

Good Energy L.P.  
232 Madison Ave.  
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September 22, 2022

*VIA ELECTRONIC SERVICE*

Luly E. Massaro, Commission Clerk  
State of Rhode Island Public Utilities Commission  
89 Jefferson Boulevard  
Warwick, Rhode Island 02888

**Re: Dockets 5042, 5047, 5061, 5062, 5169, 5212 – Executed Electricity Services Agreements**

Dear Ms. Massaro:

Per the orders of the Commission,<sup>1</sup> Good Energy is required to provide a report on the results of the bidding process for electricity supply and whether it successfully resulted in an agreement. To meet those requirements, included in this filing are (1) a publicly available versions of the executed Electricity Service Agreements (“ESAs”) with confidential information removed or redacted, and (2) a report on the bidding process including a non-confidential description of the removed or redacted information.

With respect to the removal of confidential information, the statute and orders governing aggregation programs do not include reference to final executed version of the ESAs. RI General Laws § 39-3-1.2(d) indicates, *inter alia*, that “The legislative authority shall report the results of this solicitation and proposed agreement awards to the commission.” The draft ESAs already in the docket should meet the obligation to review the proposed agreement, and a summary of the information in Exhibit A has been included in both the report and the additional non-confidential description that has been provided.

Thank you for your attention to this submission. If there any questions, please contact me at 401-225-3441.

Sincerely,

cc: Service Lists for  
Docket 5042  
Docket 5047  
Docket 5061  
Docket 5062  
Docket 5169  
Docket 5212

James G. Rhodes  
Counsel for Good Energy, L.P.

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<sup>1</sup> See, Order 24099 in Docket 5042, Order 54100 in Docket 5047, Order 24101 in Docket 5061, Order 54102 in Docket 5062, Order 24261 in Docket 5069, and Order 24317 in Docket 5212.

Certificate of Service

I hereby certify that a copy of this cover letter and the enclosures described therein were electronically transmitted to the service lists reproduced below. Due to the voluminous nature of the agreements, two copies of each shall be delivered to the PUC and additional paper versions are available upon request.

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September 22, 2022

**Docket No. 5042 – City of Central Falls Community Choice Electricity Aggregation Plan  
Service List updated 8/13/2020**

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**Docket No. 5047 – Town of Barrington Community Choice Electricity Aggregation (CCEA) Plan**  
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**Docket No. 5061– City of Providence - Community Electricity Aggregation (CEA) Plan  
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**Docket No. 5062 – Town of South Kingstown - Community Choice Electricity Aggregation (CCEA) Plan**  
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**Docket No. 5169 – Town of Portsmouth - Community Choice Electricity Aggregation (CCEA) Plan**  
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**Docket No. 5212– City of Newport - Community Electricity Aggregation (CEA) Plan**  
**Service List updated 12/22/2021**

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	<a href="mailto:Todd.bianco@puc.ri.gov">Todd.bianco@puc.ri.gov;</a>	
Office of Energy Resources Nicholas Ucci Christopher Kearns	<a href="mailto:Nicholas.ucci@energy.ri.gov">Nicholas.ucci@energy.ri.gov;</a>	
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	<a href="mailto:Becca.Trietch@energy.ri.gov">Becca.Trietch@energy.ri.gov;</a>	
	<a href="mailto:Nathan.Cleveland@energy.ri.gov">Nathan.Cleveland@energy.ri.gov;</a>	
	<a href="mailto:Carrie.Gill@energy.ri.gov">Carrie.Gill@energy.ri.gov;</a> <a href="mailto:Albert.vitali@doa.ri.gov">Albert.vitali@doa.ri.gov</a>	
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ELECTRIC SERVICE AGREEMENT

This Electric Service Agreement ("ESA" or "Agreement") is entered into as of the 15th day of September, 2022 ("Effective Date") by and between **NextEra Energy Services Rhode Island, LLC**, a Delaware Limited Liability Company ("Competitive Supplier"), and the **City of Providence**, a Rhode Island municipality (the "Municipality").

**Recitals**

WHEREAS, the Rhode Island General Assembly has adopted Chapter 3, Section 1.2 of Title 39, entitled "Aggregation of electrical load by municipality or group of municipalities", which among other things, (1) allows for competition in the generation and supply of electricity to consumers, (2) authorizes municipalities to aggregate the electrical load of electricity consumers within their boundaries, and (3) allows municipal aggregators to formulate an aggregation plan and conduct aggregation programs;

WHEREAS, Municipality has developed a Community Choice Electricity Aggregation Program ("Program") in accordance with R.I.G.L. § 39-3-1.2 to aggregate consumers located within the Municipality and to negotiate competitive rates for the supply of electricity for such consumers;

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

WHEREAS, the Municipality has received approval of its Program from the Rhode Island Public Utilities Commission ("PUC") in Docket # 5061

WHEREAS, Competitive Supplier, a limited liability company duly authorized to conduct business in the State of Rhode Island ("Competitive Supplier"), desires to provide All-Requirements Power Supply to consumers located within the Municipality, pursuant to the terms and conditions of the Municipality's Program and this ESA; and

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

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



ARTICLE 1 DEFINITIONS

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

1.1 Associated Entities – Any and all of the 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 Local Distributor,

1.2 All-Requirements Power Supply - The service under which the Competitive Supplier provides all of the electrical energy, capacity, reserves, and ancillary services, transmission services, transmission and distribution losses, congestion management, and other such services or products necessary to provide firm power supply to Participating Consumers at the Point of Sale. This supply service also includes any costs associated with meeting the “Renewable Energy Standard” at the levels required by applicable law throughout the term of the Agreement.

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

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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, 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 Competitive Supplier – The Party identified at the top of page one of this ESA, which is duly authorized to conduct business in the State of Rhode Island.

1.6 Consultant - The entity retained by the Municipality to assist in the development, implementation, and administration of the Program.

1.7. Consumer Notice - As set forth in Article 3.4.

1.8 Division - The Rhode Island Division of Public Utilities and Carriers or any successor state agency.

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

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

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

1.12 Eligible Consumers - Residential, commercial, industrial, municipal, or other consumers of electricity located within the geographic boundaries of the Municipality who receive Last Resort Service as of the Effective Date ("Last Resort Service Customers"), or New Consumers that subsequently become eligible to participate in the Program at one or more locations within the geographic boundaries of the Municipality. The residential class is comprised of the of rates A-16, A-60; the commercial class is comprised of rates C-06, G-02, S-05, S-06, S-10 and S-14; and the industrial class is comprised of B-32 and G-32. Eligible Consumers shall exclude: (1) Last Resort Service Customers who have asked their Local Distributor to not enroll them in competitive supply; (2) Last Resort Service Customers enrolled in a program that prohibits switching to a competitive supplier; and (3) customers receiving competitive supply service.

1.13 ESA - This Electric Service Agreement.

1.14 Force Majeure - Any cause not within the reasonable control of the affected Party which precludes that party from carrying out, in whole or in part, its obligations under this

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ESA, including, but not limited to, Acts of God; winds; hurricanes; storms; tornadoes; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes, lock-outs or other industrial disturbances; acts of public enemies; acts, failures to act or orders of any kind of any governmental authorities acting in their regulatory or judicial capacity, provided, however, that any such discretionary acts, failures to act or orders of any kind by the Municipality may not be asserted as an event of Force Majeure by the Municipality; acts or failures to act by the Local Distributor, including, but not limited to, the failure to distribute retail power for any reason; 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 either Party shall not constitute an event of Force Majeure.

1.15 General Communications - The type of communications described and defined in Article 6.6 herein.

1.16 Governmental Authority - Any national, state or local government, independent system operator, regional transmission owner or operator, any political subdivision thereof or any other governmental, judicial, regulatory, public or statutory instrumentality, authority, body, agency, department, bureau, or entity, excluding the Municipality.

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

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

1.19 kWh, kW - Kilowatt-hour and kilowatts, respectively.

1.20 Last Resort Service - As defined in R.I. Gen. Laws § 39-1-27.3 and in regulations of the Commission, as amended or promulgated, as the case may be, from time to time. The fixed Last Resort Service Rate is the price of the default generation service supplied by the Local Distributor, which is fixed for a period of three to six months.

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

1.22 Master Opt-Out File - As set forth in Article 3.3.

1.23 NEPOOL - The New England Power Pool.

1.24 New Eligible Consumers - Residential, commercial, industrial, municipal, or other consumers of electricity that become Eligible Consumers after the Effective Date and have

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not previously elected to opt-out of the Program.

1.25 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 All-Requirements Power Supply, or any Governmental Rule enacted and effective after the Effective Date resulting in application of any existing tax for the first time to Participating Consumers.

1.26 Opt-Out Notice - As set forth in Article 3.2.

1.27 Participating Consumers - Eligible Consumers enrolled in the Program.

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

1.29 Plan - Community Choice Electricity Aggregation Program as adopted or amended by the Municipality from time to time, and as approved by the Commission in Docket # . The Aggregation Plan is a plan developed by the Municipality to aggregate electricity consumers for the primary purpose of negotiating the best rates for the supply of electricity for such consumers.

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

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

1.32 Postcard Notice - Specified in As set forth 3.2.

1.33 Program - Community Choice Electricity Aggregation Program, which is described and implemented consistent with the Plan.

1.34 PUC or Commission - The Rhode Island Public Utilities Commission or any successor state agency.

1.35 RECs – Renewable Energy Certificates which entitle the holder to all environmental, social and non-power attributes from the generation of one megawatt-hour of renewable electricity and which are issued by the New England Power Pool.

1.36 REC Purchase Agreement or RPA - As set forth in Article 9.2.

1.37 REC Supplier - As set forth in Article 9.2.

1.38 Refresh Mailing List - As set forth in Article 3.3.

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1.39 Regulatory Event – Implementation of a new, or changes to an existing, Governmental Rule by a Governmental Authority, including without limitation the Local Distributor's tariffs, market rules, operating protocols and definitions, which have a material effect on the services and transactions contemplated by this ESA, including changes to a Governmental Rule that increase or decrease Competitive Supplier's costs. A "change" as used herein includes any amendment, modification, nullification, suspension, repeal, finding of unconstitutionality or unlawfulness, or any change in construction or interpretation, providing such "change", or the financial impact of such "change", was not known or foreseeable, or could not have been calculated, as of the Effective Date.

1.40 Replacement RECs – Renewable Energy Certificates (RECs) to be provided by the Competitive Supplier in the event the REC Supplier defaults under, or terminates, the REC Purchase Agreement prior to termination of the ESA as provided in Article 9.2.

1.41 Retail Price - As set forth in Exhibit A.

1.42 Rhode Island New RECs – RECs that meet all requirements for "new renewable energy resources" as defined in RI. Gen. Laws Section 39, Chapter 26 §2.

1.43 Service Commencement Date - As set forth in Exhibit A. [not defined in Exhibit]

1.44 Term - As defined in Article 5.1.

1.45 Updated LDC Eligible Consumers File - As set forth in Exhibit B.

## ARTICLE 2 RIGHTS GRANTED

### 2.1 GENERAL DESCRIPTION AND LIMITATIONS

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

In accordance with Article 3 below, all Eligible Consumers shall be automatically enrolled in the Program unless they choose to opt-out. In the event the Municipality takes any action to materially change its geographic boundaries, during the term of this ESA, the Municipality shall provide notice of the proposed change to Competitive Supplier with reasonable detail, including potential timing and potential impact to the Program load, as soon as reasonably possible, but at least six (6) months prior to the anticipated date of such change. As between

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the Parties, the Competitive Supplier has the sole obligation of making appropriate arrangements with the Local Distributor, and any arrangements which may be necessary with the ISO-NE so that Participating Consumers receive the electricity to be delivered pursuant to this ESA.

The Municipality shall specifically authorize the Local Distributor to provide, and Competitive Supplier the right to obtain and utilize as required, all billing and energy consumption information for Participating Consumers as is reasonably available from the Local Distributor. Competitive Supplier shall request consumption data for individual Participating Consumers from the Local Distributor via EDI. If further action is required by the Local Distributor to authorize Competitive Supplier to receive such consumption and billing data, the 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 Participating Consumers and/or the Commission, where necessary as a prerequisite to the provision of such information. Competitive Supplier shall not be responsible for any errors that Competitive Supplier makes in the provision of All-Requirements Power Supply to the extent both that: 1) such errors are caused by errors or omissions in the information provided to it by the Local Distributor; 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 Local Distributor or Competitive Supplier in any event.

## 2.2 NO THIRD PARTY BENEFICIARIES

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 R.I. Gen. Laws § 39-3-1.2 for Eligible Consumers to purchase electricity from the Competitive Supplier in accordance with the Plan and this ESA. 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

By entering into this ESA, the Parties specifically represent that they have exercised due diligence to review and have fully complied with all relevant regulations and orders of the PUC, Division and any other governmental authorities having jurisdiction over any element of the transactions contemplated by this ESA. Competitive Supplier specifically represents that it has exercised due diligence to review and has fully complied with all relevant regulations and orders of the Federal Energy Regulatory Commission ("FERC").

