



Joule Assets, Inc.
JOULE COMMUNITY POWER
CCA PROGRAM

REQUEST FOR PROPOSALS

Accounts Served by
National Grid Niagara Mohawk Power
Orange and Rockland Utilities

March 2024

Initial proposals and indicative pricing must be received by 5pm EST on March 26, 2024.
Final proposals and executable pricing must be received by 11am EST on April 11, 2024.

Please submit proposals digitally to gweinberg@jouleassets.com

Purpose

Joule Assets, Inc. (“Joule”) seeks, via this Request for Proposals (“RFP”), one or more Energy Services Companies (each an “ESCO”) licensed to supply electricity in the National Grid Niagara Mohawk Power (or “National Grid”) and Orange and Rockland Utilities (or “ORU”) service territories to provide electricity supply to utility customers in ten municipalities authorized to participate (“Participating Municipalities”) in the Joule Community Power Community Choice Aggregation (“CCA”) Program (“CCA Program”).

The awarded ESCO(s) will be required to execute an Electric Service Agreement (“ESA”) to serve as default supplier of full requirements electricity and Renewable Energy Certificates (“RECs”) to eligible residential and non-demand small commercial customers within one or more Participating Municipalities on an opt-out basis. Award in one or more Participating Municipalities does not guarantee award in all, and suppliers may be offered partial awards.

The three Participating Municipalities represent more than 15,000 accounts and 125,000 MWh/yr. Service will begin no sooner than July 2024, as determined by Participating Municipalities, in accordance with terms and specifications described in this RFP and its attachments. The Electricity Supply Agreement (ESA) for each Participating Municipality will be substantially in the form of the template provided as **Attachment 2 (Template ESA)**¹.

Background

CCA programs in New York State are enabled and governed by the *Order Authorizing Framework for Community Choice Aggregation Opt-Out Program* (Case 14-M-0224, Proceeding on Motion of the Commission to Enable Community Choice Aggregation) (“CCA Framework Order”)² issued by the Public Service Commission (“PSC”) on April 21, 2016. ESCOs that submit a response to this RFP (“Respondents”) must comply with all requirements established in the CCA Framework Order and all other Orders in Case 14-M-0224, as well as requirements of this RFP and its attachments.

Joule Assets, Inc. is a corporation organized in the State of Delaware. Joule serves as the CCA Administrator for the Participating Municipalities and is responsible for, among other things, organizing procurement, overseeing ESCO performance under the ESA, organizing educational outreach activities and, complementary with the ESCO, providing customer service. Joule is an experienced CCA Administrator in New York State, with a PSC-approved³ Implementation Plan and Data Protection Plan⁴.

Required Documents

Respondents’ proposals may include any information that they believe will help Joule and Participating Municipalities evaluate their capacity to service the CCA Program, but **must** include:

- **Cover letter with affirmation of compliance with all terms of the RFP** (including the Contracting Guidelines- Attachment 3) **and the Electricity Supply Agreement** in substantially the same form as the Template ESA (Attachment 2).
- Proposal should address **Respondent’s capacity for sourcing RECs including volume and indicative REC price**, properly registering RECs in NYGATS, as well as willingness to be connected with supplemental REC providers;
- **Pricing and Product Proposal (Attachment 1)** with indicative pricing (executable pricing will be submitted subsequently as described below); and
- Executed **Third Party Representative Agreement**. Respondents that have previously executed a Third Party Representative Agreement with Joule do not have to re-submit. Respondents without an executed Third Party Representative Agreement with Joule should contact gweinberg@jouleassets.com upon receipt of this RFP.
- **Proposed changes to ESA**, if applicable. Any revisions necessary to accommodate the proposed product

¹ Available in Word format upon request.

² Access online at: <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={38EFD3B0-48BC-400E-9795-98CB5EFAE0FA}>

³ “Order Approving Joule Assets’ Community Choice Aggregation Program with Modifications” (“Joule Order”), issued March 16, 2018 in Case 14-M-0224. Access online at:

<http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={4B0C3897-D3E2-4E5F-B0ED-2CEBFC6482FC}>

⁴ Access online at: <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={27DAFE97-1C17-4F90-B965-0FF60478C2B3}>

<http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={D36A5F19-0D67-42CB-B54D-768940A6E675}>

should be made in **Exhibit A of the Template ESA (Attachment 2)**.

Participating Municipalities

Each Participating Municipality listed in Table 1 below has:

- passed enabling CCA legislation;
- authorized Joule to serve as CCA Administrator and represent the Municipality in energy procurements; and

Select Participating Municipalities are owed a remittance of 1% Gross Receipts Tax (GRT) on electric utility bills to remain consistent with their existing tax code. Respondents must be prepared to properly collect and remit GRT to the appropriate Participating Municipalities as a function of customers' rates. Proposals should indicate an affirmation of this responsibility, as well as adjusted rates that will apply to Participating Municipalities that are owed GRT remission.

Table 1. Participating Municipalities

Municipality	Utility	NYISO Zone	GRT
Village of Brockport	National Grid	B	No
Village of Canton	National Grid	E	Yes
Town of Kendall	National Grid	B	No
Village of Lima	National Grid	B	No
Town of Potsdam	National Grid	E	No
Town of Roseboom	National Grid	F	No
Town of Rush	National Grid	B	Yes
Village of Saranac Lake	National Grid	D	Yes
Town of Tuxedo	ORU	G	No
Village of Tuxedo Park	ORU	G	No

Customer Data

Regulations permit Joule to share with Respondents certain aggregated utility data ("Aggregated Data") for each Participating Municipality. Aggregated Data includes the number of eligible customers by service class, the aggregated peak demand (kW) (for electricity) by month for the past 12 months by service class to the extent possible, and the aggregated energy (kWh) for electricity by month for the past 12 months by service class. Aggregated Data shall not include data for any service class that contains so few customers, or in which one customer makes up such a large portion of the load, that the aggregated information could provide significant information about an individual customer's usage.

Aggregated Data will be provided as an encrypted file via email as available upon Respondent's compliance with Third Party Representative Agreement.

Eligible Customer Classes

Under the CCA Framework Order, the following mass market service classes are eligible for opt-out enrollment.

Table 2. Opt-Out Service Classes

Utility	Opt-Out Eligible Service Classes
National Grid (Niagara Mohawk Power)	SC 1 Residential and Farm Service; and SC 2 Small General Service (non-demand)
Orange and Rockland Utilities	SC 1 Residential Service; and SC 2 General Secondary or Primary Service- Small Use (non-demand)

Utility customers in opt-out eligible service classes will be automatically enrolled in the CCA Program, with the exception of those:

- that opt out before Program launch;
- that have initiated a block on their utility account;
- already supplied by an ESCO;
- enrolled in time of use (including day/night interval) rates; and
- enrolled in utility assistance programs (APPs).

Demand charge customers in other service classes will be eligible to participate on an opt-in basis.

Bid Compliance and Pricing Benchmarks

Respondent must affirm in its proposal cover letter compliance with the requirements of this RFP and the Template ESA, and must meet the following criteria for the applicable supply product and/or customer class (“Compliant Bid”).

Participating Municipalities reserve the right to award or refuse any Compliant Bid, as well as to award bids that are not fully compliant for all products, rate types, term lengths, or service classes. Pricing benchmarks may change prior to contracting with refreshed utility pricing. Revised pricing benchmarks will be communicated to Respondents prior to start of executable pricing window.

1. **For Utility Assistance Program Participants (APPs): *Guaranteed Savings Variable Rate.*** The price is guaranteed to be at least \$.0005 or 1% below the utility residential supply rate, in each calendar month. Guaranteed Savings Variable Rate may be offered to other customer classes, but is required to serve APPs. Respondents should designate whether guaranteed savings rate applies to all customers or APPs only. Should a guaranteed savings product be awarded, supplemental consumption data for APPs will be provided.
2. **For CCA Conventional Electricity Products: *Pricing Comparable to Utility Price to Compare.*** Must meet the criteria for Guaranteed Savings Variable Rate described above, or must be a fixed price no greater than 5% above the most recent posted trailing 12-month average utility supply rate per kWh by NYISO Zone⁵ for opt-out eligible customer classes in Participating Municipalities⁶ (4/2022-3/2022):

\$0.0867 (ORU SC1)	\$0.0685 (National Grid D SC1)	\$0.0996 (National Grid F SC1)
\$0.0867 (ORU SC2)	\$0.0659 (National Grid D SC2)	\$0.0954 (National Grid F SC2)
\$0.0708 (National Grid B SC1)	\$0.0735 (National Grid E SC1)	
\$0.0677 (National Grid B SC2)	\$0.0706 (National Grid E SC2)	

3. **For CCA Renewable Electricity and CCA Blended Electricity Products: *Pricing Comparable to Utility Price to Compare plus Market REC Price.*** Fixed or initial variable price is no greater than the applicable benchmark for CCA Conventional Electricity Products plus a current representative market price for NYS Environmental Disclosure Program (or “EDP”) eligible RECs necessary to fulfill obligations for the applicable offering⁷.

CCA Renewable Electricity Product

\$0.1127 (ORU SC1)	\$0.0945 (National Grid D SC1)	\$0.1256 (National Grid F SC1)
\$0.1127 (ORU SC2)	\$0.0919 (National Grid D SC2)	\$0.1214 (National Grid F SC2)
\$0.0968 (National Grid B SC1)	\$0.0995 (National Grid E SC1)	
\$0.0937 (National Grid B SC2)	\$0.0966 (National Grid E SC2)	

⁵ Most recent average rates, as posted by National Grid and ORU, as of the issuance of this RFP.

<https://www.nationalgridus.com/Upstate-NY-Home/Rates/Rate-Statements>

<https://cdnc-dcxprod2-sitcore.azureedge.net/-/media/files/oru/documents/saveenergymoney/shop-for-energy-money/how-to-choose-your-energy-service-company-esco/price-to-compare.pdf?rev=94e7d5c3331143f49565e606c01eb8ef>

⁶ As mandated by PSC *Order Modifying Community Choice Programs and Establishing Further Process*, issued January 19, 2023 in Case 14-M-0224.

⁷ At the time of issuance of this RFP, market price was quoted by multiple independent sources at \$26/MWh for NYS EDP eligible RECs and \$5/MWh for national RECs.

CCA Blended Electricity Product

\$0.1022 (ORU SC1)	\$0.0840 (National Grid D SC1)	\$0.1151 (National Grid F SC1)
\$0.1022 (ORU SC2)	\$0.0814 (National Grid D SC2)	\$0.1110 (National Grid F SC2)
\$0.0863 (National Grid B SC1)	\$0.0890 (National Grid E SC1)	
\$0.0832 (National Grid B SC2)	\$0.0861 (National Grid E SC2)	

Supply Product Offerings

Complete proposals shall include pricing for the following product supply types and must comply with requirements in the Template ESA. Unless as otherwise specified, requirements apply to both fixed and variable rate offerings. Supply must be offered on an opt-out basis for eligible customers throughout the term of the ESA regardless of variations in consumption and/or expected load. Customers may cancel service at any time without penalty.

CCA Renewable Electricity Product. Respondents must provide price quotes for a CCA Renewable Electricity Product in accordance with the Template ESA. Must be fully able to be marketed as 100% renewable electricity in accordance with the laws, regulations and rules of the State of New York for all periods during the contract term.

Renewable Energy Certificates must be EDP eligible for the applicable year (vintage), procured from hydropower, solar or wind energy generating facilities sited within (or physically delivered to) New York State and be properly retired as 100% renewable electricity in the New York Generation Assets Tracking System (NYGATS). In addition, all electricity supply must comply with the New York State Clean Energy Standard and is subject to the environmental attribute and delivery rules of the Public Service Commission Environmental Disclosure Program.

CCA Blended Electricity Product. Respondents must provide a price quote for a CCA Blended Electricity Product in accordance with the Template ESA:

- 1) Fifty percent (50%) shall (a) comply with the CCA Renewable Electricity Product described above.
- 2) Fifty percent (50%) shall (a) comply with the CCA Conventional Electricity Product described below and (b) include national wind renewable energy certificates (“National RECS”). Competitive Supplier shall identify the location(s) of the renewable generators that are the sources of these National RECs and provide such information to Joule. All such National RECs shall be certified by a third party satisfactory to Joule in writing.

Please note this product could not be marketed as a 100% renewable product in New York State.

CCA Conventional Electricity Product. Respondents must provide a quote for a CCA Conventional Electricity Product in accordance in the Template ESA. Product must meet minimum compliance standards of the New York State Clean Energy Standard and is subject to the environmental attribute and delivery rules of the Public Service Commission Environmental Disclosure Program.

Fixed price offerings must be no greater than 5% above the most recent posted trailing 12-month average utility supply rate per kWh for opt-out eligible customer classes in Participating Municipalities. Variable price offerings must be guaranteed to be not less than \$.0005 or 1% below the National Grid or RG&E basic supply rate for the specified customer class, in each calendar month of the ESA.

Award Process

Indicative pricing should be entered into the Pricing and Product Proposal (or separate spreadsheet) and submitted along with the rest of Respondents’ response to this RFP by **5:00pm EST on March 26, 2024**. Participating Municipalities will review proposals and determine which, if any, proposal(s) to advance to the executable pricing period. Participating Municipalities will indicate which supply product each intends to select as the default. Joule will notify Respondents by April 5 for which Participating Municipalities they should prepare executable pricing, and volume of energy and RECs needed.

