge or access gained through this ESA will not constitute such "direct marketing."

### 18.4 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 the Parties as designated in Exhibit B.

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.

#### 18.5 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 Administrator in the manner set forth in Article 18.4. 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 Administrator in the manner set forth in Article 18.4. In the event that the name or telephone number of any such contact person for the Program Administrator changes, prompt notice shall be given to the Competitive Supplier and the Municipality in the manner set forth in Article 18.4.

#### 18.6 ENTIRE AGREEMENT; 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.

#### 18.7 FORCE MAJEURE

If by reason of Force Majeure any Party is unable to carry out, either in whole or in part, its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (i) the non-performing Party, within two (2) weeks after the occurrence of the Force Majeure, gives the other Party hereto written notice describing the particulars of the occurrence; (ii) the suspension of performance be of no greater scope and of no longer duration than is required by the Force Majeure; (iii) no obligations of the Party which were to be performed prior to the occurrence causing the suspension of performance shall be excused as a result of the occurrence; and (iv) the non-performing Party shall use Commercially Reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations. If (i) an event of Force Majeure caused by any strikes, lockouts or other industrial disturbances involving Competitive Supplier or its Associated Entities continues for a period of thirty (30) days or longer, or (ii) an event of Force Majeure arising from any other cause continues for a period of one hundred eighty (180) days or longer, any Party may terminate this ESA by sending the other Party a written notice as set forth in Article 4.2; provided, however, that the same shall not constitute a default under this ESA and shall not give rise to any damages. Additionally, Competitive Supplier shall submit all consumer drops via EDI to the Distribution Utility in accordance with the rules and regulations set forth by the PSC in Case 98- M-0667.

## 18.8 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.

## 18.9 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.

## 18.10 NO RULE OF STRICT CONSTRUCTION

The language contained herein shall be deemed to be that approved by all Parties hereto and no rules of strict construction shall be applied against any Party hereto.

## 18.11 COUNTERPARTS

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

## 18.12 DIGITAL SIGNATURES

This ESA may be executed by facsimile or other digital signature (or by using a digital signature service such as DocuSign), and such signature shall have the same force and effect as a manual signature.

## 18.13 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.

## 18.14 ADVERTISING LIMITATIONS

Competitive Supplier agrees not to use, whether directly or through any of its Associated Entities, the name of the Municipality, or make any reference to the Municipality in any advertising or other information to be distributed publicly for marketing or educational purposes, unless the Municipality expressly agrees to such usage. Any proposed use of the name of the Municipality

must be submitted in writing for agreement and prior written approval which may be withdrawn through a notice in writing at any time. The Municipality acknowledges that the Competitive Supplier's corporate affiliates own the exclusive right to the trademarked logo and trade name used by Competitive Supplier. No right, license or interest in this trademark and/or trade name is granted to the Municipality hereunder, and the Municipality agrees that it shall not assert any right, license or interest with respect to such trademark and/or trade name.

#### 18.15 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.

#### 18.16 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.

#### 18.17 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.

### **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

NO PARTY HERETO SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, TORT, CONTRACT OR OPERATION OF LAW.

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.

*[SIGNATURE PAGE TO 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:  
Title:  
Address:

Dated: \_\_\_\_\_

**PROGRAM ADMINISTRATOR**

By:  
Name: Michael Gordon  
Title: Chief Executive Officer; Joule Assets, Inc.  
Address: 22 Edgemont Road, Katonah, NY 10536

Dated: \_\_\_\_\_

[SIGNATURE PAGE TO ELECTRICITY SUPPLY AGREEMENT]

**Exhibit A - PART 1  
PRICES AND TERMS**

**JOULE ASSETS COMMUNITY CHOICE AGGREGATION PROGRAM DEFAULT CCA  
RENEWABLE ELECTRICITY PRODUCT**

This shall be the default product offered to Participating Consumers.

Firm Full-Requirements Price by Rate Classification for all Participating Consumers located in the Distribution Utility (to wit, [name of distribution utility]) territory commencing service on the first Consumer meter-read date after [ ] (“**First Meter Read Date**”).

Table 1:

Rate Class	Fixed Price per kWh	
Residential	\$	
Small Commercial	\$	

**Terms for System Supply Service**

Term: The Price and Terms stated on this Exhibit A – Part 1 will commence on the First Meter Read Date and continue until the first Consumer meter read date after [ ] (“**Final Meter Read Date**”), unless this ESA is sooner terminated in accordance with Article 4.2 of this ESA.

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

Start-Up Service Date: Firm Full-Requirements Power Supply will commence at the prices stated above as of Participating Consumer’s First Meter Read Date.

Renewable Energy in System Supply: 100% of electricity supply shall be CCA Renewable Electricity Product as defined in the Agreement.

Eligible Consumer Opt-Out: Participating Consumers are free to opt-out of the Program utilizing established utility data drop protocols. Participating Consumers are to provide five (5) days notice to the Competitive Supplier of such termination and Competitive Supplier will notify Distribution Utility to resume service as soon as possible after such notification. There are no fees or charges for Participating Consumers to opt-out or terminate service.