## 2.4 CONDITIONS PRECEDENT

The Municipality's obligations under this ESA shall be conditioned upon the Competitive Supplier, (or, with respect to (c) and (d) below, Supplier's wholesale marketing affiliate)

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fulfilling the following requirements:

- a) maintain Competitive Supplier's license from the Division;
- b) execute an Electric Supplier Service Agreement with the Local Distributor in a form reasonably satisfactory to Competitive Supplier;
- c) execute any appropriate ISO-NE applications and agreements;
- d) obtain authorization from the FERC to sell power at market-based rates;
- e) complete EDI testing with Local Distributor; and
- f) provide all other documentation and satisfy all other conditions required by the Local Distributor

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

## 2.5 OWNERSHIP AND USE OF ELIGIBLE CONSUMER DATA

Competitive Supplier acknowledges and agrees that: 1) all Eligible Consumer data (including addresses, telephone numbers or other identifying information) made available to Competitive Supplier under this ESA for such data must be protected from disclosure to third parties by the Competitive Supplier and its Associated Entities to the fullest extent possible under the law; 2) the Competitive Supplier does not hold any permanent right, title or interest in this data; and 3) this data is to be obtained, retained and used by the Competitive Supplier and its Associated Entities solely to provide All- Requirements Power Supply to Participating Consumers and to render other services expressly required or permitted under this ESA. Any other use of Eligible Consumer data without the prior written consent of the Municipality is strictly prohibited. Pursuant to such authorized use, Competitive Supplier may share such Eligible Consumer data with Associated Entities as reasonably necessary to accommodate Competitive Supplier's provision of All-Requirements Power Supply or other performance pursuant to this ESA (including, without limitation, collection of receivables), provided that Competitive Supplier will take reasonable measures to inform any such Associated Entities of the confidential nature of such data and the restrictions set forth in this Article 2.5 and elsewhere in this ESA. Except as expressly provided in this ESA, 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 All-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 19.2. A violation of this Article 2.5 shall be grounds for termination under Article 4.2(a). Competitive Supplier agrees violation of this Article 2.5 shall constitute irreparable harm.

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

### 3.1 CONSUMER CHOICE

3.1.1 The Parties acknowledge and agree that all Participating Consumers have the right, pursuant to R.I. Gen. Laws § 39-3-1.2 and the Program, to change their source of electricity supply, as set forth in Article 2.1. The Parties represent and warrant to each other that they shall not unreasonably interfere with the right of Participating Consumers to opt-out of the Program, and shall comply with any rules, regulations or policies of the Commission, the Local Distributor, the Division and/or other lawful Governmental Authority regarding the procedures for opting out or of switching from one source of electric supply to another. Notwithstanding the foregoing, however, the Parties may take Commercially Reasonable measures to encourage Participating Consumers to affirmatively agree to remain in the Program, consistent with any Governmental Rules. The Municipality further represents and warrants to the Supplier that, unless mandated by a Governmental Authority, the Municipality shall not take any action to suspend or terminate the Aggregation Plan during the Term, unless this ESA is terminated in accordance with Article 5.2, and shall not encourage Participating Consumers, either directly or indirectly, to opt out of the Program during the Term.

3.1.2 Eligible Consumer Opt-Out: Participating Consumers are free to opt-out of the Program utilizing established EDI drop protocols. Participating Consumers are to provide five (5) days' notice to the Competitive Supplier of such termination in advance of the meter read date on which it will be switching or dropping away from the Program. There are no fees or charges for Participating Consumers to opt-out or terminate service.

3.1.3 Competitive Supplier's Standard Credit Policy: The Competitive Supplier will not require a credit review for any consumer participating in the Program, nor will Competitive Supplier require any consumer to post any security deposit as a condition for participation in the Program.

### 3.2 NOTIFICATION TO ELIGIBLE CONSUMERS FOR NEW AGGREGATION

In the event the Municipality is launching a new aggregation, all Eligible Consumers will, as of the Service Commencement Date, be automatically enrolled in the Program under the terms of this Agreement unless they opt-out. The Local Distributor will provide to Competitive Supplier a list of all Eligible Consumers as of the Effective Date including service and billing addresses. Competitive Supplier shall notify each Eligible Consumer :

- (i) about the Program;
- (ii) of the date on which such Eligible Consumer will be automatically enrolled in the Program;
- (iii) that the Competitive Supplier will be providing All-Requirements Power Supply to



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- such Eligible Consumer as of the same date, subject to the opt-out provisions of R.I. Gen. Laws § 39-3-1.2, and the Plan; and
- (iv) of the opt-out procedures under the Plan and as required by applicable laws and regulations.

The Municipality shall specify the design, content, and text of the notice of the opt-out procedures (the “Opt-Out Notice”) which may be in color and may include 2 or more pages in addition to the reply form, but which shall not exceed dimension and weight requirements of the U.S. Postal Service for First Class Mail for Commercial Letters. The Municipality shall provide the Opt-Out Notice to Competitive Supplier for review, and Competitive Supplier shall notify the Municipality of any comments or concerns regarding the form or content of the notice. The Parties shall cooperate in good faith to address such comments or concerns. Once the design and content of the notice are finalized, Competitive Supplier shall, at its cost and in accordance with the approved design and content, prepare, print, and mail to each Eligible Consumer the Opt-Out Notice at least thirty six (36) days prior to the date of automatic enrollment. The Opt-Out Notice shall:

- i) prominently state all charges to be assessed by the Competitive Supplier;
- ii) provide a summary of the prices and terms included in Exhibit A;
- iii) fully disclose the prices and terms then being offered for Last Resort Service by the Local Distributor;
- iv) state how an Eligible Consumer may opt-out of the Program prior to enrollment and remain on Last Resort Service from the Local Distributor;
- v) state how all Participating Consumers, subsequent to enrollment, will also have the right to opt-out at any time and return to Last Resort Service or choose a new Competitive Supplier without paying a fee, charge or penalty;
- vi) identify the exact date by which customers must postmark the opt-out reply card to avoid automatic enrollment into the Program; and
- vii) include a reply card and postage-paid envelope that Eligible Consumers may use to exercise their opt-out rights.
- viii) at the discretion of Municipality, be provided in both Spanish and English languages.

In processing Program enrollments, the Competitive Supplier shall ensure that Eligible Consumers shall have thirty (30) days to opt-out plus six (6) days to account for mailing (i.e., three (3) days for the Opt-Out Notice to be delivered to the customer and three (3) days for the reply card to be delivered to the Competitive Supplier. The opt-out period shall end thirty-six (36) days after mailing of the Opt-Out Notice and Program enrollments shall begin no sooner than thirty-seven (37) days after mailing of the Opt-Out Notice.

The Municipality shall also specify the design and content of a postcard (“Postcard Notice”) which may be in color but shall not exceed dimension and weight requirements for First Class mail. The Municipality shall provide the Postcard Notice to Competitive Supplier for review, Competitive Supplier shall notify the Municipality of any comments or concerns regarding the form or content of the notice, and the Parties shall cooperate in good faith to address such comments or concerns. Finalization of the design and responsibility for preparing printing and

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mailing will be the same as for the Opt-Out Notice. Postcard Notice shall be mailed to each Eligible Consumer at least three (3) days before the initial Opt-Out Notices are mailed and shall not be required for Opt-Out Notices after Program launch.

All Eligible Consumers who do not elect to opt-out of the Program shall then be deemed Participating Consumers and shall be entitled to receive electric supply at the prices listed in Exhibit A and pursuant to the terms and conditions of this Agreement.

If any Opt-Out Notices are returned as undeliverable, the Competitive Supplier shall promptly make Commercially Reasonable efforts to correct any formatting errors and/or utilize data provided by the Local Distributor to identify a correct mailing address and re-send the Opt-Out Notice. Competitive Supplier shall not enroll any Eligible Consumer if the Competitive Supplier is unable to identify a correct mailing address after a first or second Opt-Out Notice is returned as undeliverable.

Once enrolled in the Program pursuant to the procedures described in this Agreement, Participating Consumers may opt out at any time without paying any fee, charge or penalty.

The Parties acknowledge that any low income discounts provided by the Local Distributor to low income consumers are not impacted by this Agreement.

### 3.3 NOTIFICATION TO NEW ELIGIBLE CONSUMERS AFTER PROGRAM LAUNCH

Throughout the term of this Agreement Competitive Supplier shall maintain a Master Opt Out File, as described in Exhibit B, that includes accurate records of a) all Eligible Consumers in the Municipality that opted out prior to enrollment and after receiving an Opt-Out Notice and b) all Participating Consumers that left the Program for any reason after they were enrolled in the Program. This Master Opt-Out File will also include any records of Eligible Consumers that have opted-out during previous ESAs, which will be provided to Competitive Supplier by the Municipality. Throughout the Term of this Agreement, or as otherwise agreed to by the Parties, the Competitive Supplier shall request from the Local Distributor an updated file that includes all Eligible Consumers in the Municipality (hereinafter the "Updated LDC Eligible Consumer File"). Once each quarter Competitive Supplier shall create a Refresh Mailing List of New Eligible Consumers, as specified in Exhibit B. which shall include all consumers in the Updated LDC Eligible Consumer File and exclude all consumers listed in the Master Opt Out File. Notwithstanding anything in the ESA to the contrary, to the extent the Competitive Supplier must rely upon a Master Opt Out file created or modified by Municipality or a third party, Competitive Supplier shall have no liability for inaccuracies or omissions in the data provided by the Municipality or third party and Competitive Supplier makes no representation or warranty as to the accuracy of such data.

In accordance with the requirements of any applicable Governmental Rules, Competitive Supplier shall notify such New Eligible Consumer listed in the Refresh Mailing List (i) of the

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date (expressed as a certain month's meter read date) on which such New Eligible Consumers will be automatically enrolled in the Program, and (ii) that the Competitive Supplier will be providing All- Requirements Power Supply to such New Eligible Consumers as of the same date, subject to the opt-out provisions of the R.I. Gen. Laws § 39-3-1.2, the Plan, and the Program Opt-Out Notice. Competitive Supplier shall mail the Opt-Out Notice, as described in Article 3.1 and 3.2, to each New Eligible Consumers listed in the Refresh Mailing List no later than sixty (60) after the Service Commencement Date and then once every quarter thereafter for the balance of the term of the Agreement, or as otherwise agreed to by the Parties. The Opt-Out Notice shall be mailed to each such New Eligible Consumer prior to the date of automatic enrollment in accordance with the requirements of the Plan, and as described in Article 3.2 above. All Opt-Out Notices and Refresh Mailing Lists of New Eligible Consumers must be approved in advance by the Municipality. Competitive Supplier is not required to mail a Postcard Notice to New Eligible Consumers.

All New Eligible Consumers who do not elect to opt-out of the Program shall then be deemed Participating Consumers and shall be entitled to receive electric supply at the prices listed in Exhibit A pursuant to the terms and conditions of this Agreement.

If any Opt-Out Notices are returned as undeliverable, the Competitive Supplier shall promptly make Commercially Reasonable efforts to correct any formatting error and/or use data provided by the Local Distributor to identify a correct mailing address and re-send the Opt-Out Notice. The Competitive Supplier shall not enroll any consumer where the Competitive Supplier is unable to identify a correct mailing address after a first or second Opt-Out Notice is returned as undeliverable.

Once enrolled in the Program pursuant to the procedures described in this Agreement, Participating Consumers may opt-out at any time without paying any fee, charge or penalty.

In providing the notifications set forth in Articles 3.2 and 3.3, and in otherwise conducting the activities in Article 3.5 below, the Competitive Supplier must rely upon information provided to it by the Local Distributor for the purpose of performing its obligations. Competitive Supplier will not be responsible for any errors in connection with its notification to Eligible Consumers or New Eligible Consumers only to the extent that such errors are caused by errors or omissions in the information provided to it by the Local Distributor or Municipality. The Municipality shall not be responsible for any such errors by the Local Distributor or Competitive Supplier in any event.

### 3.4 NOTIFICATIONS TO PARTICIPATING CONSUMERS

Once annually, upon written request, the Municipality may elect for the Competitive Supplier to mail a notice ("Consumer Notice") to each Participating Consumer. The Municipality shall specify the design and content of the Consumer Notice which may be in color but shall not exceed one (1) page double-sided and the dimension and weight requirements for First Class mail. The Municipality shall provide the Consumer Notice to Competitive Supplier for review, Competitive Supplier shall notify the Municipality of any comments or concerns

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regarding the form or content of the notice, and the Parties shall cooperate in good faith to address such comments or concerns. Finalization of the design and responsibility for preparing printing and mailing will be the same as for the Opt-Out Notice. The Municipality shall specify the date to mail each Consumer Notice, the first of which shall be no earlier than thirty (30) days prior to the Service Commencement Date. Supplier shall include the projected costs associated with the preparation, printing, and mailing of such notices in the price for All Requirements Power Supply in accordance with Exhibit A, and same shall be included in the calculation of Supplier Cost as defined in Exhibit A.

### 3.5 ENROLLMENT

Following mutually agreed upon procedures, the Competitive Supplier is responsible for accurately and promptly transmitting information regarding Eligible Consumers, to the Local Distributor. The Competitive Supplier shall be responsible for enrolling all Eligible Consumers through EDI transactions submitted to the Local Distributor for initial enrollment in the aggregation and all enrollments thereafter.

3.5.1 Participating Consumers - All Participating Consumers as of the Effective Date will continue to be enrolled in the Program under the terms of this ESA, at the Retail Prices provided in Exhibit A, unless they opt-out during the period specified in the Plan. The Municipality shall authorize the Local Distributor to provide to Competitive Supplier 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 All-Requirements Power Supply to such Participating Consumers as of the Service Commencement Date.

3.5.2 New Eligible Consumers - If New Eligible Consumers elect not to opt-out of the Program as provided in Articles 3.2 and 3.3, such New Eligible Consumers will be automatically enrolled by Competitive Supplier in the Program. Competitive Supplier shall enroll such New Eligible Consumers in accordance with applicable Governmental Authority and Local Distributor rules and in the meter read month stated in the Opt Out Notice. Residential and small commercial New Eligible Consumers shall be enrolled in the Program at the rates reflected in Exhibit A. Competitive Supplier reserves the right to enroll a New Eligible Large Commercial or Industrial Consumer in the Program at a fixed rate based on its individual pricing determinants and prevailing market conditions as determined by the Competitive Supplier ("Market Rate") rather than at the rates reflected in Exhibit A. After the Service Commencement Date, if a Large Commercial or Industrial Customer is erroneously enrolled, or offered enrollment, at a price other than the Market Rate, Competitive Supplier shall notify such customer, and the Municipality's Consultant, by telephone or mailing, of the error and that the consumer will not be enrolled, or will be returned to Last Resort Service, unless the customer opt-ins to the Program at the Market Rate by contacting the Competitive Supplier within ten (10) days of receipt of such notice and authorizing release of the customer's electric usage information

3.5.3 Re-enrollment by Eligible Consumers - At any time during this ESA, Eligible

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Consumers who have previously opted out of the Program may request that they be re-enrolled in the Program. Competitive Supplier shall provide All-Requirements Power Supply to such residential and small commercial Eligible Consumers at either the Retail Prices reflected in Exhibit A, or a price determined by the Competitive Supplier based on then-prevailing market conditions. Competitive Supplier may enroll all other customers that opt-in at the Retail Prices reflected in Exhibit A or at a market-based price determined by the Competitive Supplier based on the then-prevailing market conditions.