Executable pricing along with final proposals must be submitted by April 11 at 11am EST. If the RFP is not awarded on April 11, the RFP will remain open daily until April 18. Executable pricing will be accepted by 11am EST each day until the Participating Municipalities award the RFP and ESAs are executed. Participating Municipalities may not all award to the same Respondent, and partial awards are permitted. Respondents should indicate any conditions that apply to executable pricing submissions (e.g. minimum volume).

Term Length

Respondents must provide price quotes for a 24-month term length, but may also include quotes for other term lengths between 12 and 60 months. See **Pricing and Product Proposal (Attachment 1)** for further detail.

REC Sourcing

Respondents should indicate in their proposal whether RECs sufficient to serve all Participating Municipalities with a CCA Renewable Supply Product have been sourced (e.g. already in hand, REC confirms lined up with counterparty), and the indicative REC price. Please describe specific facility(ies) and/or entity(ies) from which RECs will be sourced.

If sufficient RECs have not yet been identified, Joule will connect Respondents with REC providers (through a broker) that have agreed to provisionally supply RECs to awarded ESCO(s) on behalf of Participating Municipalities, as needed. Should Respondents need access to supplemental RECs, it is imperative that you reach out as soon as possible to schedule a call so that we can connect you to the REC broker and further describe the process.

Respondents should confirm their ability to register a NYGATS CCA subaccount for Participating Municipalities, within which RECs will be retired in the appropriate amount in compliance with the Environmental Disclosure Program and NYGATS operating rules for CCA programs.

Utility Data Fees

On April 15, 2021 the NYS Public Service Commission issued its *Order Adopting a Data Access Framework and Establishing Further Processes* (DAF Order)¹, which orders that "all distribution utilities shall modify their current tariffs to remove all established fees associated with the release of customer data, including CCA data, and system data."

Interval Price Offerings

Day/night and time of use accounts will be excluded from opt-out enrollment. However, bidders are encouraged to optionally provide day/night and/or time of use rates, which would be offered for accounts in these rate classes for voluntary opt-in enrollment.

Additional Services

Respondents should feel free to highlight any other value added services offered including, but not limited to, services related to:

- community solar (e.g. access to capacity, ability to sleeve solar credits on a retail commodity product);
- behind-the-meter products and services (including solar+storage);
- broadband access;
- residential energy efficiency upgrades, controls; and
- small customer demand management.

Submission Method

Proposals must be submitted by email. Proposals, questions, and other correspondence should be sent to:

Glenn Weinberg

Vice President, Sales and Market Development
gweinberg@jouleassets.com
(646) 785-7204

Respondent Communication

Respondents are encouraged to request a product demonstration to Participating Municipalities on March 21. This is an opportunity to present any unique features of Respondent's proposal and product offerings and/or request clarification on any of the specifications of this RFP or municipal preferences that might help Respondent customize its proposal. Interested Respondents, please request to participate by emailing gweinberg@jouleassets.com. Respondents are otherwise permitted to submit any question about the RFP to the same address. Joule may disclose written questions and answers to other Respondents.

Submission Deadline

This RFP was sent electronically to pre-qualified ESCOs. **Initial proposals with indicative pricing must be received by 5:00pm EST on March 26, 2024. Final proposals with executable pricing must be received by 11:00am EST on April 11, 2024.**

Proposal Evaluation

- The award decision will be made on the basis of best value, as determined by Joule and Participating Municipalities.
- Joule and Participating Municipalities will determine Compliant Bids based on criteria described above.
- Respondents' proposals, when submitted, become the property of Joule.
- Joule does not guarantee any award, whether partial or full, to any Respondent.
- Joule reserves the right to disqualify from consideration any Respondent who does not comply with the conditions of this RFP.

Reservation of Rights

- This RFP is not an offer to purchase power supply and associated services.
- Joule and Participating Municipalities reserve the right to accept or reject any and all responses and also reserves the right to cancel or reissue this RFP at any time.
- Joule and Participating Municipalities are not responsible for any costs incurred by other parties in the preparation of responses to this RFP.
- Joule and Participating Municipalities reserve the right to waive any RFP requirements that are not material.
- Joule and Participating Municipalities reserve the right to make changes to the terms of the Template Electricity Supply Agreement prior to its execution; provided that material changes will be subject to the agreement of Respondent.

Confidentiality and the New York State Freedom of Information Law

Joule will treat all information provided by Respondents in connection with this RFP as public information and intends to share responses with Participating Municipalities.

However, Joule will use reasonable efforts to comply with a request by Respondent for confidential treatment of information subject to the following conditions:

- 1) The request must be included in the cover letter of Respondent's response;
- 2) The request must explain why disclosure of the information is not in the best interest of the public and must identify specific basis under the New York State Freedom on Information Law (Public Officers Law, Article 6,

Sections 84-90)(“FOIL”) for the exemption from disclosure of such information;

- 3) The request must contain the name, address and telephone number of an individual authorized by Respondent to respond to Joule about the confidential nature of the information;
- 4) If the request designates any information in Respondent’s proposal as confidential, Respondent must also submit one (1) copy of the response from which information claimed to be protected has been redacted. The information must be redacted in such a way as to allow the public to determine the general nature of the material removed and to retain as much of the response as possible;
- 5) Notwithstanding anything to the contrary herein, Respondent understands and agrees that confidential information may be disclosed in accordance with FOIL in the reasonable judgement of an attorney for Joule or a Participating Municipality;
- 6) In no event will any information provided by Respondent as part of a response hereto be deemed as confidential or otherwise non-disclosable in connection with any litigation, dispute resolution process, or any disclosure to the State of New York (or any agency, department, authority or municipality thereof including without limitation the Department of Public Service (DPS), the Public Service Commission (PSC), or the New York State Energy Research & Development Authority (NYSERDA)) for any reason including without limitation in the event of: (a) a dispute between the parties in relation to an award or denial of any award; (b) a dispute in relation to, or arising from, any Electricity Supply Agreement entered into by the parties as a result of this RFP; (c) a request from, or a submission to, DPS , PSC or NYSERDA; and
- 7) Respondent’s request for confidential treatment must not make any changes, additions or subtractions to the foregoing conditions.

Data Security Agreement and Third Party Representative Agreement

Respondent must have an executed Third Party Representative Agreement to the Data Security Agreements executed by Joule and each of the applicable utilities. Respondents that have not previously executed a Third Party Agreement for a Joule Assets CCA program, please contact gweinberg@jouleassets.com.

Attachments

Attachment 1 – Pricing and Product Proposal

Attachment 2 – Template ESA (available in Word format upon request)

Attachment 3 – Contracting Guidelines

Attachment 1 - Pricing and Product Proposal

Pricing Requirements. Respondent's pricing should conform with the criteria of a Compliant Bid in the RFP and the following requirements as well as relevant terms of the Template ESA (Attachment 2):

1. Indicative pricing should be submitted with proposals by 5pm EST on March 26, 2023.
2. Executable pricing will be submitted beginning on April 11 at 11am EST, and daily thereafter until April 18, as needed until award.
3. Respondents agree to provide Firm Full-Requirements Power Supply in accordance with the Template ESA.
4. Indicate for each offering whether pricing is fixed or variable. For Guaranteed Savings Variable Rate, please indicate whether the offer is for Assistance Program Participants (APPs) only, or all customer classes. Other variable offerings should indicate frequency and methodology for price adjustments.
5. Please provide pricing with and without Gross Receipt Tax (GRT).
6. Respondents must submit bids for 24 month term and may additionally submit bids for 12, 18, 36, 48, and/or 60 month terms.
7. Participating Municipalities in National Grid are located in NYISO Load Zones B, D, E, and F. Participating Municipalities in ORU are located in NYISO Load Zone G. All power must be scheduled into appropriate Load Zone.
8. Please provide pricing for July, August, September 2024 start dates. Alternate start dates may be offered.
9. Exhibit A of the Template ESAs contains key terms that Respondents should be familiar with, and will be updated with the final price and terms before ESA execution. Respondents should revise Exhibit A as needed to reflect proposed product and pricing.
10. Pricing offers must be sufficient to cover the full costs of the Respondent. Price quotes must include all costs to be charged at the point of entry into the relevant NYISO Load Zone inclusive of: energy, ICAP/UCAP capacity, applicable transmission charges (including congestion costs), location-based marginal pricing uplift charges, utility billing fees, ISO ancillary services or other ISO charges, Clean Energy Standard compliance (including REC and ZEC obligations), voluntary RECs, Joule administrative fees. Pricing should account for utility Purchase of Receivables program rules.
11. Customers must be permitted to revert to default utility service at any time, without penalty. For the term of the ESA, no fees will be assessed to any resident or small commercial retail customer for leaving the CCA Program.
12. Neither Joule nor Participating Municipalities nor Program customers will be responsible for any costs not specifically identified in Respondent's proposal.
13. ESCO agrees to pay 25% of projected administrative fees (commissions) for the term of the ESA no later than 15 days after ESA execution. Projected commissions will be calculated using historical usage for Participating Municipalities eroded by 20% to account for opt-outs. Monthly commission payments thereafter will be based on usage less upfront payment divided by ESA term in months: (kWh*\$ admin fee) – (\$ 25% payment/# months of ESA).
14. All sales tax, GRT, excise or similar taxes imposed with respect to the sale or consumption of Firm Full-Requirements Power Supply required to be collected by the Competitive Supplier shall be included on the customer's bill and shall be remitted to the appropriate taxing authority by Respondent.

Pricing Matrices

Please provide your compliant pricing offers in the following format. Feel free to submit a spreadsheet or fill in template provided below. Please submit a separate chart for each National Grid NYISO Zone. Populate fields with % below monthly utility price to compare for Guaranteed Savings Variable Rate or \$/kWh for fixed and variable rates.

National Grid Accounts	Term (months)	NYISO Zone	CCA Conventional Electricity Product	CCA 100% Renewable Electricity Product	CCA Blended Electricity Product
Residential Service (SC1)	12				
Residential Service	18				
Residential Service	24				
Residential Service	36				
Residential Service	48				
Residential Service	60				
Small General Service (SC2)	12				
Small General Service	18				
Small General Service	24				
Small General Service	36				
Small General Service	48				
Small General Service	60				

ORU Accounts	Term in months	CCA Conventional Electricity Product	CCA 100% Renewable Electricity Product	CCA Blended Electricity Product
Residential Service (SC1)	12			
Residential Service	18			
Residential Service	24			
Residential Service	36			
Residential Service	48			
Residential Service	60			
General Service (SC2)	12			
General Service	18			
General Service	24			
General Service	36			
General Service	48			
General Service	60			

**Attachment 2 - Template Electricity Supply Agreement
between Competitive Supplier, Joule Assets, Inc. and the
Municipality** (Remainder of this page is left intentionally blank)

PREAMBLE

This Community Choice Aggregation Electricity Supply Agreement including without limitation all exhibits, schedules and other attachments hereto (“**ESA**” or “**Agreement**”) is made as of the Effective Date between:

The municipality set forth on the signature page, a municipal corporation in the State of New York, with a principal place of business as set forth on EXHIBIT B (the “**Municipality**”);

The competitive supplier set forth on the signature page, with a principal place of business as set forth on EXHIBIT B (“**Competitive Supplier**”); and

Joule Assets, Inc., a corporation incorporated in the State of Delaware duly authorized to do business in the State of New York, with a principal place of business as set forth on EXHIBIT B (“**Program Administrator**”).

RECITALS

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

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

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

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

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

WHEREAS, the Municipality desires to offer to Participating Consumers the “default” electricity supply option set forth on EXHIBIT A (the “**Default Product**,” as further defined below);

WHEREAS, if set forth on EXHIBIT A, the Municipality desires to offer to Participating Consumers the ability to change from the Default Product to one or more alternative electricity supply product(s);

WHEREAS, Program Administrator and Municipality have entered into a Community Choice Aggregation Agreement (the “**CCA Agreement**”) pursuant to which Program Administrator and Municipality agreed, among other things, that Program Administrator would provide certain energy related services to Municipality in relation to a CCA Program including acting as Program Administrator.

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

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

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

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

WHEREAS, Competitive Supplier has submitted an offer to provide the Default Product as defined below and described in EXHIBIT A;

WHEREAS, if set forth in EXHIBIT A, Competitive Supplier has submitted an offer to provide one or more alternative electricity supply products;

WHEREAS, Competitive Supplier agrees to pay a fee to Program Administrator as set forth herein;

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

NOW THEREFORE, IT IS AGREED THAT the Municipality, the Program Administrator, and the Competitive Supplier hereby enter this ESA subject to the terms and conditions set forth herein.

ELECTRICITY SUPPLY AGREEMENT

ARTICLE 1 -- DEFINITIONS

The terms set forth in this ARTICLE 1 shall have the meanings ascribed below throughout this ESA, including in the exhibits hereto. Other terms that are defined throughout this ESA, including in the exhibits hereto, shall have the meanings ascribed as part of such definitions. Words not defined, and defined terms that appear in lower case, shall be given their common and ordinary meanings.