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

**[To Be added if (a) Competitive Supplier submits a fixed price bid that has been accepted and (b) an adder is applicable.]**

If Competitive Supplier has submitted a fixed price bid, then New Consumers who enroll or are enrolled into the Program after the first Consumer meter-read date referred to above shall be served at the fixed rate as determined by the rate calculator described in the Request for Proposals at the time of enrollment, plus the applicable adder, if any, for each rate class set forth in Table 2 below.

Rate Class	Adder (or subtractor) per kWh
Residential	\$0.0
Small Commercial	\$0.0

]

**Exhibit A - PART 2  
PRICES AND TERMS (continued)**

[Intentionally Deleted]

**Exhibit B -  
CONTACT, NOTICE AND PAYMENT INFORMATION**

<b>PROGRAM ADMINISTRATOR</b>	<b>MUNICIPALITY</b>	<b>SUPPLIER GENERAL</b>
<b>GENERAL</b>	<b>GENERAL</b>	<b>INFORMATION</b>
<b>INFORMATION</b>	<b>INFORMATION</b>	<b>INFORMATION</b>
Joule Assets Inc Contact Name: Glenn Weinberg	[Municipality] Contact Name: [     ] ]	[Name of Supplier] Contact Name: [     ] ]
Address: 22 Edgemont Road Katonah, New York 10536 914 - 977 - 3444	Address: [     ] ] Telephone Number: [     ] ]	Address: [     ] ] Telephone Number: [     ] ]
E-mail Address: <a href="mailto:gweinberg@jouleassets.com">gweinberg@jouleassets.com</a>	E-mail Address: [     ] ]	Email Address: [     ] ]
<b>PROGRAM ADMINISTRATOR</b>	<b>MUNICIPALITY ADDRESS</b>	<b>SUPPLIER ADDRESS FOR</b>
<b>ADDRESS FOR NOTICES PURSUANT TO ARTICLE</b>	<b>FOR NOTICES PURSUANT TO ARTICLE 18.4</b>	<b>NOTICES PURSUANT TO ARTICLE 18.4</b>
<b>18.4</b>	<b>18.4</b>	<b>18.4</b>
ATTN: Glenn Weinberg Joule Assets Inc	ATTN: [     ] ] Municipality: [     ] ]	ATTN: [     ] ]
Address: 22 Edgemont Road	Address: [     ] ]	Address: [     ] ]
City, State Zip: Katonah, NY 10536	City, State Zip: [     ] ]	[     ] ]
With a copy to:	With a copy to:	With a copy to:
Name: Stephen Filler, General Counsel Joule Assets Inc. 22 Edgemont Road Katonah, New York 10536 <a href="mailto:sfiller@jouleassets.com">sfiller@jouleassets.com</a>	Name: Address:	Name: Address:

[ONLY TO BE INCLUDED FOR AGREEMENTS FOR SUPPLY LONGER THAN A ONE YEAR; OTHERWISE IT WILL NOT BE INCLUDED]

**[Exhibit C -  
OPTION FOR ALTERNATIVE SUPPLY OF POWER**

Competitive Supplier shall provide power to Participating Consumers, including the option for consumers to purchase REC’s, throughout the term of this ESA and from sources of its own discretion subject to the terms of this Agreement, the RFP and the Competitive Supplier’s response. However, Program Administrator desires to support the construction of, or cause the Competitive Supplier to contract directly with, renewable sources of energy (each a “**Renewable Power Source**”) prior to award or after the Effective Date of the Program for the benefit of the Participating Consumers and of the renewable power market.

Upon agreement to a Power Purchase Agreement (“**PPA**”), acceptable to both Program Administrator, Municipality, and Competitive Supplier with any Renewable Power Source, the Competitive Supplier may purchase output from the Renewable Power Source to Competitive Supplier (or Associated Entity) either through purchase by Competitive Supplier from a third party, or by way of assignment by Program Administrator) of that PPA in accordance with this Exhibit.

Competitive Supplier may either work from a roster of Renewable Power Sources pre-approved by Program Administrator (with the cooperation of Municipality) who retain a PPA consistent with Program Administrator’s needs (for the benefit of Participating Consumers), or Competitive Supplier may obtain written approval from Program Administrator for an alternative source and PPA.

In the event Program Administrator identifies output from Renewable Power Source(s) that Program Administrator intends to assign or direct to the Competitive Supplier for use in the program for the benefit of Participating Consumers, Program Administrator will describe whether each product is unit-contingent or smoothed, and Program Administrator 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.

The Program Administrator will then fill out the Table, below, adding to it as necessary:

<b>Product</b>	<b>Unit-Contingent or committed</b>	<b>Time Block</b>	<b>Zone</b>	<b>Price (per Unit)</b>
kWh Output				
REC Output				

Capacity Standby				
kWh Output				
REC Output				
Capacity Standby				

Competitive Supplier will then solicit offers from the free market for like quantities of power, REC or capacity.

Competitive Supplier will then be required to accept offers of \_\_\_\_\_ if \_\_\_\_\_ for supply to the Program.

In such case, the Parties shall agree to a rate adjustment to Participating Consumers 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 Consumers 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.

To benefit the Municipality or Participating Consumers, Program Administrator will be authorized to invite bidders to purchase the power being replaced (separately by kWh, capacity or REC or in any bundle it chooses) if, in its sole discretion, it believes it can sell current positions that match the unit-contingent production expectation at a higher price than Competitive Supplier is quoting as a sales price.]

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