3.5.4 Eligible Consumers Served by Third-Parties - Consumers being served under other competitive supply programs offered by third-parties will not be automatically enrolled as Participating Consumers under this ESA when such program terminates or is otherwise completed. Competitive Supplier agrees that Consumers under such third-party competitive supply programs may affirmatively opt-in and receive All-Requirements Power Supply. Residential and small commercial Consumers which opt-in may be enrolled in the Program at the rates reflected in Exhibit A. All other Consumers that opt-in shall be enrolled at a price determined by the Competitive Supplier based on the then-prevailing market conditions.

3.5.5 Handling of Enrollment Rejections.

3.5.5.1 Rejections if transitioning from a previous ESA to this ESA.

The following rejections require the Competitive Supplier to reach out to the Local Distributor to correct; provided however, that Competitive Supplier, after making reasonable efforts to work with the Local Distributor, shall not be liable for the Local Distributor's failure to cooperate:

- Account name does not match account (ask for new name and name key)
- Service is not eligible (contact Local Distributor to get correct code or search your database for another enrolled account on same street to get code)
- Invalid service identifier
- Special conditions apply

In these cases, the Local Distributor should either manually enroll the account or provide Competitive Supplier the information to update the system and resubmit the enrollment.

3.5.5.2 Rejections if a Consumer Contacts the Competitive Supplier to Opt-in Via Phone or Online form.

a) The following rejections require the Competitive Supplier to reach out to the Local Distributor to correct; provided however, that Competitive Supplier, after making reasonable efforts to work with the Local Distributor, shall not be liable for the Local Distributor's failure to cooperate:

- Account name does not match account (ask for new name and name key)
- Service is not eligible (contact Local Distributor to get correct code or search your

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database for another enrolled account on same street to get code)

- Invalid service identifier
- Special conditions apply

In these cases, the Local Distributor should either manually enroll the account or provide Competitive Supplier the information to update the system and resubmit the enrollment. If Competitive Supplier cannot resolve the rejection, Competitive Supplier shall contact the customer as in 3.5.5.2(b).

b) The following rejections require the Competitive Supplier to contact the customer.

- Supplier block / Consumer Account Block
- Consumer enrolled
- Account not found
- Account exists but is not active
- Any other rejection not included in 3.5.5.2(a)

In these cases, Competitive Supplier may contact the consumer via an email or phone call that alerts customer that they could not be enrolled, that they must take action, and that they may need to complete a new enrollment request. If consumer does not take action, Supplier shall have no further responsibility. Alternatively, Supplier may propose to the Municipality another consumer communication that serves to notify consumers and provide guidance on next steps to resolve the issue.

## ARTICLE 4 – PURCHASE OF RECEIVABLES

### 4.1 PURCHASE OF RECEIVABLES

The PUC, in Docket #5073, approved of a Purchase of Receivables (“POR”) program that has been implemented by the Local Distributor. With the implementation of POR, the Parties agree to follow the terms and conditions of that program, and any other applicable regulations or tariff provisions as approved by the PUC.

## ARTICLE 5 TERM OF CONTRACT AND TERMINATION

### 5.1 TERM

This ESA shall commence on the Effective Date and terminate on the last day of the final Delivery Term as stated in Exhibit A unless extended in accordance with the terms of this ESA, provided, however, that Competitive Supplier's obligation to provide All-Requirements Power Supply shall commence on the Service Commencement Date, and shall terminate as of the last day of the Delivery Term as stated in Exhibit A, unless terminated earlier under Article 5.2 below ("Term"). The Term may be extended at any time pursuant to Article 5.4.

### 5.2 TERMINATION

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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 10, but excluding the failure to provide or arrange for All-Requirements Power Supply, which is addressed in Article 5.2(d)), within sixty (60) days following written notice to do so by the non-breaching party, except that, regarding Section 16.1, the Competitive Supplier shall have ninety (90) days following written notice to cure; 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 the PUC exercises any lawful jurisdiction so as to invalidate or disapprove this ESA in whole or in significant part; or

c) 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 by Municipality 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

d) notwithstanding the foregoing, the failure of Competitive Supplier to provide or arrange for All-Requirements Power Supply to Participating Consumers, unless such failure is due to Force Majeure or the Municipality's failure to perform its obligations hereunder, shall constitute an act of default, and the Municipality may terminate this Agreement upon giving written notice and without a cure period. In the event, however, that the Competitive Supplier has performed its obligations hereunder and its failure to arrange for or provide All-Requirements Power Supply is a direct result of actions or non-actions by any transmission service provider, the Local Distributor, or the ISO-NE, the Competitive Supplier's failure shall not be deemed to be an act of immediate default, but rather will be deemed a failure due to a Force Majeure event subject to the provisions in Article 19.6; or

e) by either Party for convenience, as set forth in Exhibit A.

### 5.3 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 electricity delivered to that date. If following termination of the ESA Municipality has chosen a new supplier for its Program, Competitive Supplier shall assist in the transition to the new

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supplier by providing all Program information in its possession to the Municipality or the new supplier on a timely basis, including all updated reports pursuant to Article 12 and Exhibit B, excluding any information recognized by law as confidential and proprietary to the Competitive Supplier.

The Competitive Supplier specifically waives all rights it may have at law or equity to claim that the Municipality has no standing or otherwise lacks the authority to seek monetary damages on behalf of individual Participating Consumers in the event of a breach of the ESA by the Competitive Supplier. The Competitive Supplier shall submit all consumer drops via EDI to the Local Distributor in accordance with the rules and regulations set forth by the EBT Working Group.

#### 5.4 EXTENSION

The Term of this ESA may be extended beyond the termination date established in Article 5.1 by mutual, written agreement of the Parties. Any new pricing terms shall be added to and replace Exhibit A as Exhibit A-2. Upon any such extension, this ESA shall continue to be in effect, and all provisions of the ESA shall retain the same force and effect as before the extension, unless it is terminated by either Party pursuant to the provisions of Article 5.2 or until the date stated in such extension.

### ARTICLE 6 CONTINUING COVENANTS

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

#### 6.1 STANDARDS OF MANAGEMENT AND OPERATIONS

In performing its obligations hereunder, during the term of this ESA, the Competitive Supplier shall exercise reasonable care and comply with all applicable Governmental Rules; and shall exercise all reasonable efforts 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 to it.

#### 6.2 CUSTOMER SERVICE ACCESS

The Competitive Supplier agrees to provide, or cause to be provided, certain reasonable customer services to Participating Consumers in English and Spanish (for written material) and English, Spanish, and Portuguese (for verbal communication). Such services shall be reasonably accessible to all Participating Consumers, shall be available during normal



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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 Local Distributor. A toll-free telephone number will be established by Competitive Supplier and be available for Participating Consumers to contact Competitive Supplier during normal business hours (9:00 A.M.- 5:00 P.M. Eastern Time, Monday through Friday) to resolve concerns, answer questions and transact business with respect to the service received from Competitive Supplier. The Municipality will post Program-related information on the Municipality's website which will be available to Participating Consumers for general information, product and service information, and other purposes.

As part of the procedures to be provided to Municipality in Article 10, Competitive Supplier shall, upon written request, provide Municipality the applicable scripts or other materials to be used by its customer service staff when contacted by a consumer related to this ESA. Municipality may suggest edits or adjustments to these scripts or other materials, and Competitive Supplier shall make any changes that are mutually agreeable.

### 6.3 RESPONDING TO REQUESTS FOR INFORMATION

Competitive Supplier shall, during normal business hours (as set forth above), respond promptly and without charge 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 acknowledges and understands that such information requests are or may be time sensitive pursuant to applicable public information access laws, specifically Title 38 of Rhode Island General Laws, and shall respond within any time constraints of which Competitive Supplier is promptly notified in writing by the Municipality. 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 6.3, 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 6.3 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 provision of the Plan or regulation of the Department or Attorney General regarding customer service. Notwithstanding and without limiting the provisions of Article 14, Competitive Supplier agrees to indemnify, defend, and hold harmless the Municipality for any liability, fines, or penalties incurred by the Municipality because of the failure of Competitive Supplier to timely and appropriately respond to information requests governed by applicable public information access laws as set forth in this Section 6.3, *provided that* the Municipality has provided Competitive Supplier timely written notice of such information requests.

### 6.4 ARRANGING FOR FIRM ALL-REQUIREMENTS POWER SUPPLY

Competitive Supplier shall participate in or make appropriate arrangements with the ISO-NE,

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any relevant regional transmission organization, wholesale suppliers or any other entity to ensure an uninterrupted flow of firm All-Requirements Power Supply (free of all claims, security interests or other encumbrances) to the Local Distributor for delivery to Participating Consumers, and cooperate with the NEPOOL, the ISO-NE or any other entity to ensure a source of back-up power in the event that Competitive Supplier is unable to deliver All-Requirements Power Supply to the Point of Delivery. In the event the Competitive Supplier is unable to deliver sufficient electricity to the Point of Delivery to serve Participating Consumers, in addition to any other remedies available to Municipality on account thereof, the Competitive Supplier shall make all such arrangements as may be necessary to continue to serve Participating Consumers under the terms of this ESA, and shall bear any costs it may incur in carrying out these 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 Local Distributor disconnects, curtails or reduces service to Participating Consumers (notwithstanding whether such disconnection is directed by the ISO- NE)

#### 6.5 NON-DISCRIMINATORY PROVISION OF SERVICE

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

#### 6.6 APPROVAL OF GENERAL COMMUNICATIONS

Competitive Supplier shall cooperate with the Municipality in the drafting and sending of messages and information to Eligible Consumers concerning the Program or any matter arising under or related to this ESA. Competitive Supplier shall provide a copy of such communications to the Municipality for its review to determine whether it is consistent with the purposes and goals of the Municipality, 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 Participating Consumers (but excluding individually drafted or tailored communications

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responding to the specific complaint or circumstance of an individual consumer). The Municipality shall have the right to disapprove such General Communications and suggest revisions if it finds the communication inconsistent with the purposes and goals of the Municipality, factually inaccurate or likely to mislead; provided, however: (i) that the communication shall be deemed approved if the Municipality fails to respond within seven (7) business days after receipt ( and (ii) that no approval shall be necessary for any communication (a) regarding any emergency situation involving any risk to the public health, safety or welfare; (b) which has been approved by the PUC or any other Governmental Authority; or (c) in the nature of routine monthly or periodic bills, or collection notices, except that any bill insert or message included at the bottom of such bill not within the scope of (a) or (b) above shall require approval. If the 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 6.6, may nevertheless elect to send such General Communication provided that it: (i) clearly indicates on such mailing that it has not been endorsed by the Municipality, (ii) has previously provided all Participating Consumers a meaningful chance to opt not to receive such General Communications, (iii) has stated in connection with such chance to opt not to receive such communications that "the Municipality wants to protect Eligible Consumers from receiving marketing materials if you do not wish to do so," and (iv) has otherwise sought input from the Municipality as to the means by which Eligible Consumers are given a chance to remove their names from any list which may receive General Communications. The 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, or inconsistent with PUC policy or directives.

The Competitive Supplier may only communicate with Participating Consumers and/or use the lists of Eligible Consumers and Participating Consumers to send educational materials, opt-out notices or other communications essential to the operation of the Program at the direction of the Program. Such lists may not be used by the Competitive Supplier to market any additional products or services to Eligible Consumers or Participating Consumers

## 6.7 COMMUNICATION OF INSERTS AND MESSAGES

Competitive Supplier agrees that if it communicates with Participating Consumers directly, and unless prevented for regulatory or other such reasons from doing so, it shall allow the Municipality to include no less than three (3) inserts per year into such communications, provided that the Municipality pays the cost of printing and reproducing such insert and any incremental postage or handling costs the Competitive Supplier may incur as a result of including such insert. Competitive Supplier shall have the right to disapprove such General Communications (that is communications other than those pertaining to the Municipality's demand-side management, energy efficiency programs and technology, and renewable energy programs, if applicable, which shall not be subject to such approval) and suggest revisions if it finds the communication inconsistent with its business interests, factually inaccurate or likely to mislead; provided, however: (i) that the communication shall be deemed approved if the Competitive Supplier fails to respond within seven (7) business days

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after receipt ; and (ii) that no approval shall be necessary for any communication which has been ordered by the Public Utilities Commission or any other Governmental Authority to be so communicated.

## 6.8 PARTICIPATING CONSUMER LISTS

### 6.8.1 Consumer Lists

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

## 6.9 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.

## 6.10 CONSENT

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

## ARTICLE 7 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 All-Requirements Power Supply in any manner whatsoever. The Parties specifically agree that the role of the Municipality is established under R.I. Gen. Laws § 39-3-1.2 and includes negotiating the terms and conditions under which All- 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 All-Requirements Power Supply to Participating Consumers. The Parties agree that Municipality is not an "electric distribution company", "electric transmission company", "distribution facility", "public utility", "generation company" or "transmission facility" within the meaning of R.I. Gen.

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Laws § 39-1-2 as a result of this ESA, unless a court, the PUC, or other lawful authority shall adjudicate to the contrary; provided, however, that the Municipality may be considered to be operating a municipal load aggregation plan pursuant to R.I. Gen. Laws § 39-3-1.2. The Competitive Supplier hereby agrees that it will take no action, whether directly or through its Associated Entities, which 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 All-Requirements Power Supply.