- 1.1 **Affiliate** -- With respect to a Party, any other entity that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, that Party. For purposes of this definition “control,” “controls,” and “controlled” means the ownership, directly or indirectly, in the aggregate of more than fifty percent (50%) of the beneficial ownership interests of an entity or the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity, whether through the ability to exercise voting power, by contract or otherwise.
- 1.2 **Associated Entities** - Any and all of the employees, officers, agents, representatives, Affiliates, and independent contractors and subcontractors of the Competitive Supplier or of any of its corporate parents or subsidiaries, which provide goods or services to, or in any way assist, the Competitive Supplier in meeting its obligations under the ESA, but specifically excluding the Distribution Utility.
- 1.3 **Bankruptcy** - With respect to a Party, (i) such Party ceases doing business as a going concern, generally does not pay its debts as they become due or admits in writing its inability to pay its debts as they become due, files a voluntary petition in bankruptcy or is adjudicated bankrupt or insolvent, or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other Governmental Rule, or seeks or consents to or acquiesces in the appointment of any trustee, receiver, custodian or liquidator of said Party or of all or any substantial part of its properties, or makes an assignment for the benefit of creditors, or said Party takes any corporate action to authorize or that is in contemplation of the actions set forth in this clause (i); or (ii) a proceeding is initiated against the Party seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other Governmental Rule and such proceeding is not dismissed within ninety (90) days after the commencement, or any trustee, receiver, custodian or liquidator of said Party or of all or any substantial part of its properties is appointed without the consent or acquiescence of said Party, and such appointment is not vacated or stayed on appeal or otherwise within ninety (90) days after the appointment, or, within ninety (90) days after the expiration of any such stay, has not been vacated, provided that, notwithstanding the foregoing, the exercise of rights to take over operation of a Party's assets, or to foreclose on any of a Party's assets, by a secured creditor of such Party (including the appointment

- of a receiver or other representative in connection with the exercise of such rights) shall not constitute a Bankruptcy.
- 1.4 **Basic Utility Supply Service** - Electricity supply service provided by the Distribution Utility to consumers who do not receive service from a Competitive Supplier or from the CCA Program. Eligible Consumers who receive Basic Utility Supply Service, and do not opt out, will become Participating Consumers as of the Service Commencement Date.
 - 1.5 **Clean Energy Standard** - The clean energy standard for electric power for load serving entities established by New York State as may be amended from time to time including those mandated by the 2015 New York State Energy Plan, and the Order of the New York State Public Service Commission Adopting a Clean Energy Standard (Case 15-E-0302)(Issued August 1, 2016) as amended.
 - 1.6 **Commercially Reasonable** - Any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known, or which in the exercise of due diligence should have been known, at the time the decision was made, would have been expected in the industry to accomplish the desired result consistent with reliability, safety, expedition, project economics and applicable law and regulations, as defined in the Uniform Business Practices or without limitations in additional applicable law and regulations, provided that in no event shall increased costs or economic hardship be an excuse for not performing a Party's obligations under this ESA.
 - 1.7 **Community Choice Aggregation or CCA** - Municipal electricity procurement program, purchasing supply for the aggregated demand for all Participating Consumers.
 - 1.8 **CCA Blended Electricity Product** – A blended electricity product offered to consumers, if and as further defined in EXHIBIT A.
 - 1.9 **CCA Conventional Electricity Product** – A conventional electricity generation product offered to consumers, if and as further defined in EXHIBIT A.
 - 1.10 **CCA Default Product or Default Product** – The default product that is offered to Participating Consumers that shall include one of the following as set forth on EXHIBIT A: the CCA Renewable Electricity Product, the CCA Conventional Electricity Product, or the CCA Blended Electricity Product.
 - 1.11 **CCA Renewable Electricity Product** – A 100% renewable electricity generation product offered to consumers, if and as further defined in EXHIBIT A.
 - 1.12 **Competitive Supplier or Energy Services Company or ESCO** - A load serving entity duly authorized to (a) serve Eligible Consumers within the service territory of the Distribution Utility; and (b) conduct business in the State of New York as an Energy Services Company. With respect to this Agreement, Competitive Supplier is identified in the preamble above.
 - 1.13 **Consolidated Billing** - A billing option that provides Participating Consumers with a single bill issued by the Distribution Utility combining delivery and supply charges from the Distribution Utility and Competitive Supplier respectively.

- 1.14 **Delivery Term** - The period of time for which prices for Firm Full-Requirements Power Supply will be provided, as set forth in EXHIBIT A.
- 1.15 **Department of Public Service or DPS** – The Department of Public Service of the State of New York or any successor state agency.
- 1.16 **Distribution Utility** - Owner or controller of the means of distribution of electricity that is regulated by the Public Service Commission for the Participating Municipality.
- 1.17 **Effective Date** – the date set forth on the signature page of this Agreement.
- 1.18 **Electronic Data Interchange or EDI** - The exchange of business data in a standardized format between business computer systems.
- 1.19 **Eligible Consumer** - a consumer who:
- a) is a part of an opt-out eligible service class (i.e., Residential and Small Commercial) and rate class in accordance with the Framework Order and all applicable Orders of the PSC and Governmental Rules; and
 - b) is an Original Consumer or is a New Consumer (each, as defined below) at one or more locations within the geographic boundaries of the Municipality;
- provided, however, excluding consumers who (i) receive Basic Utility Supply Service and have requested not to have their account information shared by the Distribution Utility; or (ii) are consumers served by an ESCO as of the Service Commencement Date.
- For the avoidance of doubt, an Eligible Consumer must reside, and/or have an electricity account, located at one or more locations within the geographic boundaries of the Municipality, as such boundaries exist on the Effective Date.
- 1.20 **ESA** - This Electricity Supply Agreement.
- 1.21 **Environmental Disclosure Program** - The current and future rules and requirements applicable in New York State to the labelling and disclosures of electric supply. Competitive Supplier agrees to comply with any current and/or future rules and regulations related to Environmental Disclosure Labels in the State of New York, and the rules relating the New York Generation Attribute Tracking System (NYGATS).
- 1.22 **Federal Energy Regulatory Commission or FERC** - The United States federal agency with jurisdiction over interstate electricity sales, wholesale electric rates, hydroelectric licensing, natural gas pricing, and oil pipeline rates.
- 1.23 **Firm Full-Requirements Power Supply** – The service under which the Competitive Supplier provides all of the electrical energy, capacity, reserves, and ancillary services, transmission services, transmission and distribution losses, congestion management, and other such services or products necessary and/or required to provide firm power supply including all those components regardless of changes in kWh usage or customer grouping during this contract term to Participating Consumers at the Point of Sale, other than the cost of transmission and distribution services that are billed through the transmission and distribution tariff(s) and provided by the utility and/or the NYISO) to provide electricity to the Point of Delivery.

- 1.24 **Force Majeure** - Any event not within the reasonable control of the affected Party which precludes a party from carrying out, in whole or in part, its obligations under this ESA including, but not limited to, Acts of God; winds; hurricanes; tornadoes; fires; landslides; earthquakes; floods; other natural catastrophes; strikes, lock-outs or other industrial disturbances; acts of public enemies; acts, failures to act or orders of any kind of any governmental authorities acting in their regulatory or judicial capacity, provided, however, that any such discretionary acts, failures to act or orders of any kind by the Municipality may not be asserted as an event of Force Majeure by the Municipality; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil or industrial disturbances or explosions. Nothing in this provision is intended to excuse any Party from performing due to any governmental act, failure to act, or order, or due to any third-party act or failure to act, where it was reasonably within such Party's power to prevent such act, failure to act, or order. Economic hardship of any Party shall not constitute an event of Force Majeure.
- 1.25 **Framework Order** - The PSC Order establishing the framework for municipal CCA programs (Case 14-M-0224, Order Authorizing Framework for Community Choice Aggregation Opt-Out Program (issued April 21, 2016)), as may be amended from time to time.
- 1.26 **General Communications** - The type of communications described and defined in ARTICLE 5.7 herein.
- 1.27 **Governmental Authority** - Any national, state or local government, independent system operator, regional transmission owner or operator, any political subdivision thereof or any other governmental, judicial, regulatory, public or statutory instrumentality, authority, body, agency, department, bureau, or entity, including the New York Public Service Commission, and the New York Department of Public Service, but excluding the Municipality.
- 1.28 **Governmental Rule** - Any law, rule, regulation, ordinance, order, code, permit, interpretation, judgment, decree, or similar form of decision of any Governmental Authority having the effect and force of law including the Joule Order, the Framework Order, the PSC Order Modifying Community Choice Aggregation Programs and Establishing Further Process (Issued and Effective January 19, 2023, the “Modifying Order”) and all other orders of the PSC, all as may be amended from time to time.
- 1.29 **Joule Order** - The PSC Order approving the Joule CCA Program (Case 14-M-0224, Order Approving Joule Assets’ Community Choice Aggregation Program with Modifications” (issued March 16, 2018)), all as may be amended from time to time.
- 1.30 **kWh, kW** - Kilowatt-hour and kilowatt, respectively.
- 1.31 **Local Law** - A local law or ordinance, adopted by Municipality according to General Municipal Law, which authorizes Municipality to participate in a Community Choice Aggregation program.
- 1.32 **New Consumer** - A consumer who is eligible to be enrolled in the Program because consumer (a) opts into the Program after the Service Commencement Date; or (b) becomes eligible to be enrolled in the Program after the Service Commencement Date.

- 1.33 **New Taxes** - Any taxes or fees not in effect as of the Effective Date enacted by a Governmental Authority or the Municipality, to be effective after the Effective Date with respect to Firm Full- Requirements Power Supply, or any Governmental Rule enacted and effective after the Effective Date resulting in application of any existing tax for the first time to Participating Consumers.
- 1.34 **NYISO** - The New York Independent System Operator, or such successor or other entity which oversees the integrated dispatch of power plants in New York and the bulk transmission of electricity throughout the New York power grid.
- 1.35 **Original Consumer** – A consumer who receives Basic Utility Supply Service from the Distribution Utility and is eligible to be enrolled in the Program as of the Service Commencement Date.
- 1.36 **Participating Consumer** - An Eligible Consumer who has not opted out of the Program.
- 1.37 **Parties** - The Municipality, the Program Administrator, and the Competitive Supplier, as the context requires. In the singular, "Party" shall refer to any one of the preceding.
- 1.38 **Point of Delivery** - The boundary of the Distribution Utility's electricity franchise, or the point at which the Competitive Supplier delivers the power to the Distribution Utility.
- 1.39 **Point of Sale** - The electric meter for each Participating Consumer's account, as designated by the Distribution Utility, such that all line loss costs are included in Competitive Supplier price to bring power to the meter.
- 1.40 **Program** - Joule Community Choice Aggregation Program.
- 1.41 **Program Administrator** - Joule.
- 1.42 **PSC** - The New York State Public Service Commission or any successor state agency.
- 1.43 **Qualifying Regulatory Event** - A Regulatory Event that impacts or provides opportunity for substantially all consumers in the same service class, but not including a Regulatory Event that applies uniquely to Competitive Supplier.
- 1.44 **Regulatory Event** - Implementation of a new, or changes to an existing, Governmental Rule by a Governmental Authority, including the Distribution Utility's tariffs, market rules, operating protocols and definitions, which effect the services and transactions contemplated by this ESA. A "change" as used herein includes any amendment, modification, nullification, suspension, repeal, finding of unconstitutionality or unlawfulness, or any change in construction or interpretation.
- 1.45 **Renewable Energy Certificate or REC**- A renewable energy certificate registered in, and fully compliant with, the New York (State) Generation Attribute Tracking System ("NYGATS") operating rules, dated May 1, 2020, as may be amended from time to time.
- 1.46 **Request for Proposal or RFP** – the request for proposal, request for qualification, request for information, or other similar request or solicitation issued by Municipality or Program Administrator, or on behalf of Municipality, Program Administrator, or a third party, to which Competitive Supplier responds that relates to the services provided or to be provided by Competitive Supplier hereunder.

- 1.47 **Service Commencement Date** – the date set forth in EXHIBIT A when Competitive Supplier is first obligated to provide electricity supply for any Participating Consumer.
- 1.48 **Service Termination Date** – the date set forth in EXHIBIT A when Competitive Supplier’s obligation to provide electricity supply terminates for any Participating Consumer.
- 1.49 **Term** – As defined in ARTICLE 4.1.
- 1.50 **Uniform Business Practices** – Regulations governing the business practices of utilities and Energy Services Companies with regards to service, billing, marketing, data, and customer rights, as applicable to Competitive Supplier, issued by the New York State Public Service Commission (Case 98-M-1343), as may be amended from time to time.

ARTICLE 2 – RIGHTS GRANTED

2.1 GENERAL DESCRIPTION AND LIMITATIONS

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

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

The Municipality specifically authorizes the Distribution Utility to provide, and Competitive Supplier the right to obtain and utilize as required, all billing and energy consumption information for Participating Consumers as is reasonably required for Competitive Supplier to perform its obligations as described herein. Competitive Supplier shall request consumption data for individual Participating Consumers from the Distribution Utility via EDI or via other adopted standards such as secure file transfer protocol. If further action is required by the Distribution Utility to authorize Competitive Supplier to receive such consumption and billing data, Municipality shall provide any necessary authorization and the Program Administrator, on behalf of the Municipality agrees to use Commercially Reasonable efforts, at Competitive Supplier's cost, to assist Competitive Supplier, if so requested by it, in obtaining such information for Participating Consumers. Competitive Supplier will be responsible for any losses or costs arising from a delayed or unsuccessful enrollment of a Participating Consumer to the extent such losses or costs are a direct result of a negligent act or omission or breach of this ESA by the Competitive Supplier. Neither the Municipality nor Program Administrator shall be responsible for any such losses or costs arising from the negligent acts or omissions or breach of this ESA by the Competitive Supplier but shall be responsible for a delayed or unsuccessful enrollment of a Participating Consumer, or de-enrollment, that is a direct result of the Municipality or Program Administrator's negligent act or omission or breach of this ESA.

2.2 NO THIRD-PARTY BENEFICIARIES

Except as specifically provided in this ARTICLE 2.2, this ESA does not and is not intended to confer any rights or remedies upon any person other than the Parties. This ESA facilitates rights under the Joule Order and Local Law for Eligible and Participating Consumers to purchase electricity from the Competitive Supplier in accordance with this ESA. Notwithstanding anything to the contrary herein, the Municipality, or Program Administrator in support of the Municipality, has the right, but not the obligation, to advocate, commence actions, and make claims (including without limitation claims for monetary damages, if any, calculated in a commercially reasonable manner) on behalf of Participating Consumers unless otherwise prevented by law.

2.3 COMPLIANCE WITH LAWS

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

2.4 CONDITIONS PRECEDENT; CONTINUING OBLIGATIONS

As a condition precedent to the Municipality's obligations under this ESA, the Competitive Supplier shall fulfill and maintain the following requirements at all times during the Term:

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

In addition, if Competitive Supplier has not fulfilled or maintained all such requirements at any time after the Service Commencement Date and during the Term, then the Municipality may terminate this ESA without any liability from Municipality to the Competitive Supplier if Competitive Supplier fails to remedy or cure such non-fulfillment or non-maintenance of any such requirement with thirty (30) days following written notice to do so by the Municipality.

2.5 OWNERSHIP AND USE OF ELIGIBLE CONSUMER DATA

Competitive Supplier acknowledges and agrees that: 1) all Eligible Consumer data (including addresses, or other identifying information) made available to Competitive Supplier on behalf of Municipality must be protected by the Competitive Supplier and its Associated Entities to the fullest extent required under the law including all PSC orders, and, to the extent applicable, in accordance with the terms of the Competitive Supplier's data security agreements with Program Administrator and the applicable Distribution Utility; 2) the Competitive Supplier does not hold any permanent right, title or interest in this data; and 3) this data is to be obtained,

retained and used by the Competitive Supplier and its Associated Entities solely to provide Firm Full- Requirements Power Supply to Participating Consumers and to render other services expressly required or permitted under this ESA. Any other use of Eligible Consumer data other than for purposes directly related to this ESA is not permitted without the prior written consent of the Municipality. Competitive Supplier may share such Eligible Consumer data with third-party vendors as reasonably necessary solely to accommodate Competitive Supplier's provision of Firm Full- Requirements Power Supply or other performance expressly required or permitted under this ESA (including collection of receivables), provided that Competitive Supplier will ensure that such third-party vendors secure and comply with all statutory, regulatory and contractual obligations in relation to the confidential nature of such data and the restrictions set forth in this ARTICLE 2.5 and elsewhere in this ESA, and that any vendor is also bound by the terms and conditions of this ESA, including those regarding data confidentiality and prohibition on non-permitted uses of data through one more or more executed non-disclosure and/or data security agreements, a copy of which will be provided to the Municipality and Program Administrator upon request, subject to any required approval from the vendor. Except as expressly provided in this ESA, and as otherwise permitted by law, Competitive Supplier and its Associated Entities shall not disclose any Eligible or Participating Consumer data to any third-party and Competitive Supplier and its Associated Entities shall take all Commercially Reasonable measures to protect Eligible and Participating Consumer data from access by, or beneficial use for, any third-party. To the extent that the provision of Firm Full- Requirements Power Supply or other services under this ESA requires that Competitive Supplier and its Associated Entities have access to or make use of any Eligible or Participating Consumer data, Competitive Supplier and its Associated Entities shall treat such Eligible and Participating Consumer data as confidential information. Competitive Supplier may use Eligible and Participating Consumer data to engage in direct marketing only during the term of this ESA and subject to the terms set forth in ARTICLE 18.2. A violation of this ARTICLE 2.5 shall be grounds for termination under ARTICLE 4.2(a). Competitive Supplier agrees violation of this ARTICLE 2.5 shall constitute irreparable harm.

Without limiting the foregoing, Competitive Supplier agrees to comply with all data security requirements of, including the terms of any data security agreement required by, the PSC, the DPS and any Distribution Utility in relation to the CCA and any confidential utility information disclosed to Competitive Supplier in performance of this Agreement. Competitive Supplier further agrees to execute and cause any third- party vendors to execute any required agreement (as described above and including a Third-Party Representative Agreement that is required by an applicable Data Security Agreement) in order to comply with the terms and conditions of this Agreement and complete any self-attestation in relation thereto as required by the PSC, the DPS and/or any Distribution Utility.

2.6 ENVIRONMENTAL DISCLOSURE PROGRAM

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

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

3.1 CONSUMER CHOICE

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

3.2 NOTIFICATION TO ELIGIBLE CONSUMERS OF OPT-OUT RIGHTS

Consistent with the requirements of any applicable Governmental Rules, and within a reasonable time after the Distribution Utility informs Competitive Supplier or Program Administrator of the existence of Original Consumers or New Consumers, and has provided to Competitive Supplier or Program Administrator such consumer's service and billing address, and other pertinent contact information, Program Administrator, with Competitive Supplier's reasonable cooperation and at Competitive Supplier's expense for the reasonable cost of printing and mailing, and using the opt-out letter template or other form as approved by the Department of Public Service, shall notify such consumer (i) of the date on which such consumer will be automatically enrolled in the Program, and (ii) that the Competitive Supplier will be providing Firm Full- Requirements Power Supply to such consumer, subject to the opt- out provisions of the Joule Order, Local Law, and the Program ("**Opt-Out Notice**").

The Opt-Out Notice shall be mailed to each such consumer not fewer than 30 days prior to the date of automatic enrollment and shall: (i) prominently state charges to be assessed by the Competitive Supplier; (ii) at a minimum, provide a summary of the prices and terms included in EXHIBIT A; (iii) state how such consumer may opt- out of the Program prior to enrollment and remain on Basic Utility Supply Service from the Distribution Utility; (iv) state how all Participating Consumers, will also have the right to opt-out at any time and return to Basic Utility Supply Service or choose a new Competitive Supplier without paying a fee or penalty to Competitive Supplier; and (iv) comport with any additional requirements of the DPS. Such notices must be approved in advance by the Municipality and DPS. For all other reviews the Parties understand that time is of the essence regarding their review and that Competitive Supplier is dependent on their timeliness to ensure Opt-Out Notice requirements are met.

In providing the notifications set forth in this ARTICLE 3.2, and in otherwise conducting the activities in ARTICLE 3.4 below, the Competitive Supplier shall rely upon information provided to it by the Distribution Utility for the purpose of performing its obligations. Competitive Supplier will be responsible for any losses or costs arising from errors in

the notification of Eligible Consumers solely to the extent that such errors are the result of the negligent acts or omissions of, or breach of this ESA by, the Competitive Supplier. The Program Administrator will be liable for any losses or costs arising from the errors in the notification of Eligible Consumers to the extent that such errors are the result of the negligent acts or omissions of, or breach of this ESA by, the Program Administrator. The Municipality shall not be responsible for any such errors by the Competitive Supplier or the Program Administrator in any event.

3.3 CONSUMER AWARENESS

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

3.4 ENROLLMENT

3.4.1 Participating Consumers

All Eligible Consumers will be enrolled in the Program as of the Service Commencement Date, thus becoming Participating Consumers, under the terms of this ESA unless they opt-out during the 30-day period following initial communication through the Opt-Out Notice. Participating Consumers may disenroll from the Program at any time thereafter with no fee or penalty. The Municipality shall authorize the Distribution Utility to provide to Competitive Supplier or to the Program Administrator (or its designee), a list of the account numbers and any other information necessary for Competitive Supplier to commence Firm Full-Requirements Power Supply to such Participating Consumers as of the Service Commencement Date. The Competitive Supplier shall be responsible for enrolling all Eligible Consumer that did not opt-out, thus becoming Participating Consumers, through data transactions (e.g., EDI) submitted to the Distribution Utility for initial enrollment in the aggregation and all enrollments thereafter.

3.4.2 New Consumers

If New Consumers do not opt-out of the Program as provided in ARTICLE 3.2, such New Consumers will be automatically enrolled by Competitive Supplier in the Program at the rates reflected in EXHIBIT A. Competitive Supplier shall enroll such New Consumers in accordance with applicable PSC and Distribution Utility rules.

3.4.3 Consumers Opting Out; Consumers Enrolling or Re-Enrolling

At any time during the Term of this ESA, consumers who were previously Participating Consumers that have previously opted out of the Program may request that they be enrolled

or re-enrolled in the Program. Competitive Supplier shall provide Firm Full-Requirements Power Supply to such consumers, at the price defined in EXHIBIT A.

3.4.4 Consumers served by Third-Parties

It is understood by the Parties that a consumer being served competitive supply by third-parties will not be automatically enrolled under this ESA until when such other competitive supply terminates or is otherwise completed. Notwithstanding the foregoing, Competitive Supplier agrees that consumers under such third-party competitive supply programs may affirmatively opt-in at any time and receive Firm Full-Requirements Power Supply, thereby becoming Participating Consumers hereunder. New Consumers who opt-in as provided in this ARTICLE 3.4.4 shall be enrolled in the Program at the rates reflected in EXHIBIT A.

3.4.5 Opt-Out/Dis-enroll

Eligible Consumers are free to opt-out of, and Participating Consumers are free to dis-enroll from the Program. Upon Participating Consumers' notice to the Competitive Supplier of such termination Competitive Supplier will notify Distribution Utility within five (5) business days to resume utility service as soon as possible after such notification, but all Parties understand and acknowledge that Competitive Supplier will continue to provide and charge for electricity services as described herein until such time as the Distribution Utility has returned the customer to the customer's preferred service. For avoidance of doubt, Participating Consumers' notice of termination to Competitive Supplier may be directly to Competitive Supplier, or indirectly from Program Administrator.

Additionally, Competitive Supplier shall submit all Participating Consumer drops via EDI to the Distribution Utility in accordance with the rules and regulations set forth by the PSC in Case 98- M-0667.

3.4.6 Termination Fees

There shall be no fees or charges imposed for Eligible Consumers or Participating Consumers to opt- out, dis-enroll or terminate service.

3.5 RESPONSIBILITY FOR ERRORS

3.5.1 Competitive Supplier will correct, and be responsible for any losses or costs arising from, errors directly caused by Competitive Supplier's billing, enrollment processes, printing or mailing of Opt-Out Notices, and/or notification of Eligible Consumers, except to the extent that:

(a) such errors are caused by Program Administrator, Municipality, or Eligible or Participating Consumers, or

(b) such errors are caused by errors or omissions in the information provided to it by the Distribution Utility; and it was reasonable for Competitive Supplier to rely upon the provided information.

3.5.2 In the event that, and without limiting Program Administrator and/or Municipality's remedies hereunder, Competitive Supplier is responsible for such errors, it shall make Commercially Reasonable efforts to correct such error(s).

ARTICLE 4 – TERM OF CONTRACT AND TERMINATION

4.1 TERM

This ESA shall be effective on the Effective Date, provided, however, that Competitive Supplier's obligation to provide Firm Full-Requirements Power Supply shall commence on the Service Commencement Date with regard to each Participating Consumer, and shall terminate on the Service Termination Date with regard to each Participating Consumer, each as set forth in EXHIBIT A, unless terminated earlier under ARTICLE 4.2 below (the "**Term**").

4.2 TERMINATION; DELAY OF SERVICE COMMENCEMENT DATE

Without limiting a Party's remedies hereunder, this ESA may be terminated at any time upon written notice:

- a) by the Municipality, or the Competitive Supplier (such Party in these circumstances, the "Non- Defaulting Party"), if the other Party (such Party the "**Defaulting 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, ARTICLE 3.5, ARTICLE 5.9, ARTICLE 8.6 and ARTICLE 9), but excluding the failure to provide or arrange for Firm Full-Requirements Power Supply, which is addressed in ARTICLE 4.2(f), within sixty (60) days following written notice to do so by the non-breaching party; or
- b) by the Municipality, or the Competitive Supplier, if any material provision or condition of this ESA be finally adjudged invalid by any court of competent jurisdiction, or if any Governmental Authority exercises any lawful jurisdiction so as to invalidate or disapprove this ESA in whole or in significant part; or
- c) by the Municipality, if a Regulatory Event that is not a Qualifying Regulatory Event (i) affects the Competitive Supplier, and (ii) Competitive Supplier incurs costs and chooses to allocate and collect excess costs from Participating Consumers; or
- d) by the Municipality, if a court, PSC or other lawful authority makes an adjudication that nullifies or materially alters any of the provisions of ARTICLE 6 – ROLE OF THE MUNICIPALITY; or
- e) by the Municipality, (i) if an order is entered against the Competitive Supplier approving a petition for an arrangement, liquidation, dissolution or similar relief relating to Bankruptcy or insolvency and such order remains unvacated for thirty (30) days; or (ii) immediately if the Competitive Supplier shall file a voluntary petition in Bankruptcy or any petition or answer seeking any arrangement, liquidation or dissolution relating to Bankruptcy, insolvency or other relief for debtors or shall seek, consent to, or acquiesce in appointment of any trustee, receiver, or liquidation of any of Competitive Supplier's property; or
- f) notwithstanding the foregoing, the failure of Competitive Supplier to provide or arrange for Firm Full-Requirements Power Supply to Participating Consumers, in the absence

of Force Majeure or the Municipality's failure to perform, shall constitute an act of default, and the Municipality may terminate this ESA upon giving written notice and without a cure period. In the event the Competitive Supplier has performed its obligations hereunder and its failure to arrange for or provide Firm Full-Requirements Power Supply is a direct result of actions or non-actions by any transmission service provider, the Distribution Utility, or the NYISO, the Competitive Supplier's failure to arrange for or provide Firm Full-Requirements Power Supply would be subject to remedy or cure as provided in ARTICLE 4.2(a); or

- g) notwithstanding anything to the contrary in this Agreement, Competitive Supplier may immediately terminate this Agreement upon written notice if the Service Commencement Date for Participating Consumers representing at least ninety (90%) percent of the load is delayed more than thirty (30) days for any reason other than a delay caused by Competitive Supplier.