## ARTICLE 8 PRICES AND SERVICES; BILLING

### 8.1 SCHEDULE OF PRICES AND TERMS

Competitive Supplier agrees to provide All-Requirements Power Supply and other related services as expressly set forth herein in accordance with the prices and terms included in Exhibit A to this ESA, which Exhibit is hereby incorporated by reference into this ESA. The Municipality authorizes Good Energy, L.P., or its lawful successor, (i) to communicate all supply, procurement, pricing, and timing decisions on the Municipality's behalf, as applicable, during the Delivery Term, and (ii) to work directly with the Competitive Supplier to establish rates for future delivery terms/pricing periods as set forth in Exhibit A. The Municipality acknowledges that as long as such rates are established in accordance with the terms of Exhibit A, the Municipality accepts and approves such rates as so established.

### 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 All-Requirements Power Supply for all of the Participating Consumers under the Program. Competitive Supplier, except as explicitly limited by the terms included in Exhibit A, shall be obligated to accept all Participating Consumers, regardless of their location or energy needs provided such Participating Consumers are eligible under the applicable regulations and tariffs of the Local Distributor.

### 8.3 METERING

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

### 8.4 TERMS AND CONDITIONS PERTAINING TO INDIVIDUAL ACCOUNT SERVICE

#### 8.4.1 Title

Title to All-Requirements Power Supply will transfer from Competitive Supplier to

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Participating Consumers at the Point of Sale. In accordance with the Local Distributor's Terms and Conditions for Competitive Suppliers, the Competitive Supplier will be responsible for any and all losses incurred on the local network transmission systems and distribution systems, as determined by the Local Distributor.

#### 8.4.2 Billing and Payment

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

#### 8.4.3 Regional and Local Transmission

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

#### 8.4.4 Taxes

All sales, gross receipts, excise or similar taxes imposed with respect to the sale or consumption of All-Requirements Power Supply shall be included on the Participating Consumer's bill and shall be remitted to the appropriate taxing authority by Competitive Supplier. Participating Consumers shall be responsible for all taxes that are required by law to be imposed upon a purchaser of electricity and are associated with electricity consumption under the ESA. Participating Consumers shall be responsible for identifying and requesting any exemption from the collection of any tax by providing appropriate documentation to Competitive Supplier. For avoidance of doubt, Competitive Supplier shall be responsible for all taxes imposed on Competitive Supplier's income.

## ARTICLE 9 DEVELOPMENT OR OFFERING OF RENEWABLE ENERGY SOURCES

### 9.1 RENEWABLE ENERGY STANDARD

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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 R.I. Gen. Laws § 39-26 et. seq., and any regulations, orders or policies adopted pursuant thereto.

## 9.2 PROVISION OF RECs

Competitive Supplier will enter into a REC Purchase Agreement ("RPA") with Green Energy Consumers Alliance, Inc. ("REC Supplier") attached hereto as Exhibit C. Pursuant to the RPA, REC Supplier will provide, and Competitive Supplier will purchase RECs in a quantity described in Exhibit A of the RPA per year to support the Municipality's opt-out and opt-in programs as described in Exhibit A of the RPA. Competitive Supplier shall procure and provide any additional quantity of RECs, above and beyond RECs provided by REC Supplier, necessary to support the Municipality's opt-out and opt-in programs as described in Exhibit A. Competitive Supplier shall include the REC's purchased from the REC Supplier in the All Requirements Power Supply to be provided to the Municipality under the ESA. Competitive Supplier shall include all costs of RECs necessary to support the Municipality's opt-out and opt-in programs in the price for All Requirements Power Supply as provided in Exhibit A of this ESA. In the event REC Supplier defaults under, or terminates, the RPA prior to the termination of this ESA, Competitive Supplier shall procure and provide Replacement RECs for the continuing term of the ESA sufficient to support the Municipality's opt-out and opt-in programs as described in Exhibit A of the RPA. In the event the price of the Replacement RECs is greater than the price paid under the RPA, then, to the extent Supplier has not yet provided written notification of the Retail Price for a Delivery Term in accordance with Pricing Exhibit A, the Municipality shall have the option to: (1) reduce the quantity of the Replacement RECs to a level such that the aggregate cost of the Replacement RECs is the same as the aggregate cost of the original remaining RECS to be provided under the RPA for such Delivery Term; or (2) increase the Retail Price as of the first day of such Delivery Term in an amount sufficient to offset the additional cost associated with the Replacement RECs. If the cost of the Replacement RECs is less than the price of the RECs under the RPA, then, to the extent Supplier has not yet provided written notification of the Retail Price for a Delivery Term in accordance with Pricing Exhibit A, the Municipality shall have the option: (A) to increase the quantity of the Replacement RECs to a level such that the aggregate cost of the Replacement RECs is the same as the aggregate cost of the original remaining RECs to be provided under the RPA; or (B) decrease the Retail Price as of the first day of such Delivery Term in an amount sufficient to offset the reduction in the cost associated with the Replacement RECs. For avoidance of doubt, if the Retail Price has been publicly announced for a Delivery Term, the Municipality shall not have the option to reduce or increase the quantity of Replacement RECs.

## 9.3 SEPARATE MUNICIPAL REC AGREEMENT

The Municipality may direct Competitive Supplier to purchase RECs from the municipality or a designated third party under one or more separate written agreements. entered into between the Municipality and Competitive Supplier. Competitive Supplier shall include the RECs purchased from the Municipality or designated third party in the All Requirements

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Power Supply to be provided to the Municipality, as Additional RI REC Content.  
Competitive Supplier shall include all costs of such RECs in the price for All Requirements  
Power Supply as provided in Exhibit A of this ESA.

## ARTICLE 10 SERVICE PROTECTIONS FOR RESIDENTIAL CONSUMERS

Competitive Supplier agrees that it and its Associated Entities shall comply with the provisions of 810-RICR-10-00-1, 815-RICR-30-05-1 and 815-RICR-30-05-02 , as applicable to Competitive Suppliers, and any amendments thereto, and any code of conduct or policies the may be adopted by a Governmental Authority. The Competitive Supplier shall, at least 30 days prior to the Service Commencement Date, provide a written description of its customer services, confidentiality and related practices and procedures for review by the Municipality.. Such services and practices shall comply with applicable law. Municipality may request changes to such services and practices, and, if such request is mutually agreeable to both Parties, Competitive Supplier shall amend its services and practices based on Municipality's request. Such written description shall also include the Competitive Supplier's plans for complying with the "opt-out" provisions of R.I. Gen. Laws § 39-3-1.2; and for handling consumer complaints, including any arbitration procedures. If the Participating Consumer(s) so permit(s) or to the extent such permission is required by law or the terms of any Governmental Authority order with respect to this ESA, the Competitive Supplier agrees to provide notice to the Municipality of any consumer complaints received from a Participating Consumer, and the Municipality shall have the right, but not the obligation, to participate in resolution of the dispute, to the extent that such complaints relate directly to the Program, and to the extent permitted by Commission or Division regulations and other applicable law. The use of practices and procedures which materially fail to comply with Commission or Division regulations and policies shall be deemed grounds for termination of this ESA, at the discretion of the Municipality after providing written notice of such failure to the Competitive Supplier and allowing the Competitive Supplier sixty (60) days to cure such failure.

In addition, and in accordance with R.I. Gen. Laws § 39-1-27.1 and 815-RICR-30-05-1.5, 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 contact the Division consistent with the provisions of 815-RICR-30-05-1.5.

## 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.

## ARTICLE 12 POWER SUPPLY INFORMATION AND ACCESS TO INFORMATION

### 12.1 POWER SUPPLY INFORMATION



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#### 12.1.1 Monthly Reports

Competitive Supplier shall provide the Municipality or its agent with monthly reports as described in Exhibit B. The monthly reports will be due to the Municipality or its agent within fifteen (15) days following the last day of each month. Unless otherwise noted in Exhibit B. This information shall be provided in electronic format.

#### 12.1.2 Consumer-Related Data

On and after the Service Commencement Date, Competitive Supplier will maintain consumer-related data in electronic form including utility account number, billing name, billing address, service address historical usage, demand, and ICAP (Installed Capacity) data. Competitive Supplier will make such data available to the Municipality or its agent upon request within forty-five (45) days of the request. A violation of this Article 12.1.2 shall be grounds for termination under Article 5.2(a).

#### 12.1.3 Standard of Care

Competitive Supplier 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 notify the Municipality in writing and provide the correct information or data to the Municipality or its agent within a Commercially Reasonable amount of time

### 12.2 DISCLOSURE LABEL

Within fifteen (15) days of the end of each calendar quarter that occurs during the term of this ESA, Competitive Supplier shall present a copy of the current "Disclosure Label", required by the R.I. Gen. Laws § 39-26-9 and as approved by the PUC in the Municipality's approved aggregation plan, to be disclosed to their Participating Consumers which shall include 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. The Disclosure Label shall include in its title the quarter to which it applies (e.g., Q1 2022). The Disclosure Label shall use the most recent data available as of the time the report is produced and shall note the dates to which the data applies. Competitive Supplier may be required to deliver one final Disclosure Label after termination of this ESA. The provisions of this Article 12.2 shall survive the termination of this ESA.

### 12.3 BOOKS AND RECORDS

Competitive Supplier shall keep their books and records in accordance with any applicable regulations or guidelines of the Commission, the FERC, and any other Governmental Authority. The Municipality will have access to any reports mandated by the Securities and

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Exchange Commission which are available on the Internet "EDGAR" system. Upon reasonable request by the Municipality, Competitive Supplier shall provide backup for any charge under this ESA questioned by the Municipality free of charge.

#### 12.4 COPIES OF REGULATORY REPORTS AND FILINGS

Upon reasonable written request, and within a Commercially Reasonable amount of time, Competitive Supplier shall provide to the Municipality a copy of each public periodic or incident-related report or record relating solely to this ESA which it files with any Rhode Island 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..

### 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 Rhode Island without respect to conflicts-of-laws principles. Any litigation arising hereunder shall be brought solely in the appropriate federal court in Rhode Island or appropriate state court sitting in the Rhode Island county in which the Municipality is located, to whose jurisdiction the parties hereby assent, waiving all objections to venue or forum.

#### 13.2 DISPUTE RESOLUTION

Unless otherwise provided for in this ESA, the dispute resolution procedures of this Article 13.2 shall be the exclusive mechanism to resolve disputes arising under this ESA. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this ESA. Any dispute that arises under or with respect to this ESA that cannot be resolved shall in the first instance be the subject of informal negotiations between the Parties involved in the dispute. The dispute shall be considered to have arisen when one Party sends the other Party(ies) involved in the dispute a written notice of dispute. The period for informal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless such time is modified by written agreement of the Parties involved in the dispute. In the event that the parties involved in the dispute cannot resolve a dispute by informal negotiations, the Parties may seek judicial enforcement subject to the provisions of this ESA. Notwithstanding the foregoing, injunctive relief may be immediately sought without resorting to the procedure set forth herein to prevent irreparable harm that would be caused by a breach of this ESA.

### ARTICLE 14 INDEMNIFICATION

#### 14.1 INDEMNIFICATION BY THE COMPETITIVE SUPPLIER

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In addition to any other remedies available to the Municipality at law or equity, and notwithstanding any other provision contained herein, in the event of a third-party claim against the Municipality, the Competitive Supplier shall indemnify, defend, and hold harmless the Municipality ("Indemnified Party") and the Indemnified Party's officials, officers, employees, agents, representatives, and independent contractors, from and against any and all (i) costs, (ii) claims, (iii) liabilities, (iv) damages, (v) expenses (including reasonable attorney's fees), (vi) causes of action, (vii) suits or (viii) judgments, arising from such third-party claim and 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 of its obligations, covenants, representations or warranties contained in this ESA and not resulting from the actions of the ISO, Local Distributor, the Municipality or its employees or agents, or (ii) any action or omission taken or made by the Competitive Supplier or its Associated Entities in connection with Competitive Supplier's performance of this ESA.

#### 14.2 NOTICE OF INDEMNIFICATION CLAIMS

If the Municipality seeks indemnification and defense of such third-party claims pursuant to this Article 14, it shall notify Competitive Supplier of the existence of a claim as soon as practicable after learning of such claim, describing with reasonable particularity the circumstances giving rise to such claim. Within thirty (30) calendar days of receipt of such notice from the Municipality, the Competitive Supplier will provide written acknowledgment that it will assume the defense and indemnification of such claim. If the Competitive Supplier assumes defense of third party claims, it may assert any defenses that are or would otherwise be available to the Municipality. If Competitive Supplier does not provide such acknowledgement, or refuses to assume such defense or indemnification, the Municipality may exercise such rights and remedies available to it under this ESA

#### 14.3 SURVIVAL

Notwithstanding any provision contained herein, the provisions of this Article 14 shall survive the termination of this ESA.

#### 14.4 DUTY TO MITIGATE

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

### ARTICLE 15 REPRESENTATIONS AND WARRANTIES

#### 15.1 BY THE COMPETITIVE SUPPLIER

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

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- 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 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 bids for competitive electric supply services is true and accurate.

## 15.2 BY THE MUNICIPALITY

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

- a) this ESA constitutes the legal, valid and binding contract of the Municipality enforceable in accordance with its terms, subject to applicable law;
- b) the execution, delivery and performance of this ESA are within the Municipality's powers, have been or will be duly authorized by all necessary action;
- c) the Municipality 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 the Municipality.

## 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

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own expense, before the Effective Date and throughout the term of this ESA, unless otherwise specified, comprehensive commercial general liability insurance of at least \$3,000,000 combined single limit and excess liability coverage of at least \$5,000,000 with insurers licensed to do business in the State of Rhode Island and satisfactory to the Municipality. A certificate that each such insurance coverage is in force and effect as of the Effective Date, and listing the Municipality as an additional insured on all policies under this ARTICLE 16, shall be submitted on or before the Effective Date and thereafter whenever renewed or requested by the Municipality. Failure to provide a certificate of insurance shall be a material breach, subject to cure, under Article 5.2(a) herein. All insurers must be notified that the insurance policies must provide that a copy of any notice of cancellation or non-renewal will be sent to the Municipality.

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

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

#### ARTICLE 17 CONFIDENTIALITY

Competitive Supplier acknowledges that the Municipality is subject to public records laws, including without limitation, R.I. Gen. Laws § 38-2 et. seq., and that this Agreement, and information exchanged between the Parties in the performance of this Agreement, may qualify as a public record subject to disclosure thereunder. To the extent not prohibited by such laws, each Party shall keep confidential, and shall not disseminate to any third party (other than such Party's affiliates) or use for any other purpose (except with written authorization, such authorization not to be unreasonably withheld), any information received from the other that is confidential or proprietary in nature unless legally compelled (by deposition, inquiry, request for production of documents, subpoena, civil investigative demand or similar process, or by order of a court or tribunal of competent jurisdiction, or in order to comply with applicable rules or requirements of any stock exchange, government department or agency or other Governmental Authority, or by requirements of any securities law or regulation or other Governmental Rule) or as necessary to enforce the terms of this ESA. The Party receiving confidential or proprietary information shall have no obligation with respect to such information which: (i) is or becomes generally available to the public other than as a result of disclosure by the receiving Party; (ii) was in its possession prior to disclosure hereunder and which was not acquired directly or, to the receiving Party's

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knowledge, indirectly from the disclosing Party; (iii) was received from a non-party to this ESA who to the receiving Party's knowledge, was not subject to a confidentiality agreement or fiduciary obligation regarding information; or (iv) was independently developed by the receiving Party without reference to the information.

Either Party may disclose confidential information, to the extent required to fulfill its obligations under this Agreement, to its affiliates, and to its officers, directors, employees, attorneys, accountants and Associated Entities. This Article 17 shall survive the termination of this ESA for a period of two (2) years.

If either Party is required by law to disclose any confidential information of the other Party, such Party shall request that such disclosure be protected and maintained in confidence to the extent reasonable under the circumstances and use reasonable efforts to protect or limit disclosure with respect to commercially sensitive terms. In addition, subject to the public records laws referenced above, such Party shall make good faith efforts to provide the other Party with prompt written notice of the requirement to disclose confidential information in order to enable the other Party to seek an appropriate protective order or other remedy, and such Party shall consult with the other Party with respect to the other Party taking steps to resolve the scope of any required disclosure. In the event the Competitive Supplier requests the Municipality's assistance in protecting the confidentiality of information 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 if it continues to request the Municipality's assistance, and if so, the Competitive Supplier shall reimburse the Municipality for all costs reasonably incurred by the Municipality in connection with such efforts.

For the avoidance of doubt, subject to the public records laws referenced above, the information related to this ESA that is considered confidential and proprietary in nature shall include the following:

- a) any account information related to the Participating Consumers including, without limitation, historic usage data, metering, and billing and payment information;
- b) any information regarding transactions entered into by Competitive Supplier and any third parties in connection with the provision of All-Requirements Power Supply;
- c) any list of Participating Consumers;
- d) any information disclosed by a Party during any settlement discussions;
- e) Competitive Supplier's insurance policies;
- f) any financial security instrument(s) provided by Competitive Supplier;
- g) any non-public information provided by Competitive Supplier; and
- h) any information which either Party should reasonably understand to be confidential and proprietary by virtue of the sensitive nature of the information.

Notwithstanding, the information related to this ESA that is considered confidential and proprietary in nature shall be expressly marked "CONFIDENTIAL" and shall be marked with a name and contact information of the person to contact for notification in the event of

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possible disclosure. Without limiting the provisions of this Article or Article 14 (including Competitive Supplier's right to assume the defense of any claim for fines or penalties against the Municipality), Competitive Supplier agrees to indemnify, defend, and hold harmless the Municipality for any liability, fines, or penalties incurred by the Municipality should its reasonable efforts to comply with Article 17 cause an alleged or actual violation of applicable public records laws.

#### ARTICLE 18 REGULATORY EVENT

If, after the Effective Date, a Regulatory Event occurs or New Taxes are imposed, and such event or taxes have a direct, material and adverse effect on the economic benefits to a Party to this Agreement, the affected Party shall send written notice to the other Party, setting forth the Regulatory Event or New Taxes and reasonably demonstrating the effect of the same on the affected Party. Upon delivery of such notice, the Parties shall use reasonable efforts to negotiate an amendment to this Agreement to mitigate such effect. Alternatively, if as a direct result of such a Regulatory Event or New Taxes, Competitive Supplier incurs additional, material costs, which costs are not recovered by Competitive Supplier pursuant to Exhibit A, Competitive Supplier shall provide a written notice to the Municipality that documents: a) the effective date of the Regulatory Event or New Tax; b) a detailed explanation and reasonable demonstration of the material costs incurred as a result of the Regulatory Event or New Tax; c) the timing of the cost impacts to be incurred by the Competitive Supplier; d) the proposed price increase per kWh to be passed on to Participating Consumers; and e) a proposed plan for coordinating with the Local Distributor for an increase in price to be billed by the Local Distributor designed to reimburse the Competitive Supplier for such cost impact. If the Parties are not able to agree on an amendment to this Agreement or reimbursement contemplated by this section, and Competitive Supplier reasonably determines that it cannot recover such additional material costs prior to termination or expiration of the ESA, then Competitive Supplier may implement a retail price adjustment after completing the actions described above in (a) through (e) of this Article; *provided that* the matter will then be subject to dispute resolution in accordance with Article 13.2. If the result of such dispute resolution process is a finding or ruling that Competitive Supplier was not entitled to the retail price adjustment imposed by Competitive Supplier, in whole or in part, Competitive Supplier shall issue refunds to all Participating Consumers within sixty days of such determination. In no event shall a price change become effective without providing Participating Consumers with a 30-day advance notice of the price change.

#### ARTICLE 19 MISCELLANEOUS

##### 19.1 NO ASSIGNMENT WITHOUT PERMISSION

Competitive Supplier shall not 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

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Supplier in the ESA. Notwithstanding the above, the Competitive Supplier may assign this Agreement without the Municipality's consent to (a) an affiliate, or (b) a purchaser of all or substantially all of the Competitive Supplier's business (assets or equity) related to this ESA. Any assignment, regardless of whether consent is required, shall be subject to the following requirements: (i) Competitive Supplier shall provide the Municipality with notice of the proposed assignment at least forty-five 45 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; (iii) Competitive Supplier and such assignee shall, at least forty-five (45) days in advance of any assignment, reasonably demonstrate and represent and warrant to Municipality that assignee has the experience and financial ability to fulfill all obligations of the Competitive Supplier in the ESA; and (iv) Competitive Supplier shall cure all defaults of this ESA, if any, of Competitive Supplier existing at the time of assignment.. The Municipality 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 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. Notwithstanding the foregoing, any assignment under this Article 18.1 shall comply with the Governmental Rules concerning assignments in Rhode Island.

## 19.2 DIRECT MARKETING

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

Competitive Supplier also agrees not to engage, whether directly or through any of its Associated Entities, in any direct marketing to any Participating Consumer that relies upon Competitive Supplier's unique knowledge of, or access to, Participating Consumers gained as a result of this ESA. For the purposes of this provision, "direct marketing" shall include any telephone call, mailing, electronic mail, or other contact between the Competitive Supplier and the Consumer. Broad-based programs of the Competitive Supplier that do not rely on unique knowledge or access gained through this ESA will not constitute such "direct marketing." Any lists of Eligible Consumers/Participating Consumer may not be used by Competitive Supplier to market any additional products or services to Eligible Consumers or Participating Consumers without the Municipality's written permission.

## 19.3 NOTICES

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



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If to Competitive Supplier:

NextEra Energy Services Rhode Island, LLC  
ATTN: Legal Department  
20455 State Highway 249 – Suite 200  
Houston, TX 7707  
Fax: 866.620.4392  
Email: [contracts@nexteraenergyservices.com](mailto:contracts@nexteraenergyservices.com)

With copy to:

NextEra Energy Marketing, LLC  
ATTN: Legal Department  
700 Universe Boulevard, CTR/JB  
Juno Beach, FL 33408-2683  
(561) 625-7504 (facsimile)

*For Operational Issues Only:*

NextEra Energy Services Rhode Island, LLC  
ATTN: President  
20455 State Highway 249 – Suite 200  
Houston, TX 7707  
Email: [brian.landrum@nexteraenergyservices.com](mailto:brian.landrum@nexteraenergyservices.com)

If to Municipality:

Mr. Charles de Casteja  
Good Energy, L.P.  
232 Madison Avenue, 3<sup>rd</sup> Floor  
New York, NY 10016  
Phone: 212-792-0222  
Fax: 212-792-0223  
[charles@goodenergy.com](mailto:charles@goodenergy.com)

and

Emily Koo  
City of Providence Director of Sustainability  
City Hall  
25 Dorrance Street  
Providence, RI 02903  
Phone: 401-680-5000  
[Ekoo@providenceri.gov](mailto:Ekoo@providenceri.gov)

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With copy to:

City of Providence City Solicitor  
444 Westminster Street, Suite 220  
Providence, RI 2903

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 19.3 by giving notice thereof in the manner required herein.

#### 19.4 CHANGES IN EMERGENCY AND SERVICE CONTACT PERSONS

In the event that the name or telephone number of any emergency or service contact for the Competitive Supplier changes, Competitive Supplier shall give prompt notice to the Municipality in the manner set forth in Article 19.3. In the event that the name or telephone number of any such contact person for the Municipality changes, prompt notice shall be given to the Competitive Supplier in the manner set forth in Article 19.3.

#### 19.5 ENTIRE ESA; AMENDMENTS

This ESA, including the Plan incorporated by reference in Section 19.14, constitute the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. This ESA may only be amended or modified by a written instrument signed by all Parties hereto.

#### 19.6 FORCE MAJEURE

If by reason of Force Majeure any Party is unable to carry out, either in whole or in part, its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (i) the non-performing Party, within two (2) weeks after the occurrence of the Force Majeure, gives the other Party hereto written notice describing the particulars of the occurrence; (ii) the suspension of performance be of no greater scope and of no longer duration than is required by the Force Majeure; (iii) no obligations of the Party which were to be performed prior to the occurrence causing the suspension of performance shall be excused as a result of the occurrence; and (iv) the non-performing Party shall use Commercially Reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations. If (i) an event of Force Majeure caused by any strikes, lockouts or other industrial disturbances involving Competitive Supplier or its Associated Entities continues for a period of thirty (30) days or

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longer, or (ii) an event of Force Majeure arising from any other cause continues for a period of sixty (60) days or longer, either Party may terminate this ESA by sending the other Party a written notice as set forth in Article 5.2; provided, however, that such termination 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 Local Distributor in accordance with applicable rules and regulations.

#### 19.7 EXPENSES

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

#### 19.8 NO JOINT VENTURE

Competitive Supplier 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.

#### 19.9 JOINT WORK PRODUCT

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

#### 19.10 COUNTERPARTS

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

#### 19.11 COMMISSION

The Parties acknowledge that the Price for energy as described in Exhibit A includes a commission fee equal to \$0.001 (1 mil) per kWh of Participating Consumers actual usage for the duration of the ESA payable to Good Energy, L.P., the Consultant hired by the Municipality to develop, implement, and administer the Program. The Municipality may adjust the amount of the commission fee from time to time by providing notice to the Competitive Supplier at least sixty (60) days prior to the start of the next Delivery Term as provided in Exhibit A; *provided that* the Municipality shall have completed all required action with the Municipality's governing officials and the PUC to enable such fee adjustment as of the start of such Delivery Term. The Competitive Supplier will include the then-current commission fee (including any adjusted commission fee as set forth above) in the Retail Price for energy, and agrees to make the monthly commission payments on behalf of Participating Consumers to Good Energy, L.P. for the term as provided for in this ESA. The commission fees shall be paid ten (10) business days following receipt by Competitive

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Supplier of the corresponding monthly payments from Participating Consumers or Local Distributor, as applicable. This provision shall be binding upon the Parties and all permitted assigns and other successors-in-interest of the Parties.

#### 19.12 WAIVER

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

#### 19.13 PLAN

Competitive Supplier agrees that it has been provided with and had a reasonable opportunity to read the Plan. The Parties agree that the Plan, in the form as it exists on the Effective Date of this ESA, is incorporated into this ESA by reference, and that it shall be construed harmoniously to the greatest practicable extent; notwithstanding the foregoing, in the event of any conflict between this ESA and the Plan, this ESA shall govern. The Municipality will provide Competitive Supplier with amendments to the Plan as they are adopted; provided, however, that such amendments are not incorporated into this ESA as a result of such adoption. Any amendments hereto must be made in accordance with Article 19.5 of this ESA.

#### 19.14 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 approval. 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. Prior to the Service Commencement Date, the Municipality shall provide the Competitive Supplier, for its review and approval of the use of the name of Competitive Supplier, its parents or affiliates, copies of its web site and other marketing materials in which the name of a competitive supplier is typically used.

#### 19.15 PRESS RELEASES

*Electric Service Agreement*  
*PUBLIC VERSION*

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.

#### 19.16 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.

#### 19.19 SURVIVAL OF OBLIGATION

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

#### 19.20 REMEDIES

##### 19.20.1 General

Subject to the limitations set forth in Article 19.20.2 below and Article 5, the Municipality and the Competitive Supplier reserve and shall have all rights and remedies available to each of them at law or in equity with respect to the performance or non-performance of the other Party hereto under this ESA.


##### 19.20.2 Limitations

NO PARTY HERETO SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT. Notwithstanding the foregoing, each Party acknowledges that the preceding sentence shall not limit the other Party's rights to seek direct damages and shall not apply to claims of the Municipality against Competitive Supplier for indemnification of third party claims under Article 14.1.

*Electric Service Agreement*

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 Municipality and the laws, rules and regulations of the State of Rhode Island, as of the respective dates set forth below

COMPETITOR

By: 

Name: Brian Landrum

Title: President

Address: 20455 State Highway 249, Suite 200 Houston, TX 77070

Dated: 09/15/2022

MUNICIPALITY

By: 

Name: Emily Koo

Title: Director of Sustainability

Address: 25 Dorrance St., Providence, RI 02906

Dated: 9/7/2023

Approved as to form and correctness:



Jeff Dana, City Solicitor

*Electric Service Agreement*  
*PUBLIC VERSION*

**EXHIBIT A TO  
ELECTRIC SERVICE AGREEMENT  
Between City of Providence (“Municipality”)  
and NextEra Energy Services Rhode Island, LLC (“Competitive Supplier”)**

*Confidential*  
*Exempt from public records disclosure pursuant to R.I. Gen. Laws §38-2-2(4)(B)*

**REDACTED**

**EXHIBIT B**

**REPORTS**



Competitive Supplier shall provide the following five reports to the Municipality, free of charge, as noted below or as otherwise agreed to by the Parties in writing.

1) SALES REPORT (DATA PORTAL REPORT): Monthly report of sales which will contain the following information broken out by month, customer type (i.e., rate class), electricity supply product name: (i) the actual aggregate kWh sales for each meter read of the reporting period; (ii) the number of Participating Consumer accounts active in each meter read of the reporting period as of the (a) first of the month and (b) end of the month; (iii) enrollments; (iv) dropped accounts; (v) accounts billed; and (vi) the price per kWh from Exhibit A associated with the product name. Data for each subsequent month will be added to the previous month's report so that it provides a month-by-month view of entire contract.

The Sales Report shall be produced in the format shown below:

### TEMPLATE SALES REPORT

Template shows a municipality with four different products.

Community Name	YearMonth	Product	Product Rate	Customer Type	Active Accounts as of FOM	Enrollments	Moved/Closed Accounts	Active Accounts as of EOM	Accounts Billed	Billed Usage (kWh)	Opt-Outs
MuniName	202112	MuniName Basic	0.10000	R1							
MuniName	202112	MuniName Basic	0.10000	R2							
MuniName	202112	MuniName Basic	0.10000	R3							
MuniName	202112	MuniName Basic	0.10000	G1							
MuniName	202112	MuniName Basic	0.10000	G2							
MuniName	202112	MuniName Basic	0.10000	S1							
MuniName	202112	MuniName Basic	0.10000	S2							
MuniName	202112	MuniName 50	0.11500	R1							
MuniName	202112	MuniName 50	0.11500	R2							
MuniName	202112	MuniName 50	0.11500	R3							
MuniName	202112	MuniName 50	0.11500	G1							
MuniName	202112	MuniName 50	0.11500	G2							
MuniName	202112	MuniName 50	0.11500	S1							
MuniName	202112	MuniName 50	0.11500	S2							
MuniName	202112	MuniName 100	0.12500	R1							
MuniName	202112	MuniName 100	0.12500	R2							
MuniName	202112	MuniName 100	0.12500	R3							
MuniName	202112	MuniName 100	0.12500	G1							
MuniName	202112	MuniName 100	0.12500	G2							
MuniName	202112	MuniName 100	0.12500	S1							
MuniName	202112	MuniName 100	0.12500	S2							
MuniName	202112	MuniName Standard	0.11500	R1							
MuniName	202112	MuniName Standard	0.11500	R2							
MuniName	202112	MuniName Standard	0.11500	R3							
MuniName	202112	MuniName Standard	0.11500	G1							
MuniName	202112	MuniName Standard	0.11500	G2							
MuniName	202112	MuniName Standard	0.11500	S1							
MuniName	202112	MuniName Standard	0.11500	S2							

2) MASTER ACCOUNT LIST: A cumulative list of Participating Consumers, which includes those customers that: (i) were submitted for enrollment; (ii) have been enrolled during this ESA; and (iii) are currently enrolled during this ESA. The report shall include all customer identifying information provided by the Local Distributor and: (i) account status (e.g., enrolled, dropped, account rejected, never submitted, etc.); (ii) account start date; (iv) account end date; (v) account read cycle; (vi) load zone; (vii) current product start date or opt-in date (if applicable e.g., if an account switched from one product to another in the Program); and (viii) current rate.

3) MASTER OPT-OUT FILE: A list of a) all consumers in the Municipality that opted out prior to enrollment and after receiving an Opt-Out Notice and b) all Participating Consumers that left

the program for any reason after they were enrolled in the Program. This Master Opt-Out File will also include any records of customers that have opted-out during previous ESAs, which will be provided to Competitive Supplier by the Municipality. The report shall include all customer identifying information provided by the Local Distributor and (i) Opt-Out Notice mailing date (if applicable) and (ii) opt-out date.

4) REFRESH MAILING LIST: Throughout the term of this Agreement, as mutually agreed to by the Parties, the Competitive Supplier shall obtain from the Local Distributor an updated file that includes all Eligible Consumers in the Municipality, hereinafter the Updated LDC Eligible Consumers File. Once each quarter, or as otherwise agreed to by the Parties, Competitive Supplier shall create a Refresh Mailing List of New Eligible Consumers, which shall include all customers in the Updated LDC Eligible Consumers File and exclude all customers listed in the Master Opt-Out File.

5) MONTHLY CONSULTANT'S COMMISSION REPORT: Competitive Supplier shall provide Municipality with information to obtain this monthly report online, provided, however, if online access is unavailable for any reason, Competitive Supplier shall provide a written copy of such report within thirty (30) days.

**EXHIBIT C**  
**REC PURCHASE AGREEMENT**

## REC PURCHASE AGREEMENT

This REC PURCHASE AGREEMENT (the “*Agreement*”) is made and entered into as of September 8, 2022 (the “*Effective Date*”), by and between Green Energy Consumers Alliance, Inc. a Massachusetts nonprofit corporation (“*REC Supplier*”), and NextEra Energy Services Rhode Island, LLC., (“*Purchaser*”), a Delaware Limited Liability Company. REC Supplier and Purchaser may be referred to herein collectively as the “*Parties*,” or either singularly as a “*Party*.”

WHEREAS, REC Supplier arranges for the purchase and sale of Renewable Energy Certificates (“*RECs*”);

WHEREAS, Purchaser was selected as the competitive supplier through a Request for Proposals (“*RFP*”) to provide aggregated generation service to the customers of municipal aggregations in the towns of Barrington, Portsmouth, and South Kingston, and the cities of Central Falls, Newport, and Providence (“*Municipal Aggregators*”), each of which has developed and implemented a municipal aggregation program with its broker, Good Energy, L.P. (“*Good Energy*”), which provides consulting services to the Municipal Aggregators arranging for competitive electric supply in the state of Rhode Island;

WHEREAS, the municipal aggregation plans of the Municipal Aggregators have been approved by the Rhode Island Public Utilities Commission;

WHEREAS, the Municipal Aggregators through Good Energy and REC Supplier, seek to offer an opt-out aggregated product to Municipal Aggregators’ customers that is greener than what is required by the Rhode Island Renewable Energy Standard, as amended (the “*RES*”), as well as other green energy programs on an opt-in basis;

WHEREAS, REC Supplier through this Agreement offers two products – an Opt-in Program and an Opt-out Program, both as defined in Exhibit A – to Municipal Aggregators’ customers;

WHEREAS, Purchaser and the Municipal Aggregators have entered into Electric Service Agreements dated September 6-9, 2022 (“*Electric Service Agreements*”) requiring, among other things, Purchaser to enter into this Agreement to purchase RECs from REC Supplier as required pursuant to this Agreement;

WHEREAS, energy attributes created from various qualifying renewable energy projects can be traded in the form of RECs through the New England Power Pool Generation Information System (“*NEPOOL-GIS*”);

WHEREAS, Purchaser wishes to purchase and REC Supplier wishes to sell those RECs at a price as provided in Exhibit A subject to certain terms and conditions set forth herein; and

WHEREAS, REC Supplier is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code and desires to enter into this Agreement in order to further its tax-exempt purposes, including providing customers with REC costs that are tax deductible.

NOW THEREFORE, in consideration of the promises and mutual covenants set forth herein, REC Supplier and Purchaser do hereby agree as follows:

## **SECTION 1           TERM AND TERMINATION**

This Agreement shall commence upon the Effective Date and continue until the earlier of i) the date this Agreement is terminated pursuant to Section 11 herein, ii) after written notice from Purchaser to REC Supplier in the event of the termination of all of the Electric Service Agreements or iii) with written notice to REC Supplier with at least thirty (30) days' prior written notice of termination (the "**Term**"). For the avoidance of doubt, Purchaser shall be obligated to provide timely written notice to REC Supplier in the event of termination of any of the Electric Service Agreements. In addition, if (a) any material provision or condition of this Agreement be finally adjudged invalid by any court of competent jurisdiction, or (b) the PUC exercises any lawful jurisdiction so as to invalidate or disapprove this Agreement in whole or in significant part, this Agreement shall immediately terminate. Following termination of this Agreement, the Parties shall each discharge by performance all obligations due to the other Party that arose up to the date of termination of this Agreement. Upon the effective date of termination of the Agreement, all rights and obligations of the Parties shall cease, including, but not limited to, all rights granted to REC Supplier and Purchaser under Section 15.2 (Use of Business Names and Program Name). Upon termination of this Agreement, the Programs (as defined below) may continue to be offered by REC Supplier and Purchaser shall not have any claim for additional compensation or any other rights in or associated with the Programs.

## **SECTION 2           PROGRAMS**

During the Term, REC Supplier shall have the sole obligation to provide the programs to Purchaser described in Exhibit A (the "**Programs**"). . The Parties agrees to provide customers located or doing business in the Municipal Aggregator's geographical limits with the right to participate in the Programs during the term of the Municipal Aggregator's ESA with Purchaser, provided that such customers meet any eligibility requirements set forth in the ESA, the relevant Aggregator's aggregation plan, and in applicable law. REC Supplier agrees to provide Purchaser with the related expertise, labor, materials and supplies necessary to assist with implementation of the basic aggregated supply option and other services described in Exhibit A. REC Supplier shall not be responsible for providing RECs necessary for Purchaser to meet RPS requirements.

## **SECTION 3           QUANTITY AND TYPE OF RECS**

3.1 Opt-in and Opt-out Programs. Subject to Exhibit A, REC Supplier shall sell to Purchaser RECs in a total amount of the "**REC Quantity**", as further described in Exhibit A.

3.2 Monthly Report. Purchaser shall provide to REC Supplier a monthly report within ten (10) business days after the end of each month that provides the monthly number of enrolled customers and the monthly Aggregate Load for both the Opt-in and Opt-out Programs ("**Monthly Report**"). The Monthly Report shall contain:(1) the number of enrolled customers in (a) the Opt-

in Program and (b) the Opt-out Program; and (2) the actual Aggregate Load for that month for (a) the Opt-in Program and (b) the Opt-out Program.

3.3 RECs provided for the Opt-in and Opt-out Programs by REC Supplier pursuant to this Agreement must meet all requirements needed for the state of Rhode Island to address the impact of voluntary purchase of RECs on the availability of allowances in the Regional Greenhouse Gas Emissions.

3.4 RECs provided for the Opt-in and Opt-out Programs by REC Supplier pursuant to this Agreement will also comply with any other requirements set forth in Exhibit A.

#### **SECTION 4 TRANSFER AND DELIVERY OBLIGATION**

4.1 REC Supplier will transfer RECs to Purchaser's, or Purchaser's affiliate's and/or subsidiary's, as designated by Purchaser, NEPOOL-GIS account based on the REC Quantity. Transfers of RECs provided to meet the REC Quantity within a given Contract Year may occur in NEPOOL-GIS trading periods associated with that Contract Year, the last two quarters of the preceding year, or the first quarter of the following year, provided that all Voluntary RECs necessary to meet the Voluntary REC Quantity that are qualified as Rhode Island New Renewable Energy Resource Certificates must be transferred no later than 30 days before the last day of the NEPOOL-GIS trading period for the fourth quarter associated with the Contract Year, and further provided that REC Supplier will send no less than fifty percent (50%) of the RECs to meet the annual REC Quantity by the end of the first six-month period of the Contract Year. "**Contract Year**" shall be defined for purposes of this Agreement as the calendar year for each year in the Term beginning in May 2023.

4.2 On a quarterly basis based on the Contract Year, REC Supplier shall report to Purchaser the following: (a) the quantity of RECs delivered by REC Supplier to Purchaser during the relevant quarter; (b) the time period during which the generation evidenced by such certificates occurred; (c) the portion of the REC Quantity that is covered by the quarter in question.

4.3 Purchaser shall notify REC Supplier via electronic mail within fifteen (15) business days of REC delivery to assure REC Supplier that all of the purchased RECs were retired within fifteen (15) business days of REC delivery, and will provide a record of retirement within thirty (30) business days following the close of that trading period. Purchaser may not resell or bank the RECs.

4.4 If REC Supplier fails to transfer RECs that fully satisfy the requirements set forth herein, then REC Supplier shall, for each non-compliant REC or REC not transferred, transfer to Purchaser comparable RECs of equivalent vintage that are recognized under and comply with the RES and meet the applicable program requirements set forth on Exhibit A ("**Comparable RECs**"). A failure by REC Supplier to transfer Comparable RECs to Purchaser in accordance with this Section 4.4 shall constitute an event of default with respect to REC Supplier pursuant to Section 11.1(b).

#### **SECTION 5 PRICING AND PAYMENT**

5.1 The pricing terms for the Programs are set forth in Exhibit A. Purchaser shall pay to REC Supplier for RECs delivered within ten (10) business days of Purchaser's receipt of written confirmation from NEPOOL-GIS that the transfer order has been completed. Purchaser shall make such payment by wire transfer of immediately available United States dollars to an account designated by REC Supplier or as otherwise reasonably requested by REC Supplier.

## **SECTION 6 NATURE OF PURCHASE**

All environmental value and credits of any kind and nature resulting from or associated with the RECs delivered to Purchaser shall accrue to and be assigned exclusively to Purchaser. Purchaser understands and acknowledges that it will not receive any electricity or any other tangible good or service hereunder. Purchaser understands and acknowledges that RECs are not securities and that this Agreement is not intended to be an investment contract.

## **SECTION 7 TAX DEDUCTIBLE RECS**

The Parties acknowledge that REC Supplier has represented that it is recognized as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code and that REC Supplier desires to enter into this Agreement in order to further its tax-exempt purposes. REC Supplier's tax-exempt purposes include, among other things, promoting the development of renewable energy resources and developing, marketing, buying and/or selling renewable or green energy certificates to members of the public, governmental units, nonprofits and other organizations. In furtherance of these purposes, Purchaser agrees to cooperate with REC Supplier for the Opt-in Program (as described in Exhibit A): (1) transmitting any reasonable data related to tax deductions so that REC Supplier can, at its sole cost and expense, inform and educate customers that the amount paid to REC Supplier for RECs purchased through the Opt-in Program are tax deductible, subject to pre-approval by Municipal Aggregators; and (2) by providing REC Supplier with the name, address and annual payment amounts of each customer in the Opt-in Program no later than January 10<sup>th</sup> of each Contract Year ("Opt-In Customer Data"), subject to REC Supplier's receipt of written pre-approval by Municipal Aggregators. As between REC Supplier and Purchaser, Opt-in Customer Data shall be deemed to be Purchaser's Confidential Information for purposes of Section 16 of this Agreement. REC Supplier may not use the business name, trade name, or marks of Purchaser or any of its affiliates without obtaining Purchaser's prior written consent, which consent Purchaser may withhold in its sole discretion.

## **SECTION 8 DISTRIBUTION COMPANY'S ROLE**

Both Parties recognize that the Distribution Company may engage in certain activities related to this Agreement which may affect REC Supplier's provision of RECs. Purchaser, at its sole discretion, may enforce its rights under any agreement with the Distribution Company, or applicable tariff, and its rights as a competitive supplier pursuant to Rhode Island law. As used in this Agreement, "***Distribution Company***" shall mean Rhode Island Energy (formerly known as Narragansett Electric Company, Inc and National Grid USA) or any other company which provides the regulated portion of electric services in any municipal aggregation territory or their successor company(ies) or entity(ies).

## **SECTION 9 COOPERATION**

The Parties shall use their best efforts to cooperate with each other in the conduct of their activities hereunder at their own expense except where expressly required to the contrary. Among other things, each Party shall provide the other Party on a timely basis any material information related to the supply of RECs under this Agreement from any Municipal Aggregator, Distribution Company or Governmental Authority. As used in this Agreement, “**Governmental Authority**” means 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.

## **SECTION 10 REPRESENTATIONS AND WARRANTIES**

10.1 REC Supplier’s Representations and Warranties. As a material inducement to entering into this Agreement, REC Supplier hereby represents and warrants to Purchaser as of the Effective Date and as of each date that RECs are transferred to Purchaser 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 Agreement;
- (b) this Agreement will constitute the legal, valid and binding obligation of REC Supplier enforceable in accordance with its terms;
- (c) the execution, delivery and performance of this Agreement 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) it has all authorizations from any Governmental Authority necessary for it to legally perform its obligations under this Agreement or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due, and it has exercised due diligence to review and has fully complied with all relevant regulations and orders of the PUC, the Rhode Island Attorney General, the Rhode Island Office of Energy Resources, and the Independent System Operator – New England (“**ISO-NE**”) and any other Governmental Authority having jurisdiction over any element of the transactions related to this Agreement;
- (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 REC Supplier to Purchaser in connection with the negotiation and execution of this Agreement, contain any untrue statement of a material fact or omit 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) it has received copies of the Electric Service Agreements, has read and understood all such documents and has had an adequate opportunity to ask questions regarding all such documents.
- (h) it has the right to sell the RECs;
- (i) the RECs have never been sold for any other purpose or use;
- (j) the RECs provided by REC Supplier to Purchaser pursuant to this Agreement shall (i) meet the program requirements set forth on Exhibit A, and (ii) comply with and be certifiable under the RES; and
- (j) the RECs are free and clear of all liens or other encumbrances.

10.2 Purchaser's Representations and Warranties. As a material inducement to entering into this Agreement, Purchaser hereby represents and warrants to REC Supplier as of the Effective Date 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 Agreement;
- (b) this Agreement will constitute the legal, valid and binding obligation of Purchaser enforceable in accordance with its terms;
- (c) the execution, delivery and performance of this Agreement 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) it has all authorizations from any Governmental Authority necessary for it to legally perform its obligations under this Agreement or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due, and it has exercised due diligence to review and has fully complied with all relevant regulations and orders of the PUC, the Rhode Island Attorney General, the Rhode Island Office of Energy Resources , and ISO-NE and any other Governmental Authority having jurisdiction over any element of the transactions related to this Agreement;
- (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 Purchaser to REC Supplier in connection with the negotiation and execution of this Agreement, contain any untrue statement of a material fact or omit 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;

(g) it has received copies of the Electric Service Agreement, has read and understood all such documents and has had an adequate opportunity to ask questions regarding all such documents; and

(h) it has exercised due diligence to review and has fully complied with all relevant regulations and orders of the Federal Energy Regulatory Commission, PUC, the Rhode Island Attorney General, the Rhode Island Office of Energy Resources and any other Governmental Authority having jurisdiction over any element of the transactions contemplated by this Agreement.

10.3 As used herein, “**Governmental Rule**” shall mean 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.

## **SECTION 11 EVENTS OF DEFAULT; TERMINATION**

11.1 For purposes of this Agreement, each of the following shall constitute an “**Event of Default**”:

(a) if a Party fails to make, when due, any payment hereunder, and such failure is not cured within five (5) business days of written notice of such breach from the other Party;

(b) if a Party materially breaches any or all of its obligations as described in this Agreement (other than a payment default as set forth in Section 11.1(a)) if such breach is not cured within ten (10) business days of written notice of such breach from the other Party, provided that, if the defaulting Party cannot reasonably cure the default within ten (10) business days and defaulting Party is making Commercially Reasonable, good faith efforts to cure, then the defaulting Party shall have an additional fifteen (15) business days, or a period as reasonably agreed between the parties, to cure; provided, further, that such cure period may not exceed any applicable compliance deadline;

(c) if any material representation or warranty made by a Party pursuant to Section 10 (Representations and Warranties) of this Agreement proves to have been misleading or false in any material respect when made and such Party does not cure the underlying facts so as to make such representation or warranty correct and not misleading within fifteen (15) days of written notice from the other Party; or

(d) if the other Party (i) makes an assignment or any general arrangement for the benefit of its creditors (ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it, or (iii) otherwise becomes bankrupt or insolvent (however evidenced).

11.2 Remedies upon Termination for Default. If either Party is in default, the other Party (the “**Non-Defaulting Party**”) may select any or all of the following remedies: (i) designate a day no

earlier than twenty (20) days after the effective date of the notice as an early termination date (“**Early Termination Date**”) to liquidate and terminate any or all transactions then outstanding (each referred to as a “**Terminated Transaction**”) between the Parties, provided, however, that if the Event of Default is pursuant to Section 11.1(d)(ii or iii), then the Early Termination Date shall be the day immediately preceding the date upon which the defaulting Party became bankrupt, (ii) withhold any payments due to the defaulting party, (iii) suspend performance, and (iv) exercise such remedies as provided in this Agreement, including an action for damages.

The Non-Defaulting Party shall use reasonable efforts to mitigate damages and shall calculate in a Commercially Reasonable manner, for each Terminated Transaction as of the time the Early Termination Date, its damages, if any, including any costs reasonably incurred in re-selling or re-purchasing any RECs not received or delivered, through the Early Termination Date plus (unless the Event of Default arises under Section 11.1(d)(ii or iii), any damages for the RECs that are required to be delivered under this Agreement or the Electric Service Agreements during the remainder of the Term if the Agreement(s) was/were not terminated by comparing the price for such RECs under this Agreement and the market price for that quantity of RECs (the “**Settlement Amount**”). The Settlement Amount, if any, shall be paid or caused to be paid by the owing Party to the other Party within three (3) business days of such Party’s receipt of written notice of the Settlement Amount.

## **SECTION 12        DISPUTE RESOLUTION; CHOICE OF LAW; DUTY TO MITIGATE**

12.1    The Parties agree to use their respective Commercially Reasonable efforts to resolve any dispute(s) that may arise regarding this Agreement. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under this Agreement between the Parties. Any dispute that arises under or with respect to this Agreement shall in the first instance be the subject of informal negotiations between the Parties, who shall use their respective good faith efforts to resolve such dispute. The dispute shall be considered to have arisen when one Party sends the other a notice that identifies with particularity the nature, and the acts(s) or omission(s) forming the basis of, the dispute. The period for informal negotiations shall not exceed fourteen (14) calendar days from the time the dispute arises, unless it is modified by written agreement of the Parties.

In the event that the Parties cannot resolve a dispute by informal negotiations, the sole venue for judicial enforcement shall be the appropriate federal court in Rhode Island or appropriate state court sitting in the Rhode Island county in which the Municipality is located, to whose jurisdiction the parties hereby assent, waiving all objections to venue or forum. Notwithstanding the foregoing, injunctive relief from such court may be sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this Agreement. Each Party consents to such venue and expressly waives any objections to venue it might otherwise be able to raise.

12.2 This Agreement and the rights of the Parties shall be interpreted and determined in accordance with the laws of the State of Rhode Island without regard to its internal conflicts of laws principles.

12.3 Both Parties agree that they have a duty to mitigate damages and covenants 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 Agreement. "**Commercially Reasonable**" as used in this Agreement shall mean 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 regulations.

**12.4 EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HERON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS EFFICIENCY ADDENDUM, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, OR STATEMENTS WHETHER ORAL OR PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.**

#### **SECTION 13 INDEMNIFICATION**

Each Party shall indemnify, defend and hold harmless the other Party ("**Indemnified Party**") and Indemnified Party's officers, employees, agents, representatives and independent contractors, from and against any and all costs, claims, liabilities, damages, expenses (including reasonable attorneys' fees), causes of action, suits or judgments, incurred by, on behalf of or involving any one of the foregoing parties to the extent arising, directly or indirectly, from or in connection with (i) any material breach by the other Party of its obligations, covenants, representations or warranties contained in this Agreement, (ii) the other Party's actions or omissions taken or made in connection with performance of this Agreement, or (iii) any claims against one Party in connection with or relating to the other Party's performance under this Agreement or the other Party's representations made about the REC's, except to the extent such claim is caused by the other Party's breach of any obligations hereunder; provided however, that the forgoing obligations to indemnify, defend and hold harmless shall be limited to third party claims.

#### **SECTION 14 LIMITATION OF LIABILITY**

14.1 THE REMEDIES AND MEASURES OF DAMAGES SET FORTH IN THIS SECTION 14, AND ANY OTHER REMEDIES EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, SHALL BE THE SOLE AND EXCLUSIVE REMEDIES AVAILABLE TO THE PARTIES HEREUNDER. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS MEASURE OF DAMAGE IS PROVIDED, SUCH REMEDY OR MEASURE SHALL BE THE SOLE AND EXCLUSIVE REMEDY THEREFOR. IF NO REMEDY OR MEASURE OF DAMAGE IS EXPRESSLY PROVIDED, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY AS THE SOLE AND EXCLUSIVE

REMEDY. THE PARTIES CONFIRM AND AGREE THAT UNDER THIS AGREEMENT, NO PARTY SHALL BE REQUIRED TO PAY OR BE LIABLE FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, LOST PROFIT OR BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT, CONTRACT OR OTHERWISE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

## **SECTION 15 ACCESS TO INFORMATION; REPORTING; CUSTOMER DATA**

15.1 Books and Records. Each Party shall maintain its books, records, and other compilations of data pertaining to the requirements of this Agreement in accordance with any applicable regulations or guidelines of any applicable Governmental Authority. All records shall be kept for a period of three (3) years commencing on the Effective Date.

15.2 Use of Business Names and Program Name. Purchaser may use REC Supplier's business name and trade name ("Green Energy Consumers Alliance", "and/or "Green Energy Consumers" or other trade names used by REC Supplier) and the Program names as necessary to implement its services to a Municipal Aggregator and any Program hereunder. Purchaser may not sublicense its rights under this Section 15.2. REC Supplier may use Purchaser's business name and trade name as necessary to offer and implement the Program, provided that Purchaser shall review any material that uses Purchaser's business and/or trade name prior to release by REC Supplier, and provided further that any such use of Purchaser's business and/or trade name shall be subject to Purchaser's prior written consent, which consent may be withheld in Purchaser's sole discretion.

15.3 Ownership of Program Names. Each Party acknowledges that it has no intellectual property rights in the other Party's program names (including, but not limited to, the Programs). Each Party agrees not to: (i) challenge the other Party's ownership or use of its program names; (ii) attempt to register the other Party's program names or any marks substantially similar thereto; (iii) co-brand its products with the other Party's program names or corporate name or trademarks (except as expressly set forth herein); or (iv) incorporate the other Party's program names, company name, product names, trademarks, service marks, or domain names into its program names, company name, product names, trademarks, service marks, or domain names or similar designations unless the other Party expressly agrees in writing in its sole discretion. Purchaser understands and agrees that it shall not acquire any intellectual property rights in the Program names as a result of creation or implementation of the Programs.

15.4 Intellectual Property and Proprietary Information. Each Party acknowledges that it shall not acquire any intellectual property rights or other rights in the program names, company name, product names, trademarks, service marks, domain names, proprietary information, data or goodwill of the other Party as a result of this Agreement. Neither Party will use the other Party's intellectual property or proprietary information for unauthorized purposes.

15.5 Ownership of Program Materials. All documents, data, and information of any kind prepared by a Party pursuant to this Agreement related to the Programs (the “**Program Materials**”) shall be the property of that Party and may be used by the other Party only in accordance with the terms set forth by the owner of the Program Materials.

15.6 Return of Data. If a Party supplies data to the other Party, then upon request, the Party who received such data shall immediately return to REC Supplier all data (including the Program Materials, contracts, specifications, files, lists, books, reports, computer files, records, videos, notes, computer programs, data storage and other items) furnished to it.

15.7 Advertising and Marketing Limitations. Except as set forth in Section 15.2, each Party agrees not to use the name of the other, or the other Party’s programs, in any advertising or other information to be distributed publicly for marketing or educational purposes, unless such Party expressly agrees to such usage. REC Supplier also agrees not to engage in any direct marketing to any customer that relies upon REC Supplier’s unique knowledge of, or access to, customers’ data gained as a result of this Agreement. Broad-based programs of REC Supplier that do not rely on unique knowledge or access gained through this Agreement will not constitute such “direct marketing.”

## **SECTION 16      CONFIDENTIALITY**

REC Supplier and Purchaser each agree to treat in confidence this Agreement and all Confidential Information. Confidential Information will not be communicated to any person other than REC Supplier, Purchaser and their respective Affiliates and each of their officers, directors, employees, agents, financiers, attorneys, and professional consultants so long as such persons are bound by substantially similar confidentiality obligations. Nothing in this Section 16 shall limit the ability of either Party to enforce the provisions of this Agreement. For purposes of this Section 16, “**Confidential Information**” means all trade secrets or confidential, competitively sensitive or other proprietary information provided by either party in connection with this Agreement, whether disclosed directly or indirectly, in writing or orally, and which, if in tangible form, is marked by the disclosing party with the words “Confidential” or “Proprietary” or marking of similar import, or if disclosed orally, is identified as confidential at the time of disclosure and in a written notice delivered to the nondisclosing party promptly following disclosure. Confidential Information does not include: (i) information already in the possession of the nondisclosing party at the time of disclosure by the disclosing party, as long as such information was not provided by the disclosing party; (ii) information that is now or later becomes publicly available, unless such information becomes publicly available as a result of any action or inaction on the part of the nondisclosing party; (iii) information received by the nondisclosing party from a third party, unless such third party was under a duty of confidentiality with respect to such information. “**Affiliate**” shall mean a person or entity controlling, controlled by or under common control with a Party.

## **SECTION 17      MISCELLANEOUS**

17.1 No Assignment Without Permission. Neither Party shall assign its rights and privileges under this Agreement without the prior written approval of the other Party. Such consent shall not be unreasonably withheld. Notwithstanding the foregoing, Purchaser may assign to an affiliated entity under common control or management with Purchaser or to any purchaser of all or substantially all of Purchaser's equity, business or assets. Any assignee to this Agreement shall agree in writing to be bound by the terms and conditions of this Agreement. The rights and obligations created by this Agreement shall inure to the benefit of, and be binding upon, the successors and permitted assigns of, the respective Parties hereto.

17.2 Compliance with Laws; Service Protections. Each Party shall promptly and fully comply with all existing and future Governmental Rules of all Governmental Authorities having jurisdiction over the activities covered by this Agreement.

17.3 Change in Law. If any statutes, rules, regulations, permits or authorizations are enacted, amended, granted or revoked which have the effect of changing the transfer and sale procedure set forth in this Agreement so that the implementation of this Agreement becomes impossible or impracticable, or otherwise revokes or eliminates the RPS, the Parties hereto agree to negotiate in good faith to amend this Agreement to conform with such new statutes, regulations, or rules in order to maintain the original intent of the Parties under this Agreement.

17.4 Good Faith. All rights, duties and obligations established by this Agreement shall be exercised in good faith and in a Commercially Reasonable manner.

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

if to Purchaser to:

NextEra Energy Services Rhode Island, LLC  
ATTN: President  
20455 State Highway 249 – Suite 200  
Houston, TX 7707  
Fax: 866.620.4392  
Email: [contracts@nexteraenergyservices.com](mailto:contracts@nexteraenergyservices.com)

with a copy to:

Melva Deshmukh  
NextEra Energy Marketing, LLC  
700 Universe Boulevard, CTR/JB  
Juno Beach, FL 33408-2683  
(561) 304-6193  
Email: [melva.deshmukh@nee.com](mailto:melva.deshmukh@nee.com)

Purchaser's NEPOOL-GIS Account:

Company ID: 14064  
Company Name: NextEra Energy Services Massac  
Account Administrator Email: [GEXARECS@gexaenergy.com](mailto:GEXARECS@gexaenergy.com)

if to REC Supplier to:

Larry Chretien, Executive Director  
Green Energy Consumers Alliance, Inc.  
284 Amory Street  
Boston, MA 02130  
phone: 617-524-3950, Ext 121  
fax: 617-524-0776  
email: [larry@greenenergyconsumers.org](mailto:larry@greenenergyconsumers.org)  
cc: Mikaela Hondros-McCarthy; [mikaela@greenenergyconsumers.org](mailto:mikaela@greenenergyconsumers.org)

REC Supplier's NEPOOL-GIS Account: Green Energy Consumers Alliance, Inc.

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 Agreement; (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 Agreement; 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 Agreement. Notices may also be transmitted by electronic mail, provided that any notice transmitted solely by electronic mail which is not confirmed as received by the receiving Party shall be followed up by personal delivery or overnight delivery within forty-eight (48) hours. Either Party may change its address and contact person by giving notice thereof in the manner required herein.

17.6 Entire Agreement; Amendments. This Agreement and the Electric Service Agreements constitute the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. This Agreement may only be amended or modified by a written instrument signed by both Parties hereto.

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

17.8 No Joint Venture. Purchaser and REC Supplier will perform all services under this Agreement as an independent contractor. Nothing herein contained shall be deemed to constitute any Party a partner, agent or legal representative of any other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of REC Supplier and Purchaser hereunder are individual and neither collective nor joint in nature.



17.9 Joint Workproduct. This Agreement shall be considered the workproduct of both Parties hereto, and, therefore, no rule of strict construction shall be applied against either Party.

17.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The Parties agree that a scanned or electronically reproduced copy or image of this Agreement bearing the signatures of the Parties hereto shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence of this Agreement notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Agreement and without the requirement that the unavailability of such original, executed counterpart of this Agreement first be proven.

17.11 Waiver. No waiver by any Party hereto of any one or more defaults by any other Party in the performance of any provision of this Agreement 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 Agreement shall only be effective if made in writing and signed by the Party who is making such waiver.

17.12 Headings and Captions. The headings and captions appearing in this Agreement are intended for reference only, and are not to be considered in construing this Agreement.

17.13 Survival of Obligations. Termination of this Agreement for any reason shall not relieve either Party of any obligation accrued or accruing prior to such termination, including, but not limited to, Section 12 (Dispute Resolution), Section 13 (Indemnification), Section 15.6 (Return of Data), and Section 16 (Confidentiality).

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed, by their respective officers duly authorized, effective as of the date set forth in Section 1.

PURCHASER:

By: Ble  
Name: Brian Landrum  
Title: President  
Dated: 9/8/2022

**GREEN ENERGY CONSUMERS ALLIANCE, INC.**

By: Larry F Chretien  
Name: Larry Chretien  
Title: Executive Director  
Dated: 9/8/2022

## **EXHIBIT A PROGRAMS**

### (A) Description of Programs

#### (1) Definitions:

“Opt-in Program” means the 50% Local Green and 100% Local Green programs described in Exhibit A to the Electric Service Agreements, which include an additional 50% and 100% of RI New RECs, respectively.

“Opt-Out Program” means the Local Green program described in Exhibit A to the Electric Service Agreements, which includes an additional 10% of RI New RECs, as such percentage may be amended from time to time by the Municipal Aggregators.

(2) Opt-in & Opt-out Programs. REC Supplier will offer the following RECs as further specified in Section 3.1 of the Agreement:

- a. Content is one hundred percent (100%) wind and solar RECs certified as “**RI New RECs**” (as defined in the RES) pursuant to the RES.
- b. Purchaser shall pay REC Supplier the Price per REC for RECs purchased under this REC Purchase Agreement as provided in Exhibit A (F) below.
- c. Purchaser acknowledges and agrees that REC Supplier may make changes in the Opt-in Program, including, but not limited to, the price, provided that REC Supplier provides notice of any changes to quantity or price on or before the August 25 of the year prior to any Contract Year.
- d. RECs supplied by REC Supplier shall first be used to supply all additional REC requirements for the Opt-in and Opt-Out Programs above state-mandated RES compliance. RECs may only be used for Purchaser’s RES compliance for the Municipal Aggregators’ load if excess RECs remain after additional REC requirements have been fulfilled.
- e. For this Opt-in Program, RECs supplied by the REC Supplier will meet 100% of the additional REC obligation for the Opt-in Program first from the REC Quantity. Any remaining RECs supplied by the REC Supplier will be supplied to the Opt-out Program, in accordance with (A)(2)(d) of Exhibit A, above.

(B) REC Supplier is not required to supply RECs necessary to meet RES requirements for the Opt-out or Opt-in Program customers.

(C) This Exhibit A may only be amended or modified by a written instrument signed by both Parties hereto.

(D) Purchaser shall not offer any warranties or representations in connection with the Programs that would obligate or otherwise bind REC Supplier except as expressly set forth herein.

(E) REC Supplier will make a reasonable effort to deliver RECs from, but not limited to, the following projects:

<b>Project Name</b>	<b>Location</b>
Coventry / Town of West Warwick Wind Turbines	Coventry, RI
Narragansett Bay Commission Wind Turbines	Coventry and Providence, RI
A St 1 and 2 Johnston Solar Facility	Johnston, RI
North Providence Landfill Solar	North Providence, RI
Hopkin Hills Solar	West Greenwich, RI

(F) Subject to Section 1 (Term and Termination) of the Agreement, REC Supplier shall deliver the following RECs for each Contract Year. [REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

The Parties may adjust the Quantity and/or Price of RECs for a Contract Year by mutual written agreement prior to August 25 of the year prior to the Contract Year.

The purpose of this report is to provide the Commission with required information regarding the solicitation for electricity suppliers to serve the approved aggregation programs that are further described in the above-referenced dockets. The order of the Commission indicates that the report shall include:

1. Whether the solicitation was successful.
2. Identifying the name of the winning supplier.
3. The dates electric service will commence and terminate.
4. The prices for each product to be offered to customers.
5. Specific renewable energy quantity for each.

**1. Whether the solicitation was successful.**

Yes. The solicitation was successful, and a supplier was selected to serve the approved aggregation programs.

**2. Identifying the name of the winning supplier.**

The winning supplier is NextEra Energy Services Rhode Island, LLC.

**3. The dates electric service will commence and terminate.**

The aggregation programs are set to commence with the May 2023 meter read. The agreement currently runs through December 2027 and terminates at the meter read in January 2028. There are provisions for early termination, as well as provisions for extending the agreement at the mutual agreement of the parties.

**4. The prices for each product to be offered to customers.**

Currently, the price for electricity supply at the time of launch is unknown. Please refer to the description of the procurement and hedging strategy found in the supplemental description. Rates will be set at periodic intervals for varying terms during the contract period as agreed to by the Supplier and the Municipal Aggregators. When the prices for the initial term beginning May 2023 are set, they will also be provided to the Commission in the form of an updated and finalized Consumer Notification Letter, a draft version of which was included in the aggregation plans. Prices for subsequent intervals will be published in advance of each term in accordance with each Municipal Aggregator's aggregation plan. Customers will have sufficient notice of a change in rates and will be able to opt out or change suppliers at any time without penalty.

**5. Specific renewable energy quantity for each.**

The renewable energy quantity for each product is consistent with what was described in the aggregation plans when approved by the municipalities and the Commission. There will be four products for each community, with the exception of Central Falls, which has three products. Though the product names may vary by community, they all fall into the following categories:

- Basic = meets the RES
- Default (for automatic enrollment) = 10% voluntary RI New RECs above the RES
- 50% = sufficient voluntary RI New RECs so that REC purchases reflect 50% of usage (Central Falls will not offer this product)
- 100% = sufficient voluntary RI New RECs so that REC purchases reflect 100% of usage

### **Supplemental Pricing Information**

Exhibit A of each of the ESAs that have been filed, have been removed from the documents to ensure that specific terms and trade secrets are kept confidential. If the Commission determines that this portion of the ESAs must be included, Good Energy will do so under a motion for Confidential Treatment.

Exhibit A is the pricing guide for how rates will be calculated. This pricing guide includes a pricing model and risk management strategy that is proprietary to NextEra Energy Services Rhode Island, LLC (NES). This model and strategy has been uniquely designed to provide the Municipal Aggregation customers with competitive rates, and includes detailed descriptions of how certain pricing components are valued. The transparency for price buildup is one of the greatest assets of this agreement. Disclosure of Exhibit A would severely hamper the ability of the Municipal Aggregator and NES to administer these programs and would erase any competitive advantage the Municipal Aggregators may have by developing this program.

The Municipal Aggregators and NES have begun the process of implementing the risk management strategy for the upcoming term, beginning in May 2023. However, certain components of the rate will be finalized in the future, in accordance with proprietary processes disclosed in Exhibit A. For this reason, the Municipal Aggregators are not yet able to announce the rate. Municipal Aggregators expect to finalize and announce the rate in March 2023, when opt-out notices are mailed, in compliance with each Municipal Aggregator's aggregation plan.