4.3 OBLIGATIONS UPON TERMINATION

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

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

4.4 EXTENSION

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

ARTICLE 5 – CONTINUING COVENANTS

5.1 STANDARDS OF MANAGEMENT AND OPERATIONS

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

with all relevant industry standards and practices for the supply of electricity to Participating Consumers; and that, at all times with respect to Participating Consumers, it exercises good practice for a Competitive Supplier and employs all Commercially Reasonable skills, systems and methods available. For avoidance of doubt, Competitive Supplier shall timely inform utility of all requests by Participating Consumers to leave the program.

5.2 CUSTOMER SERVICE ACCESS

The Competitive Supplier agrees to provide, or cause to be provided, certain customer services to Eligible and Participating Consumers. Such services shall be reasonably accessible to all Eligible and Participating Consumers, shall be available during normal working hours, shall allow Eligible and Participating Consumers to transact business they may have with the Competitive Supplier, and shall serve as a communications liaison among the Competitive Supplier, the Municipality, and the Distribution Utility. A toll-free telephone number will be established by Competitive Supplier and be available for Eligible and Participating Consumers to contact Competitive Supplier during normal business hours (9:00 a.m. – 6:00 p.m. Eastern Time, Monday through Friday), as well as 9:00 a.m.-1:00 p.m. on Saturday, to resolve concerns, answer questions and transact business with respect to the service received from Competitive Supplier. To the extent practicable, the Administrator will provide to Municipality, and Municipality will post, program-related information on the Municipality's website which will be available to Eligible and Participating Consumers for general information, comparative pricing, product, and service information, and other purposes. The Competitive Supplier will not be responsible for the accuracy of information on the website and will not be liable for any damages to Eligible and Participating Consumers as a result of misinformation or mistake on the website.

5.3 RESPONDING TO REQUESTS FOR INFORMATION

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

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

5.4 ARRANGING FOR FIRM FULL-REQUIREMENTS POWER SUPPLY

Except as otherwise stated herein or in any exhibit made a part hereof, Competitive Supplier shall participate in or make appropriate arrangements with the NYISO, any relevant regional transmission organization, wholesale suppliers or any other entity to provide for an uninterrupted flow of Firm Full- Requirements Power Supply to the Distribution Utility for delivery to Participating Consumers. In the event the Competitive Supplier is unable to meet its obligations as described above, the Competitive Supplier shall utilize such arrangements and exercise all Commercially Reasonable efforts as may be necessary to continue to serve Participating Consumers under the terms of this ESA, and shall bear any costs it may incur in carrying out these efforts and obligations. Notwithstanding anything to the contrary herein, Competitive Supplier shall not be responsible in the event that, through no fault of the Competitive Supplier or its Associated Entities, the Distribution Utility disconnects, curtails or reduces service to Participating Consumers (notwithstanding whether such disconnection is directed by NYISO).

5.5 NON-DISCRIMINATORY PROVISION OF SERVICE

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

5.6 APPROVAL OF GENERAL COMMUNICATIONS

Competitive Supplier shall cooperate with the Municipality and Program Administrator in the drafting and sending of messages and information to Eligible or Participating Consumers concerning the Program or any matter arising under or related to this ESA. Competitive Supplier shall, prior to sending, whether directly or through its Associated Entities, any direct mail, advertising, solicitation, bill insert, electronic mail, or other similar written or electronic communication (collectively, "**General Communications**") to Eligible or Participating Consumers (but excluding individually drafted or tailored communications responding to the specific complaint or circumstance of an individual consumer), provide a copy of such General Communication to the Municipality and to Program Administrator for its review to determine whether it is consistent with the purposes and goals of the Municipality

and Program Administrator, except that approval shall not be required for any communications that are standardized by the Governmental Rules or applicable law, in which case they will be considered already approved by all Parties. For all other reviews the Municipality and Program Administrator understand that time is of the essence regarding their review and that Competitive Supplier is dependent on their timeliness to its obligations are met. The Municipality or Program Administrator shall have the right to disapprove such General Communications and suggest revisions within seven (7) calendar days (not including weekends and holidays) of receiving a copy thereof if it finds the communication inconsistent with the purposes and goals of the Municipality, factually inaccurate or likely to mislead; provided, however that there shall be no such right of disapprove for any communication (a) regarding any emergency situation involving any risk to the public health, safety or welfare; or (b) in the nature of routine monthly or periodic bills, or collection notices, except that, with regard to any bill insert or message included in such bill not within the scope of (a) above, Municipality or Program Administrator shall have such right of disapproval. If the Municipality objects to any General Communication on the grounds it is inconsistent with the purposes and goals of the Municipality, the Competitive Supplier, after consultation as provided in this ARTICLE 5.6, may nevertheless elect to send such General Communication provided that it: (i) clearly indicates on such communication that it has not been endorsed by the Municipality, and (ii) has previously provided all Participating Consumers a meaningful chance to opt not to receive such General Communications. The Municipality may reject or exclude any proposed General Communication that, in its reasonable judgment, is contrary to the interests and objectives of the Program or the Municipality, provided, however, any such right of rejection or exclusion shall not apply to Competitive Supplier's notice to exercise or enforce its rights under the ESA or any agreement with customer, including but not limited to any notice of Force Majeure or change in law.

5.7 COMMUNICATION OF INSERTS AND MESSAGES

Competitive Supplier agrees that if it communicates with Participating Consumers directly (or if it is provided a certain number of characters on the Distribution Utility bill for discretionary communication), and unless prevented for regulatory or other such reasons from doing so, it shall allow the Municipality or Program Administrator to include no less than three (3) inserts per year into such communications, provided that the Program Administrator, where appropriate pays the cost of printing and reproducing such insert and any incremental postage or handling costs the Competitive Supplier may incur as a result of including such insert. Competitive Supplier shall have the right to disapprove such General Communications (other than those pertaining to the Municipality's distributed energy resources efforts including but not limited to, demand-side management, energy efficiency programs and technology, and renewable energy programs, if applicable) and suggest revisions within seven (7) calendar days after receipt (not including weekends and holidays) if it finds the communication inconsistent with its business interests, factually inaccurate or likely to mislead; provided, however that there shall be no such right of disapproval for any communication which has been ordered by PSC or any other Governmental Authority to be so communicated.

5.8 PARTICIPATING CONSUMER LISTS

To the extent not prohibited by any Governmental Rule or expressly prohibited by any Participating Consumer(s), the Competitive Supplier shall, upon request of the Municipality or of Program Administrator, provide aggregate consumption information as the Municipality or Program Administrator may request to the extent such information is available to Competitive Supplier. The Competitive Supplier will provide the sync list/file of Participating Consumers to the Administrator with the frequency the sync list/file is provided by the Distribution Utility.

Competitive Supplier shall use Commercially Reasonable efforts to provide updates to Participating Consumer lists in an electronic format reasonably acceptable to both Parties on a weekly basis. This weekly update shall include a minimum of unique identifier (account number and/or point of delivery ID) account status, service end date, and rate for each Participating Consumer who has had any change since the previous update.

Notwithstanding anything to the contrary in this Agreement, the transmission frequencies of the lists as described in this ARTICLE 5.8 may deviate from those stated above until such time as Competitive Supplier has systems or processes that are automated and capable of creating such files.

5.9 COMPLIANCE WITH LAWS

The Parties shall promptly and fully comply with all existing and future Governmental Rules of all Governmental Authorities having jurisdiction over the activities or obligations covered by this ESA. Program Administrator and Municipality shall comply with all applicable orders from any Governmental Authority regarding the content of the Opt-Out Notice or education and outreach process to Eligible Consumers regarding the Program and participation in the Program. Each of the Parties shall comply with all lawful requests of the Department of Public Service that relate to the services to be provided in accordance with this ESA.

5.10 CONSENT

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

5.11 CREDITWORTHINESS

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

5.12 COMPLIANCE WITH RFP

Competitive Supplier: (i) represents and warrants that to its knowledge, all representations and statements of fact made as part of its RFP response are true and accurate as of the Effective Date; (ii) covenants that it shall perform all obligations of Competitive Supplier made as part of its RFP response to the extent set forth in this Agreement; and (iii) to its knowledge, as of the Effective Date is compliant with the terms and conditions set forth in the RFP. In the event of any conflicts between a Party's obligations, representations and warranties set forth in this Agreement and those set forth in an RFP, the obligations, representations, warranties set forth in this Agreement shall govern.

ARTICLE 6 – ROLE OF THE MUNICIPALITY

Under this ESA, the Municipality shall not actually receive, take title to, or be liable for the supply or delivery of Firm Full-Requirements Power Supply in any manner whatsoever. The Parties specifically agree that the role of the Municipality is established under the Joule Order, other applicable PSC orders, and Local Law and may include negotiating the terms and conditions under which Firm Full- Requirements Power Supply will be provided by the Competitive Supplier under this ESA. Except as may otherwise be provided herein, it is the sole obligation of the Competitive Supplier to arrange for delivery of Firm Full- Requirements Power Supply to Participating Consumers. The Parties agree that, with regards to electricity, Municipality is not a “public utility company” or providing any “public utility service” within the meaning of GML 360 and Article 4 of the Public Service Law as a result of this ESA. Should a court, PSC, or other lawful authority adjudicate to the contrary, the provisions of 4.2(b) shall apply. However, the Municipality may be considered to be operating a Community Choice Aggregation Implementation Plan pursuant to Joule Order and Local Law. Except as may otherwise be agreed by the Parties in writing, the Competitive Supplier shall take no action, whether directly or through its Associated Entities, that would make the Municipality liable to any Participating Consumer due to any act or failure to act on the part of the Competitive Supplier or its Associated Entities relating to the delivery of, supply of, or billing for Firm Full-Requirements Power Supply.

ARTICLE 7 – ROLE OF PROGRAM ADMINISTRATOR

7.1 PROGRAM ADMINISTRATOR RIGHTS AND DUTIES

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

Program Administrator, agrees to:

- a) Provide the involved agencies and parties, such as but not limited to the PSC, DPS or Distribution Utility, requested information about and documentation of the actions undertaken by the Municipality in furtherance of enabling participation in the Program;
- b) Prepare, or cause to be prepared, and provide the Municipality with requested and non-confidential information that the involved agencies and parties, such as but not limited to the PSC, DPS or Distribution Utility, provide to the Program Administrator in furtherance of establishing the Program;
- c) Upon execution hereof, initiate all the necessary steps to secure the needed information to fulfill the customer notification requirements of the Joule Order, including but not limited to the following: file final versions of customer opt-out letters, after the supply procurement is finalized, that provide details on Program contracts.
- d) File any request for proposals or similar solicitation seeking electricity supply or other energy services and any draft correspondence on such services with DPS Staff.
- e) Provide the Municipality with timely communications content to effect customer notification requirements for approval, such approval not to be unreasonably withheld, given the projected schedule of Program's implementation;
- f) Fulfill any other responsibilities as may reasonably adhere to facilitating the implementation of the Program; and
- g) Fulfill any other responsibilities as set forth in this agreement herein.

7.1.2 Upon request of Competitive Supplier, Program Administrator will provide additional quality assurance and review of data. Competitive Supplier should request this service at least five (5) business days in advance of deliverable. Program Administrator will invoice supplier at an hourly rate of \$80 for this service.

7.2 INDEPENDENT CONTRACTOR

The Parties agree that neither Program Administrator nor Municipality is an agent or employee of Competitive Supplier for any purpose. All expenses which are incurred by Program Administrator in connection with this ESA shall be borne wholly and completely by Program Administrator, except as otherwise agreed herein or in writing. Program Administrator shall be responsible for all state, federal, and local taxes, including estimated taxes and social security and employment reporting for Program Administrator or any employees or agents of Program Administrator.

ARTICLE 8 – PRICES AND SERVICES; BILLING

8.1 SCHEDULE OF PRICES AND TERMS

Competitive Supplier agrees to provide Firm Full-Requirements Power Supply and other related services as expressly set forth herein in accordance with the prices and terms

included in EXHIBIT A to this ESA, which exhibit is hereby incorporated by reference into this ESA.

8.2 OBLIGATION TO SERVE

As between the Parties, and except as may otherwise be agreed by the Parties in writing, Competitive Supplier has the sole obligation to obtain sources of supply, whether from generating facilities owned or controlled by its Affiliates, through bilateral transactions, or the market, as may be necessary to provide Firm Full- Requirements Power Supply for all of the Participating Consumers under the Program. Competitive Supplier, except as explicitly limited by the terms included in EXHIBIT A, shall be obligated to accept all Eligible Consumers that have not opted-out, regardless of their location or energy needs provided such consumers are eligible under the applicable regulations and tariffs of the Distribution Utility.

8.3 METERING

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

8.4 TITLE

Title to Firm Full-Requirements Power Supply will transfer from Competitive Supplier to Participating Consumers at the Point of Sale. Notwithstanding anything to the contrary herein, the Parties acknowledge that the Competitive Supplier does not own or control any of the transmission or distribution facilities used to deliver electricity, has no responsibility for system reliability, and that these functions are solely the responsibility of the NYISO and/or the Distribution Utility, and accordingly that Competitive Supplier shall have no liability on account of any acts or omissions of these parties or for any interruption or failure to deliver arising therefrom.

In accordance with the rules governing the supply of electricity in the service territory of the Distribution Utility, Competitive Supplier will be responsible for any and all losses incurred on the local network transmission systems and distribution systems, as determined by the Distribution Utility.

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

8.6 PARTICIPATING CONSUMER BILLS

Competitive Supplier shall accurately and timely process data received from, and provide accurate and timely data to, the Distribution Utility to facilitate regular billing. Competitive Supplier's repeated failure to materially comply with this provision in a manner that impacts the delivery of electricity and/or invoices to Participating Consumers shall be deemed a material breach of this Agreement unless such failure is caused by Distribution Utility, Municipality, consumers, or Program Administrator; provided, however, that Competitive Supplier shall be afforded a written notice of the default and a period of time to cure as set forth in ARTICLE 4.2(a).

8.7 REGIONAL AND LOCAL TRANSMISSION

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

8.8 TAXES

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

ARTICLE 9 – ADDITIONAL COMPLIANCE BY COMPETITIVE SUPPLIER

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

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

ARTICLE 10 – SERVICE PROTECTIONS FOR CONSUMERS

10.1 UNIFORM BUSINESS PRACTICES COMPLIANCE

Competitive Supplier agrees that it and its Associated Entities directly or indirectly involved in providing services or meeting the Competitive Supplier's obligations under the ESA shall comply with the provisions of the Uniform Business Practices, as applicable to Competitive Supplier, and any amendments thereto, notwithstanding any relief from the Uniform Business Practices offered by the PSC to the Program. Furthermore, the Parties acknowledge and agree that any right of ESCO to discontinue service to any Participating Consumer and return the consumer to full utility service shall be subject to the Uniform Business Practices and to any limitations contained in this ESA. Without limiting the foregoing, the Parties intend that this ESA is a "sales agreement" for purposes of Section 5.H.4.a of the Uniform Business Practices. In addition, the Competitive Supplier and its Associated Entities agrees to comply with any code of conduct or policies the PSC may adopt in accordance with the Joule Order and to all related orders of Case 14-M-0224 to which the Program Administrator is required to adhere, notwithstanding any relief from the Uniform Business Practices offered by the PSC to the Program.

10.2 DESCRIPTION OF COMPETITIVE SUPPLIER'S PROCEDURES AND SERVICES

The Competitive Supplier shall, on or before the Effective Date or upon request, provide a written, detailed description of its billing and termination procedures, customer services, confidentiality and related practices and procedures for approval by the Municipality (which approval shall not be unreasonably withheld). Such written description shall also include the Competitive Supplier's plans for protecting the rights of Participating Consumers under the Home Energy Fair Practices Act which requires that all utility customers be treated fairly with regard to application for service, customer billing, and complaint procedures.

If the Participating Consumer(s) so permit(s) and to the extent required by the Governmental Rules, the Competitive Supplier agrees to provide notice to the Municipality and Administrator of any consumer complaints received from a Participating Consumer, and the Municipality shall have the right, but not the obligation, to participate (directly or through the Program Administrator) in resolution of the dispute, to the extent that such complaints relate directly to the Program, and to the extent permitted by PSC regulations and other applicable law. The Municipality and Program Administrator understand and agree that time is of the essence regarding any review of consumer complaints and any participation they wish to have in the response and/or resolution, in order for Competitive Supplier to meet its obligations herein and in compliance with Governing Rules. The failure to timely submit such written description by the Competitive Supplier (as described above), or the submission of practices and procedures

which materially fail to comply with PSC regulations and policies, shall be deemed grounds for termination of this ESA, at the discretion of the Municipality after providing written notice by the Municipality or the Program Administrator, of such failure to the Competitive Supplier and allowing the Competitive Supplier sixty (60) days to cure such failure.

10.3 DISPUTE RESOLUTION

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

ARTICLE 11 – NON-DISCRIMINATION IN HIRING AND EMPLOYMENT

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

ARTICLE 12 – POWER SUPPLY INFORMATION AND ACCESS TO INFORMATION

12.1 POWER SUPPLY INFORMATION

12.1.1 MONTHLY REPORT OF SALES (COMMISSIONS FILE)

Competitive Supplier shall provide the Program Administrator with a monthly report of sales, commissions file, which will contain all reporting as agreed in writing by the Parties including at a minimum: (i) the actual kWh sales, rate and commission due to Program Administrator for each meter read of the reporting period (with billing "from and to" date); (ii) unique identifier used to enroll customer (account number and/or point of delivery ID), status (e.g., active or cancelled), service class and municipality; and (iii) other information reasonably requested. The monthly report will be due to the Program Administrator within thirty (30) days following the close of each month. This information shall be provided in electronic format, satisfactory to the Program Administrator.

12.1.2 CONSUMER-RELATED DATA

On and after the Service Commencement Date, Competitive Supplier will maintain consumer-related data in electronic form including utility account number, pre-enrollment ID, point of delivery ID (when in existence), billing name, billing address, service address, meter read/cycle, historical usage, demand, ICAP (Installed Capacity) data, supply rate, service start date and status (e.g., active or cancelled). Subject to any restrictions of confidentiality or data security as described in ARTICLE 2.5, Competitive Supplier shall

make such information available to Program Administrator and its contractors at such time and in a commercially reasonable manner as reasonably requested by Program Administrator. Competitive Supplier shall transmit weekly files to Program Administrator indicating any change in Participating Consumer records per ARTICLE 5.8 (e.g., customer dropped, enrolled, changed supply). A violation of this ARTICLE 12.1.2 shall be grounds for termination under ARTICLE 4.2(a) unless such violation is due to a system or reasonable administrative error and the Competitive Supplier demonstrates to the Municipality's satisfaction that such system or administrative error exists and that the Competitive Supplier is acting in good faith to resolve such issue.

12.1.3 STANDARD OF CARE

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

12.2 POWER SUPPLY REPORT

Unless the Environmental Disclosure Program labeling requirement is waived by PSC, Competitive Supplier shall present a copy of the current Environmental Disclosure Program label annually or as and when required by PSC of all Competitive Suppliers to be disclosed to their Participating Consumers, which includes information pertaining to Competitive Supplier's power supply and a reasonably detailed description of the sources of Competitive Supplier's power supply used to serve Participating Consumers pursuant to this ESA, except to the extent such disclosure would violate any confidentiality obligations of Competitive Supplier. Competitive Supplier shall still provide Environmental Disclosure Program labels to Administrator, consistent with Competitive Supplier's practices and in compliance with applicable laws.

12.3 BOOKS AND RECORDS

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

12.4 COPIES OF REGULATORY REPORTS AND FILINGS

Upon reasonable request, Competitive Supplier shall provide to the Municipality a copy of each public periodic or incident-related report or record applicable to Competitive Supplier's obligations under this ESA and which it files publicly with any New York or federal agency regulating rates, service, compliance with environmental laws, or compliance with

affirmative action and equal opportunity requirements, unless the Competitive Supplier is required by law or regulation to keep such reports confidential. Competitive Supplier shall be reimbursed its reasonable costs of providing such copies, if only available in hard copy.

ARTICLE 13 – RESOLUTION OF DISPUTES; CHOICE OF LAW AND FORUM

13.1 CHOICE OF LAW AND FORUM

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

13.2 DISPUTE RESOLUTION

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

ARTICLE 14 – INDEMNIFICATION

14.1 BY THE COMPETITIVE SUPPLIER

Subject to the limitations herein, in addition to any other remedies available to the Municipality and Program Administrator at law or equity, and notwithstanding any other provision contained herein, the Competitive Supplier shall indemnify, defend and hold harmless the Municipality and the Program Administrator and their Associated Entities (“**Program Indemnified Parties**”) and the Program Indemnified Parties’ elected officials, officers, owners, directors, employees, and agents, from and against any and all costs, claims, liabilities, damages, expenses (including reasonable attorneys’ fees), causes of action, suits or judgments, incurred by, on behalf of or involving any one of the foregoing parties to the extent arising directly from or in connection with (i) any material breach by Competitive Supplier or its Associated Entities of

its or their obligations, covenants, representations or warranties contained in this ESA and not resulting from the actions (or omissions where there is a duty to act) of the NYISO, Distribution Utility, the Municipality, the Program Administrator or any of their elected officials, officers, owners, directors, employees, representatives, independent contractors or agents, if any or (ii) any action or omission taken or made by the Competitive Supplier or its Associated Entities in connection with Competitive Supplier's performance of this ESA.

14.2 BY THE PROGRAM ADMINISTRATOR

Subject to the limitations herein, in addition to any other remedies available to the Competitive Supplier at law or equity, and notwithstanding any other provision contained herein, the Program Administrator shall indemnify, defend and hold harmless the Municipality and the Competitive Supplier and its Associated Entities ("**Supplier Indemnified Parties**") and the Supplier Indemnified Parties' officers, owners, directors, employees, and agents, from and against any and all costs, claims, liabilities, damages, expenses (including reasonable attorneys' fees), causes of action, suits or judgments, incurred by, on behalf of or involving any one of the foregoing parties to the extent arising directly from or in connection with (i) any material breach by Program Administrator or its Associated Entities of its or their obligations, covenants, representations or warranties contained in this ESA and not resulting from the actions (or omissions where there is a duty to act) of the NYISO, Distribution Utility, the Municipality, the Competitive Supplier or any of their elected officials, officers, owners, directors, employees, representatives, independent contractors or agents, if any or (ii) any action or omission taken or made by the Program Administrator or its Associated Entities in connection with Program Administrator's performance of this ESA.

14.3 NOTICE OF INDEMNIFICATION CLAIMS

In the event a Party seeks indemnification pursuant to this ARTICLE 14 -- INDEMNIFICATION, it shall notify the Indemnifying Party of the existence of a claim, or potential claim as soon as practicable after learning of such claim, or potential claim, describing with reasonable particularity the circumstances giving rise to such claim.

14.4 SURVIVAL

Notwithstanding any provision contained herein, the provisions of this ARTICLE 14 -- INDEMNIFICATION shall survive the termination of this ESA with respect to (i) any claims which occurred or arose prior to such termination and (ii) any losses occurring as a result of the termination; provided that any action related to such claims or losses must be commenced not later than two (2) years from the date of the termination 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 as follows:

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

- a) this ESA constitutes the legal, valid and binding contract of the Municipality enforceable in accordance with its terms, subject to applicable law;
- b) the execution, delivery and performance of this ESA are within the Municipality's powers, have been or will be duly authorized by all necessary action;
- c) Municipality has all authorizations necessary for it to legally perform its obligations under this ESA or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due;
- d) no Bankruptcy is pending or threatened against the Municipality;
- e) none of the documents or other written information furnished by or on behalf of Municipality to or for the benefit of the Competitive Supplier pursuant to this ESA, contains any untrue statement of a material fact or omits to state any material fact required

to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading; and

- f) Subject to the conditions set forth in ARTICLE 2.4, this ESA constitutes a legal, valid and binding obligation of the Municipality enforceable against it in accordance with its terms, and the Municipality has all rights such that it can and will perform its obligations to the Competitive Supplier in conformance with the terms and conditions of this ESA, subject to Bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally and general principles of equity.

15.3 BY THE PROGRAM ADMINISTRATOR

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

- a) this ESA constitutes the legal, valid and binding contract of Program Administrator enforceable in accordance with its terms, subject to applicable law
- b) the execution, delivery and performance of this ESA are within Program Administrator's powers, have been or will be duly authorized by all necessary action;
- c) Program Administrator has all authorizations from any Governmental Authority necessary for it to legally perform its obligations under this ESA or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due;
- d) no Bankruptcy is pending or threatened against Program Administrator;
- e) none of the documents or other written information furnished by or on behalf of Program Administrator to or for the benefit of the Competitive Supplier pursuant to this ESA, contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading; and
- f) subject to the conditions set forth in ARTICLE 2.4, this ESA constitutes a legal, valid and binding obligation of the Program Administrator enforceable against it in accordance with its terms, and the Program Administrator has all rights such that it can and will perform its obligations to the Competitive Supplier in conformance with the terms and conditions of this ESA, subject to Bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally and general principles of equity.

ARTICLE 16 -- INSURANCE

- 16.1 In order to help support the indemnifications provided in ARTICLE 14, and its other promises and covenants stated herein, Competitive Supplier shall secure and maintain, at its own expense, before the Effective Date and throughout the term of this ESA, unless otherwise specified, commercial general liability insurance of at least \$1,000,000

combined single limit and excess liability coverage of at least \$5,000,000 with insurers licensed to do business in the State of New York. Each of the required insurance policies shall be with insurers qualified to do business in the State of New York, with an A- or better rating for financial condition and financial performance by Best's Key Rating Guide, Property/Casualty Edition. In the event the Competitive Supplier's insurance carrier is downgraded to a rating of lower than Best's A-, Competitive Supplier shall have ninety (90) days to obtain coverage from a carrier with a rating of at least Best's A-. Proof acceptable to the Municipality that each such insurance coverage is in force and effect, and listing the Municipality as an additional insured on all policies, shall be submitted on or before the Effective Date and thereafter whenever renewed or requested by the Municipality. All insurers must be notified that the insurance policies must provide that a copy of any notice of cancellation or non-renewal will be sent to the Municipality.

- 16.2 With respect to any of the insurance policies provided by the Competitive Supplier pursuant to these requirements which are "claims made" policies, in the event at any time such policies are canceled or not renewed, the Competitive Supplier shall provide a substitute insurance policy with terms and conditions and in amounts which comply with these requirements and which provides for retroactive coverage to the date of the cancellation or non-renewal of the prior "claims-made" policy. With respect to all "claims made" policies which have been renewed, the Competitive Supplier shall provide coverage retroactive to the Effective Date under this ESA. All said substitute or renewed "claims made" policies shall be maintained in full force and effect for not less than three (3) years after the date of the termination of the ESA.
- 16.3 Competitive Supplier, to the extent required by law, must provide worker's compensation insurance meeting all applicable state and federal requirements.

ARTICLE 17 -- REGULATORY EVENT/NEW TAXES

17.1 REGULATORY EVENT

If a Regulatory Event occurs, the Parties shall use their best efforts to reform this ESA to give effect to the original intent of the Parties. If despite such best efforts, a Regulatory Event is such that it only affects Competitive Supplier, and not other ESCOs similarly situated in the market, and both Program Administrator and Municipality agree that Competitive Supplier is incurring excess costs as a result thereof and agrees that Competitive Supplier may recover such costs, such amount shall be allocated to and collected from Participating Consumers on a per kWh basis through applicable monthly invoice(s).

17.2 QUALIFYING REGULATORY EVENT

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

17.3 NEW TAXES

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

ARTICLE 18 -- MISCELLANEOUS

18.1 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.

18.2 NO ASSIGNMENT WITHOUT PERMISSION

Competitive Supplier or Program Administrator shall not directly or indirectly assign this ESA or any of its rights, obligations and privileges under this ESA without the prior written approval of the Municipality except (i) in the event of the sale of all or substantially all of its retail electricity business to an entity with credit and service ability to deliver on all material obligations of the assigning party under this ESA, (ii) to an Affiliate, or (iii) by Competitive Supplier in connection with any financing or other financial arrangements involving the accounts, revenues or proceeds hereof. Such approval may be denied at the reasonable discretion of the Municipality, including if the proposed assignee does not have the experience and financial ability to fulfill all obligations of the Competitive Supplier or Program Administrator in the ESA. Notwithstanding the above, any assignment of this ESA by the Competitive Supplier, whether as the result of the sale of all or substantially all of the Competitive Supplier's business related to this ESA or otherwise, shall be subject to the following requirements: (i) Competitive Supplier shall provide the Municipality with notice of the proposed assignment at least sixty (60) days prior to such assignment; (ii) Competitive Supplier's assignee shall agree in writing to be bound by the terms and conditions of this ESA; and (iii) Competitive Supplier and such assignee shall, at least 60 days in advance of any assignment, reasonably demonstrate to Municipality that assignee has the experience and financial ability to fulfill all obligations of the Competitive Supplier in the ESA. The Municipality or Program Administrator may assign this ESA without the prior consent of Competitive Supplier provided that the proposed assignee has at least the same financial ability as the Municipality or Program Administrator and such assignment would not materially impair the rights and interests of Competitive Supplier under this ESA. The rights and obligations created by this ESA shall inure to the benefit of, and be binding upon, the successors and permitted assigns of, the respective Parties hereto.

18.3 DIRECT MARKETING

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

In no event may Competitive Supplier directly or through any of its Associated Entities market to, offer or provide any product or service to Participating or Eligible Consumers other than the electricity product(s) provided as part of this Agreement, except with the written consent of the Municipality and Program Administrator. For the purposes of this provision, "market to" shall include any telephone call, mailing, electronic mail, or other contact between the Competitive Supplier and the consumer.

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

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

18.4 NOTICES

All notices, demands, requests, consents or other communications required or permitted to be given or made under this ESA shall be in writing and addressed to the Parties as designated in the Contact for Notices set forth in EXHIBIT B.

Notices hereunder shall be deemed properly served (i) by hand delivery, on the day and at the time on which delivered to the Contact for Notices at the address set forth in Exhibit B of 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 Contact for Notices at the address set forth in Exhibit B of 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 Contact for Notices at the address set forth in Exhibit B of this ESA. Any party may change its address and contact person for the purposes of this ARTICLE 18.3 by giving notice thereof in the manner required herein.

18.5 CHANGES IN EMERGENCY AND SERVICE CONTACT PERSONS

In the event that the name, telephone number, or other contact information of any emergency or service contact for the Competitive Supplier changes, Competitive Supplier shall give prompt notice to the Municipality and the Program Administrator in the manner set forth in ARTICLE 18.3. In the event that the name, telephone number, or other contact information of any such contact person for the Municipality changes, prompt notice shall be given to the Competitive Supplier and the Program Administrator in the manner set forth in ARTICLE 18.3. In the event that the name, telephone number, or other contact information of any such contact person for the Program Administrator changes, prompt notice shall be given to the Competitive Supplier and the Municipality in the manner set forth in ARTICLE 18.3.

18.6 ENTIRE AGREEMENT; AMENDMENTS

This ESA constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. This ESA may only be amended or modified by a written instrument signed by all Parties hereto, duly authorized to sign such instrument.

18.7 FORCE MAJEURE

If by reason of Force Majeure any Party is unable to carry out, either in whole or in part, its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (i) the non-performing Party, within two (2) weeks after the occurrence of the Force Majeure, gives the other Party hereto written notice describing the particulars of the occurrence (the “**Force Majeure Notice**”); (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 continues for a period of thirty (30) days or longer from the date of the Force Majeure Notice, or (ii) an event of Force Majeure arising from any other cause continues for a period of one hundred eighty (180) days or longer from the date of the Force Majeure Notice, any Party may terminate this ESA by sending the other Party a written notice as set forth in ARTICLE 4.2; provided, however, that the same shall not constitute a default under this ESA and shall not give rise to any damages.

18.8 EXPENSES

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

18.9 NO JOINT VENTURE

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

18.10 INTERPRETATION

For purposes of this Agreement, (a) the words "include," "includes" and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (y) to sections, schedules, and exhibits mean the sections of, and schedules and exhibits attached to this Agreement; and (z) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The schedules and exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein. In the event of any conflict between EXHIBIT A or EXHIBIT B, and any other provisions of this Agreement, the provisions of EXHIBIT A or EXHIBIT B shall govern. All references to "\$" or "dollars" mean the lawful currency of the United States of America. Whenever the masculine is used in this Agreement, the same shall include the feminine and whenever the feminine is used herein, the same shall include the masculine, where appropriate. Whenever the singular is used in this Agreement, the same shall include the plural, and whenever the plural is used herein, the same shall include the singular, where appropriate.

18.11 COUNTERPARTS; DIGITAL SIGNATURES

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

18.12 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 with respect to an obligation to the waiving Party and shall only be effective if made in writing and signed by the Party who is making such waiver.

18.13 ADVERTISING LIMITATIONS

Competitive Supplier and Municipality agree not to use, whether directly or through any of its Associated Entities, the name of the other Party, or make any reference to the other Party in any advertising or other information to be distributed publicly for marketing purposes, unless such other Party expressly agrees to such usage in writing. The Municipality acknowledges that the Competitive Supplier or its Affiliates own the exclusive right to the trademarked logo and trade name used by Competitive Supplier. No right, license or interest in this trademark and/or trade name is granted to the Municipality hereunder, and the Municipality agrees that it shall not assert any right, license or interest with respect to such trademark and/or trade name.

18.14 PRESS RELEASES

The Parties agree to jointly review and provide written approval to the other prior to issuance of all media press releases regarding this Agreement; provided, however, that nothing herein shall require a Party to provide a Party who is in breach of this Agreement, and the breach remains uncured for the applicable cure period, the opportunity to review or approve a press release in relation to such breach. Approval of press releases will not be unreasonably withheld. The Parties agree to cooperate in good faith prior to the issuance of any press release with respect to this ESA, such cooperation to include agreement as to the form, substance and timing of such formal press release.

18.15 HEADINGS AND CAPTIONS

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

18.16 SURVIVAL OF OBLIGATIONS

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

ARTICLE 19 -- REMEDIES

19.1 GENERAL

Subject to the limitations set forth in ARTICLE 19.2 below, the Parties reserve and shall have all rights and remedies available to each of them at law or in equity with respect to the performance or non- performance of the other Party hereto under this ESA.

19.2 LIMITATIONS OF LIABILITY

NO PARTY HERETO SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, CONNECTED WITH OR

RESULTING FROM PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER SUCH CLAIMS ARE BY STATUTE, ARE BASED UPON BREACH OF WARRANTY, TORT, CONTRACT OR OPERATION OF LAW.

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

19.3 DISCLAIMER

EXCEPT AS EXPRESSLY PROVIDED HEREIN, EACH PARTY MAKES NO WARRANTIES, WHETHER EXPRESS OR IMPLIED, OF THE IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

19.4 CONFIDENTIALITY.

This Agreement and all information shared between the Parties regarding this Agreement and the services to be provided hereunder is strictly confidential and shall not be disclosed by a Party (except to the Party's Affiliates, Associated Entities, members, directors, contractors, employees, lenders, counsel and other advisors, permitted assignees, or prospective purchasers who have a need to know the information and have agreed to treat such information as confidential) without the prior written consent of the other Party, except as required by Governmental Rule or in connection with protecting or enforcing a Party's rights hereunder. Disclosure of any information by a Party if required by Governmental Rule shall not constitute a breach of this ESA provided that such Party notifies the other Parties of any such requirement in order to provide the other Parties a reasonable opportunity to seek an appropriate protective order; provided, however, if the other Parties does not obtain a protective order or other remedy against disclosure, the disclosing Party agrees to furnish only that portion of the Information which the disclosing Party is legally required to furnish.

[SIGNATURE PAGE TO FOLLOW]

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

Dated: as of _____ (the “**Effective Date**”)

(NAME OF COMPETITIVE SUPPLIER)

By: _____
Print Name:
Title:
Email:

TOWN OF HENRIETTA

By: _____
Print Name
Title:
Email

JOULE ASSETS INC. (Program Administrator)

By: _____
Jessica Stromback
Chief Executive Officer
jstromback@jouleassets.com

[\[SIGNATURE PAGE TO ESA\]](#)

EXHIBIT A – PRODUCTS, PRICES AND TERMS

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

[CHOOSE ONE OF THE FOLLOWING PRODUCTS]:

[CCA RENEWABLE ELECTRICITY PRODUCT [FIXED or VARIABLE]
(as further defined below)]

For this product, 100% of electricity supply shall be CCA Renewable Electricity Product as defined in this Agreement.]

[CCA CONVENTIONAL ELECTRICITY PRODUCT [FIXED or VARIABLE]
(as further defined below)]

[CCA BLENDED ELECTRICITY PRODUCT [FIXED or VARIABLE] (as further defined below)]

For this product, 50% of electricity supply shall be CCA Renewable Electricity Product as defined in this Agreement.]

[ENTER NAME OF DEFAULT PRODUCT] (DEFAULT PRODUCT) at the following fixed prices:

<u>Service Class</u>	<u>Price per kWh</u>	<u>Price per kWh with GRT (if applicable)</u>
Residential	\$ _____/kWh	
Small Commercial	\$ _____/kWh	

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

[IF APPLICABLE, ALSO CHOOSE PRODUCTS FROM CHOICES BELOW]

CCA RENEWABLE ELECTRICITY PRODUCT [FIXED or VARIABLE] at the following fixed prices:

For this product, 100% of electricity supply shall be CCA Renewable Electricity Product as defined in this Agreement.

<u>Service Class</u>	<u>Price per kWh</u>	<u>Price per kWh with GRT (if applicable)</u>
Residential	\$ _____/kWh	
Small Commercial	\$ _____/kWh	

CCA CONVENTIONAL ELECTRICITY PRODUCT [FIXED or VARIABLE] (as further defined below) at the following fixed prices:

<u>Service Class</u>	<u>Price per kWh</u>	<u>Price per kWh with GRT (if applicable)</u>
Residential	\$ _____/kWh	
Small Commercial	\$ _____/kWh	

CCA BLENDED ELECTRICITY PRODUCT [FIXED or VARIABLE] (as further defined below) at the following PRICES:

For this product, 50% of electricity supply shall be CCA Renewable Electricity Product as defined in this Agreement.

<u>Service Class</u>	<u>Price per kWh</u>	<u>Price per kWh with GRT (if applicable)</u>
Residential	\$ _____/kWh	
Small Commercial	\$ _____/kWh	

3. FURTHER DEFINITIONS

“**CCA Renewable Electricity Product**” means a 100% renewable electricity supply product that consists of electricity supply together with NY Voluntary EDP Eligible RECs Purchase (as defined below) for 100% of supply. This CCA Renewable Electricity Product includes a voluntary purchase of Renewable Energy Certificates (“**RECs**”), supporting the NY Environmental Disclosure Program that are sourced from NY EDP Eligible Renewable Resources (as defined below) in an amount equal to 100% of the Participating Consumers’ electricity usage including any additional RECs required to account for line loss. This is in addition to Competitive Supplier’s obligation to make REC purchases associated with New York Clean Energy Standard requirements applicable to Competitive Supplier.

“**CCA Conventional Electricity Product**” means an electricity supply product that meets the minimum Clean Energy Standard requirements.

“**CCA Blended Electricity Product**” means an electricity supply product that consists of electricity supply together with:

- (a) NY Voluntary EDP Eligible RECs Purchase (as defined below) for 50% of electricity supply. This CCA Blended Electricity Product includes a voluntary purchase of Renewable Energy Certificates, supporting the NY EDP Program that are sourced from NY EDP Eligible Renewable Resources in an amount equal to 50% of the Participating Consumers’ electricity usage including any additional RECs required to account for line loss. This is in addition to Competitive Supplier’s obligation to make REC purchases associated with New York Clean Energy Standard requirements applicable to Competitive Supplier; and
- (b) National Wind Voluntary RECs Purchase for 50% of electricity supply. National Wind Voluntary RECs shall be sourced 100% from a National Wind Renewable Resource (as defined below). Each REC represents the environmental attributes associated with one MWh of electricity generated by a National Wind Renewable Resource, but does not include any tax credits, depreciation allowances or third-party subsidies of any kind.

“**National Wind Renewable Resource**” means any electric power generated or sourced from nationally-sited wind power generators. Competitive Supplier does not represent or warrant that the RECs purchased hereunder can be used as offsets or otherwise for compliance with any emission reduction or similar program. Specifically, National Wind Renewable Resources do not qualify for the NY EDP Program as administered by the New York State Energy Research and Development Authority. RECs will be retired for all Participating Consumers collectively at the Program level.

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

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

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

“NY Tier 2 REC Program Costs” means any costs related to the purchase of Tier 2 eligible renewable energy certificates (“Tier 2 REC’s”) associated with the expansion of the Clean Energy Standard including additional compliance requirements in accordance with the “Order Adopting Modifications to the Clean Energy Standard” in DPS Case 15- E-0302 dated October 15, 2020 (as may be proposed or implemented during the term of this ESA).

“NY Voluntary EDP Eligible RECs Purchase” means that the applicable product requires purchase of Renewable Energy Certificates supporting the NY EDP Program (as defined above) that are sourced from one or more NY EDP Eligible Renewable Resources (as defined above) in an amount equal to 100% for the CCA Renewable Electricity Product, or 50% for the CCA Blended Electricity Product, of the Participating Consumers’ electricity usage, in addition to any then-current REC purchases associated with New York Clean Energy Standard requirements applicable to Competitive Supplier. In the event that the DPS or other Governmental Authority determines that a 100% Renewable Clean Power Product may be provided through a NY Voluntary EDP Eligible RECs Purchase in an amount equal to 100% for the CCA Renewable Electricity Product, or 50% for the CCA Blended Electricity Product, of the Participating Consumers’ electricity usage less any then-current Tier 1 REC purchase associated with the Clean Energy Standard requirements applicable to Competitive Supplier in New York, such change shall be deemed a Regulatory Event as that term is defined in this ESA and the Parties agree to amend this EXHIBIT A to reflect the cost impact of such Regulatory Event. Competitive Supplier anticipates that the RECs provided hereunder will be generated primarily by hydroelectric facilities, but some portion of the RECs may be generated by wind, solar or other facilities, and Competitive Supplier reserves the right to source the RECs from any additional qualifying NY EDP Eligible Renewable Resources as applicable. Each REC represents environmental attributes associated with one MWh of electricity generated by a renewable fuel type defined by NYGATS Operating Rules, dated May 1, 2020, but does not include any tax credits, depreciation

allowances or third-party subsidies of any kind. Competitive Supplier does not represent or warrant that the RECs purchased hereunder can be used as offsets or otherwise for compliance with any emission reduction or similar program.

4. ADDITIONAL TERMS FOR SUPPLY SERVICE

The following provisions shall apply to electricity provided in this Agreement:

- A. Term. The service, price and terms set forth herein for all electricity provided in this Agreement shall commence, with the Service Commencement Date and continue through the Service Termination Date, unless this ESA is terminated earlier in accordance with ARTICLE 4.2 of this ESA.

For purposes of this ESA, the Service Commencement Date means, for each Eligible Consumer who has not opted-out, the first meter read for the month of [_____].

For purposes of this ESA, the Service Termination Date means, for each Participating Consumer, the first meter read for the month of [_____].

For avoidance of doubt, assuming that the Distribution Utility does not change its meter read dates, the total service period for each Participating Consumer who is enrolled for their first meter read date after the Service Commencement Date shall be [_____] months.

The period of delivery of Firm Full-Requirements Power Supply shall be consistent with the provisions of ARTICLE 4 -- TERM OF CONTRACT AND TERMINATION and EXHIBIT A of this ESA.

Start-Up Service Date: Firm Full-Requirements Power Supply will commence at the prices stated above as of the Service Commencement Date.

- B. Certain Pass-throughs. Municipality understands that for any supply to Participating Consumers the price includes NY Public Policy Transmission Costs (as defined above) and NY Tier 2 REC Program Costs (as defined above) based on the estimates of such costs for calendar year 2023 that were obtainable by Competitive Supplier and Competitive Supplier will pass through to Participating Consumers any future changes (upward or downward) to such NY Public Policy Transmission Project Costs (as defined above) or NY Tier 2 REC Program Costs (as defined above), based on changes in such costs during the remainder of term of this ESA, and which will be reflected in a future adjustment. Any such adjustments shall occur once during any calendar year.
- C. Certain Cost Exclusions. The Parties agree and acknowledge that the prices set forth in this EXHIBIT A do not take into account costs and charges associated with changes after the Effective Date to the obligations of New York's Clean Energy Standard ("CES"), including but not limited to CES Tier 4 program costs as described in the "Order Adopting

Modifications to the Clean Energy Standard” in case 15-E-0302 dated October 15, 2020, as may be amended or modified from time to time during the term of this Agreement. Any such changes (upward or downward) shall be deemed a Regulatory Event as that term is defined in this ESA and the Parties agree to amend this EXHIBIT A to reflect the cost impact of such Regulatory Event.

- D. Purchase of Renewable Energy Certificates; NYGATS Recording. Competitive Supplier shall identify the technology and location of the renewable generators that are the sources of the RECs for the CCA Renewable Electricity Product and CCA Blended Electricity Product, as applicable. All NY Voluntary EDP Eligible RECs shall be created and recorded as such in the New York Generation Attribute Tracking System (“NYGATS”).
- E. Credit policy: The Competitive Supplier will not require a credit review for any consumer participating in the Program, nor will Competitive Supplier require any consumer to post any security deposit as a condition for participation in the Program. The Competitive Supplier may terminate service to a Participating Consumer and return such consumer to default utility service in the event that the consumer fails to pay its electricity charges past due greater than sixty (60) days.
- F. Refresh Dates: The Parties agree and acknowledge that Competitive Supplier shall perform a refresh or new customer sweep to create a list of New Consumers for enrollment after the first meter read date each March and September (each, a “**Refresh Date**”) during the term of this ESA. As a result of any such refresh or new customer sweep performed, New Consumers will be automatically enrolled in the Program unless such consumers opts out of the Program; provided, however, that no refresh, sweep or enrollment of such New Consumers that are part of any refresh or sweep shall occur less than four (4) months prior to the Service Termination Date or in the event of termination of this Agreement. Competitive Supplier may perform a refresh and enroll New Consumers outside of the Refresh Dates if mutually agreed to by all the Parties hereunder.

For each Refresh Date, the Competitive Supplier will mail an Opt-Out Notice to each New Consumer at least 30-days prior to the date of automatic enrollment and shall: (i) prominently state all charges to be assessed by the Competitive Supplier; (ii) at a minimum, provide a summary of the prices and terms included in EXHIBIT A; (iii) state how such New Consumer may opt-out of the Program prior to enrollment and remain on Basic Utility Supply Service from the Distribution Utility; and (iv) state how all Participating Consumers will also have the right to opt-out at any time and return to Basic Utility Supply Service or choose a new retail electricity supplier without paying a fee or penalty to Competitive Supplier. All forms of such notices must be approved in advance by the Municipality and DPS.

5. ADDITIONAL PROVISIONS

- A. Program Administrator Fee. Competitive Supplier shall pay Program Administrator \$0.002 for each kWh delivered, invoiced and paid for by Participating Consumers during the Term (“**Program Administrator Fee**” or “**Fee**”). The Parties agree that Competitive Supplier will

remit the Program Administrator Fee to the Program Administrator, pursuant to the terms of this ESA. Competitive Supplier shall pass through such payments to Program Administrator for the duration of this ESA. This provision shall be binding upon the Parties and all permitted assigns and other successors-in-interest of the Parties.

For avoidance of doubt, Municipality shall not be responsible for payment of the Fee.

B. Payments to Competitive Supplier. Participating Consumers will be invoiced by the Distribution Utility for electricity supply charges, unless otherwise agreed by the Competitive Supplier. The Parties agree and acknowledge that unless otherwise agreed by the Competitive Supplier and the Distribution Utility, the Distribution Utility will purchase the receivables due hereunder and pay the Competitive Supplier directly. If the Distribution Utility(ies) discontinue or materially modify their program to purchase the receivables of eligible customers, such change will be considered a Qualifying Regulatory Event.

C. Payment of Fee. The monthly Program Administrator Fee shall be paid by the last business day of the month based on revenue collected by Competitive Supplier with respect to each Participating Consumer during the calendar month two months prior. For example, full payments received in January will be paid by the end of March. If Competitive Supplier has paid a past Fee in error (or the payment was based on information subsequently determined invalid), it may deduct from or add to future payments due under this ESA and provide explanation of the error in sufficient detail.

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

EXHIBIT B -- CONTACT, NOTICE AND PAYMENT INFORMATION

<u>PROGRAM ADMINISTRATOR</u>	<u>MUNICIPALITY</u>	<u>COMPETITIVE SUPPLIER</u>
General Contact	General Contact	General Contact
Joule Assets Inc Type of Entity: Corporation State of incorporation: Delaware Contact: Glenn Weinberg	Name of Municipality: _____ [Contact]	Full Corporate Name: Type of Entity: _____ State of organization: _____ Contact: _____
2875 Route 35 (a/k/a One Pepsi Way) Suite 6 South Katonah, NY 10536 (914) 977-3444	[Address] [Telephone]	
E-mail: gweinberg@jouleassets.com	[E-mail]	
Contact for Notices Pursuant to <u>Article 18.3</u>	Contact for Notices Pursuant to <u>Article 18.4</u>	Contact for Notices Pursuant to <u>Article 18.4</u>
ATTN: Glenn Weinberg Joule Assets Inc	ATTN: [Name] [Name of Municipality]	ATTN: [Name] [Name of Entity]
10 Bank Street, Suite 560 White Plains, NY 10606 c/o United Corporate Services, Inc., gweinberg@jouleassets.com	[Address] [E-mail]	[Address] [E-mail]
With a copy to:	With a copy to:	With a copy to:
Stephen Filler, General Counsel Joule Assets Inc. 10 Bank Street, Suite 560 White Plains, NY 10606 c/o United Corporate Services, Inc. sfiller@jouleassets.com	[Name] [Address] [E-mail]	Name: Address:

Attachment 3 - Contracting Guidelines

For suppliers who Joule has not worked with before: before Joule will provide you with the aggregated data, you will be required to execute a binding Third Party Representative Agreement in connection with Joule's Data Security Agreement (DSA) with the utility.

March 26th RFP RESPONSES DUE with any necessary ESA redlines. *Please provide redlines in advance of this date if possible.* Please send RFP response with ESA redlines to Glenn Weinberg at gweinberg@jouleassets.com

March 26th Please complete and return **Template ESA Exhibit B – Contact, Notice and Payment Information (see below)** with designated signatory contact info (see attached). Please send to Hannah Karp-Chester at hannah@joulecommunitypower.com

Upon receipt of these instructions, please schedule a tentative meeting on **March 27th or March 28th** with your lawyers and our general counsel (Stephen Filler – sfiller@jouleassets.com) to review your potential ESA redlines.

April 11th through April 18th – Executable pricing window. ESAs will be executed upon RFP award within this pricing window.

ESA execution procedure:

1. Municipalities are providing ESA signature pages to Joule in advance of the executable pricing window.
2. Upon written confirmation of RFP award from Municipalities, Joule will insert municipal signatures into the competed ESAs.
3. Joule will complete pricing and product information, sign digitally and request digital signature from your designated signatory. Municipalities will not be signing digitally.

EXHIBIT B -- CONTACT, NOTICE AND PAYMENT INFORMATION

<u>PROGRAM ADMINISTRATOR</u>	<u>MUNICIPALITY</u>	<u>COMPETITIVE SUPPLIER</u>
General Contact	General Contact	General Contact
Joule Assets Inc Type of Entity: Corporation State of incorporation: Delaware Contact: Glenn Weinberg	Name of Municipality: _____ [Contact]	Full Corporate Name: Type of Entity: _____ State of organization: _____ Contact: _____
2875 Route 35 (a/k/a One Pepsi Way) Suite 6 South Katonah, NY 10536 (914) 977-3444	[Address] [Telephone]	Address [Telephone]
E-mail: gweinberg@jouleassets.com	[E-mail]	[Email] _____
Contact for Notices Pursuant to Article 18.6	Contact for Notices Pursuant to Article 18.6	Contact for Notices Pursuant to Article 18.6
ATTN: Glenn Weinberg Joule Assets Inc	ATTN: [Name] [Name of Municipality]	ATTN: [Name] [Name of Entity]
10 Bank Street, Suite 560 White Plains, NY 10606 c/o United Corporate Services, Inc., gweinberg@jouleassets.com	[Address] [E-mail]	[Address] [E-mail]
With a copy to:	With a copy to:	With a copy to:
Stephen Filler, General Counsel Joule Assets Inc. 10 Bank Street, Suite 560 White Plains, NY 10606 c/o United Corporate Services, Inc. sfiller@jouleassets.com	[Name] [Address] [E-mail]	Name: Address:

ESA Signatory – digital signature needed between 4/11-4/18 pricing day window

Name:

Title:

Email:

Phone Number:

Any additional contacts to include (CC) on digital signatory request day of: