

## **FORM OF COMPETITIVE ELECTRIC SUPPLY AGREEMENT**

WHEREAS, the Massachusetts Legislature has adopted Chapter 164 of the Acts of 1997, (the "Restructuring Act"), which, *inter alia*, (1) allows for competition in the generation and supply of electricity to customers, (2) authorizes municipalities to aggregate the electrical load of electricity consumers within their boundaries, and (3) allows municipal aggregators to formulate an aggregation plan and conduct aggregation programs;

WHEREAS, all of the municipalities in Barnstable County and Dukes County have formed the Cape Light Compact ("Compact") and entered into an "Inter-Governmental Agreement of the Cape Light Compact" ("Compact Agreement"), for the purposes, *inter alia*, of acting as a municipal aggregator and negotiating the best terms and conditions and the most competitive market rates available for the supply of electricity to consumers located on Cape Cod and Martha's Vineyard;

WHEREAS, all twenty-one Barnstable County and Dukes County towns and the two counties presently belong to the Compact (the "Member Municipalities");

WHEREAS, Consolidated Edison Solutions, Inc., a New York corporation, duly authorized to conduct business in the Commonwealth of Massachusetts ("Supplier"), desires to continue to provide All-Requirements Power Supply to Consumers residing within the Member Municipalities under the Aggregation Plan, pursuant to the terms and conditions of this Agreement;

WHEREAS, Consolidated Edison Solutions, Inc. has been chosen by the Compact from among several competitive suppliers to be the Compact's Supplier for the Term set forth in this Agreement; and

WHEREAS, the Compact desires that Supplier provide competitive retail power supply to the Consumers.

NOW THEREFORE, IT IS AGREED THAT, the Compact and Supplier hereby enter into this Competitive Electric Supply Agreement ("Agreement") subject to the terms and conditions below.

### **ARTICLE 1            DEFINITIONS**

When used in this Agreement, the following terms shall have the meanings given, unless a different meaning is expressed or clearly indicated by the context. Words defined in this Article 1 which are capitalized shall be given their common and ordinary meanings when they appear without capitalization in the text. Words not defined herein shall be given their common and ordinary meanings.

**1.1      Aggregation Plan** - The "Cape Light Compact Aggregation Plan" as adopted and in effect upon the Effective Date, as amended by the Compact, from time to time.

1.2 **Aggregation Program** - The power supply program, implemented under the Aggregation Plan.

1.3 **Agreement** - This Competitive Electric Supply Agreement.

1.4 **All-Requirements Power Supply** - Service under which Supplier provides all of the electrical energy, capacity, reserves, ancillary services, transmission and distribution losses, congestion management, and such other services or products necessary for firm power supply to Consumers at the Point of Sale, including, without limitation, compliance with the Renewable Portfolio Standard requirements set forth in G.L. c. 25A §11F and cognate regulations.

1.5 **Bankruptcy** - Bankruptcy means with respect to a Party that such Party (i) ceases doing business as a going concern, generally does not pay its debts as they become due or admits in writing its inability to pay its debts as they become due, files a voluntary petition in bankruptcy or is adjudicated bankrupt or insolvent, or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other Governmental Rule, or seeks or consents to or acquiesces in the appointment of any trustee, receiver, custodian or liquidator of said Party or of all or any substantial part of its properties, or makes an assignment for the benefit of creditors, or said Party takes any 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.

1.6 **Basic Service** - Service provided by a distribution company to a customer who is not receiving generation service from a competitive supplier or any successor service as determined by the DPU, as defined herein.

1.7 **Cape Light Compact Green<sup>sm</sup>** - a Compact program whereby Consumers will have the option to pay a premium, in excess of their standard electricity charges, for certificates representing attributes of energy derived from new renewable energy resources.

1.8 **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.

1.9 **Compact** - The Cape Light Compact, formed in October 1997, by an intergovernmental agreement under the Massachusetts General Laws and presently consisting of twenty-one (21) towns in Barnstable and Dukes Counties and the two counties themselves for which the Compact acts as agent.

1.10 **Compact Agreement** - The Inter-Governmental Agreement of the Cape Light Compact, as in effect on July 31, 1998 and as may be amended from time to time.

1.11 **Consumers** - A residential, small commercial/industrial, medium and large commercial/industrial, or other consumer of electricity who receives electric supply service through the Distribution Company's distribution or transmission service from any supplier, at one or more locations within the geographic boundaries of a Member Municipality.

1.12 **Counties** - Barnstable County and the County of Dukes County. In the singular, "County" shall refer to either of the two Counties.

1.13 **Distribution Company** - NSTAR Electric Company, or any successor company(ies) or entity(ies) providing electricity distribution services in each Member Municipality.

1.14 **DPU** - The Massachusetts Department of Public Utilities, or any successor state agency.

1.15 **Effective Date** - The effective date of this Agreement, pursuant to Article 4 (Term of Contract and Termination) below.

1.16 **Force Majeure** - Any cause not within the reasonable control of the affected Party which precludes that Party from carrying out, in whole or in part, its obligations under this Agreement, including, but not limited to, Acts of God; winds; hurricanes; tornadoes; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes; lock-outs or other industrial disturbances; acts of public enemies; acts, failures to act or orders of any kind of any Governmental Authority acting in its regulatory or judicial capacity, provided, however, that any such discretionary acts, failures to act or orders of any kind by the Compact or a Member Municipality may not be asserted as an event of *Force Majeure* by the Compact or a Member Municipality as the case may be; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil disturbances or explosions. Nothing in this provision is intended to excuse any Party from performing due to any governmental act, failure to act, or order, where it was reasonably within such Party's power to prevent such act, failure to act, or order. Economic hardship of either Party shall not constitute an event of *Force Majeure*.

1.17 **General Communications** - The type of communications described and defined in Article 5.7 (Approval of General Communications) herein.

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

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

1.20 **Green Power** - Electric energy generated by equipment or facilities including solar power, biomass, landfill gas, wind turbine, hydro power or other renewable energy generating resource or technology, as may defined by G.L. c. 25A, §11F or G.L. c. 164, §1, or that may be otherwise added by mutual agreement of the Parties.

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

1.22 **kWh, kW** - Kilowatt-hour and kilowatt, respectively.

1.23 **Member Municipalities** - The twenty-one (21) towns and two (2) Counties which are presently members of the Cape Light Compact as of the Effective Date of this Agreement. The Member Municipalities include the following towns in Barnstable County: Barnstable, Bourne, Brewster, Chatham, Dennis, Eastham, Falmouth, Harwich, Mashpee, Orleans, Provincetown, Sandwich, Truro, Wellfleet and Yarmouth, and the following towns in Dukes County: Aquinnah, Chilmark, Edgartown, Oak Bluffs, Tisbury and West Tisbury. The Compact acts as agent for the Member Municipalities as set forth in Article 2.2 (Agency Relationship) below.

1.24 **NEPOOL** - The New England Power Pool.

1.25 **Operational and Reserve Fund** – The fund described in Article 15.3 (Operational and Reserve Fund) of this Agreement.

1.26 **Parties** - The Compact and Supplier, as the context requires. In the singular, “Party” shall refer to either of the preceding.

1.27 **Point of Delivery** - The point of interconnection between NEPOOL Pool Transmission Facilities and the transmission facilities of the Distribution Company.

1.28 **Point of Sale** - The electric meter(s) for each Consumer’s account, as designated by the Distribution Company.

1.29 **Related Documents** - The Compact Agreement, the Aggregation Plan, and the Administrative Services Agreement between Barnstable County and the Compact.

1.30 **Restructuring Act** - Chapter 164 of the Massachusetts Acts of 1997.

1.31 **Supplier** – Consolidated Edison Solutions, Inc., a New York corporation duly authorized to conduct business in the Commonwealth of Massachusetts.

## **ARTICLE 2            RIGHTS GRANTED**

**2.1      General Description and Limitations** - Supplier is hereby granted the exclusive right to provide All-Requirements Power Supply to Consumers pursuant to the terms and conditions set forth in this Agreement. Supplier is hereby granted the right to provide All-Requirements Power Supply to Consumers pursuant to the terms of the Compact's Aggregation Plan and Aggregation Program, and expressly conditioned on the terms and conditions set forth in this Agreement. In accepting this grant, the Parties recognize that Supplier is only authorized to supply All-Requirements Power Supply to Consumers, and that the Distribution Company presently has the right and obligation to distribute and deliver electricity to individual customers, until changes in law, regulation or policy may allow otherwise. Supplier further recognizes i) that it is only authorized by this Agreement to supply All-Requirements Power Supply to Consumers in the Member Municipalities; and ii) that this Agreement does not guarantee that any individual Consumer will be served by Supplier. As between the Parties, Supplier has the sole obligation of making appropriate arrangements with the Distribution Company, and any arrangements which may be necessary with the ISO so that Consumers receive the electricity supplies to be delivered pursuant to this Agreement. The Compact agrees to use reasonable efforts, at Supplier's cost, to assist Supplier, if so requested by it, in obtaining historical energy consumption and billing data information for Consumers, including, without limitation, assisting Supplier, at Supplier's cost, in obtaining permission from such Consumers and/or the DPU, where necessary as a prerequisite to the provision of such information.

**2.2      Agency Relationship** - The Compact is authorized to act on behalf of the Member Municipalities in contracting for electric supply for such Member Municipalities. In any litigation arising under this Agreement, both the Compact and one or more Member Municipalities (acting individually or jointly) have the right to bring claims against Supplier.

**2.3      Compliance with Laws** - By entering into this Agreement, Supplier specifically represents that it has exercised due diligence to review and has fully complied with all relevant regulations and orders of the Federal Energy Regulatory Commission, the DPU, the Attorney General of the Commonwealth, and the Massachusetts Department of Energy Resources and any other Governmental Authority having jurisdiction over any element of the transactions contemplated by this Agreement.

**2.4      Further Conditions and Limitations** - The Compact and the Member Municipalities expressly reserve the right to adopt such local bylaws, ordinances, rules, regulations and policies as they may deem necessary in the exercise of their governmental powers, and nothing in this Agreement shall be interpreted as limiting the governmental powers of the Compact or of the Member Municipalities as may be granted by law.

**2.5      Conditions Precedent** -

The obligations of the Compact under this Agreement shall be conditioned upon Supplier fulfilling the following requirements:

- (i) maintaining its Competitive Supplier license from the DPU (as such term is defined in the Distribution's Company's Terms and Conditions - Competitive Suppliers);
- (ii) executing a Competitive Electric Supplier Service Agreement with the Distribution Company in a form reasonably satisfactory to Supplier;
- (iii) executing all appropriate ISO applications and agreements;
- (iv) obtaining authorization from the FERC to sell power at market-based rates.

If Supplier has not fulfilled all such requirements by the date of this Agreement, either Party may terminate this Agreement without any liability to the other Party.

**2.6 Ownership and Use of Consumer Data** - Supplier acknowledges that the Compact shall have exclusive ownership of all right, title and interest in and to all Consumer data (including addresses, telephone numbers or other identifying information) made available to Supplier as a result of execution of this Agreement. Supplier shall use Consumer data solely to provide All-Requirements Power Supply to Consumers and to render other services expressly required or permitted under this Agreement. Any other use of Consumer data without the prior written consent of the Compact is strictly prohibited. Except as expressly provided in this Agreement, Supplier shall not disclose any Consumer data to any third-party and Supplier shall take all reasonable measures to protect Consumer data from access by, or beneficial use, for any third-party. To the extent that the provision of All-Requirements Power Supply or other services under this Agreement requires that Supplier have access to or make use of any Consumer data, Supplier shall treat such Consumer data as confidential information. Supplier may use Consumer data to engage in direct marketing only during the term of this Agreement and subject to the terms forth in Article 17.2 (Direct Marketing). A violation of this Article 2.6 shall be grounds for termination under Article 4.2(1). Supplier agrees violation of this Article 2.6 shall constitute irreparable harm.

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

**3.1 Customer Choice** - The Parties acknowledge and agree that, subject to existing Agreements, all Consumers have the right, pursuant to the Restructuring Act, to change their source of electricity supply, as set forth in Article 2.1 (General Description and Limitations) of this Agreement. The Compact, or Consumers, as the case may be, shall give reasonable notice of any such changes in accordance with any terms formulated by the DPU or as included in Exhibit A and the Aggregation Plan. The Parties represent and warrant to each other that they shall not unreasonably interfere with the right of Consumers to opt out, and shall comply with any rules, regulations or policies of the DPU or other lawful authority regarding the process of opting out or of switching from one source of electric supply to another.

**3.2 Notification of Rights** - Consistent with the requirements of law, the Compact, with the assistance of Supplier shall notify all Consumers in the Member Municipalities of the date upon which they will be automatically enrolled in the Aggregation Program, and that Supplier will be

providing electrical supply to Consumers subject to the opt-out provisions of the Restructuring Act, the Aggregation Plan and Aggregation Program, and Exhibit A. The Compact, in its discretion as to form and content shall: (1) prominently state all charges to be made by Supplier; (2) provide a summary of the prices and terms included in Exhibit A as well as fully disclose the prices and terms then being offered for Basic Service or any equivalent service by the Distribution Company; and (3) state how the Consumer may gain access to Basic Service and that any ratepayer choosing to opt-out after automatic enrollment may do so without penalty and be entitled to return to Basic Service. All such notices must be approved in advance by Supplier, such approval not to be unreasonably withheld.

**3.3 Enrollment** - All residential Consumers residing within the Member Municipalities that are receiving All-Requirements Power Supply under the Compact's Aggregation Program as of December, 2014 will be enrolled in the Aggregation Program under the terms of Exhibit A unless and until such Consumers opt-out.

Any residential Consumer which is new to the Member Municipalities' respective territories will be automatically enrolled by Supplier in the Aggregation Program. This enrollment shall be administratively arranged by Supplier and the Distribution Company with the cooperation and reasonable support from the Compact by identifying all new Basic Service Consumers within the Member Municipalities and verifying any required meter and customer codes.

At any time during the term of this Agreement, residential Consumers who have previously opted out may return to supply by the Supplier. Supplier shall have the discretion to set the price for such returning residential Consumers as determined by the then prevailing market conditions. Residential Consumers who relocate to or within the Member Municipalities shall have the right to receive electrical supply from Supplier, subject to the prices and terms in Exhibit A. Besides accurately and promptly transmitting information provided by such Consumers to the Distribution Company and following any procedural or other such steps which may be mutually agreed to, Supplier shall have no obligation to effect adds and drops at Consumer's request, such processing being the responsibility of the Distribution Company.

Residential Consumers enrolled in competitive supply programs offered by third-parties will not be automatically enrolled as Consumers under this Agreement when such program terminates or is otherwise completed. Supplier agrees that residential Consumers under such third-parties competitive supply programs may affirmatively opt-in and receive All-Requirements Power Supply at the Supplier's discretion at a price determined by the then prevailing market conditions. Supplier agrees that when such third-party competitive supply programs terminate, Supplier will negotiate with the Compact in good faith to include residential consumers that had been enrolled in other programs as residential Consumers under this Agreement.

## **ARTICLE 4                    TERM OF CONTRACT AND TERMINATION**

**4.1 Term** - This Agreement and the rights granted under it to Supplier shall commence on October 28, 2014 (the "Effective Date") and terminate on January 31, 2017, unless the Agreement is terminated before such date under the provisions of Article 4.2 (Termination). The

term of this Agreement may be extended in accordance with the provisions of Article 4.4 (Extension).

**4.2 Termination** - This Agreement may be terminated at any time upon written notice:

(1) by the Compact (acting on behalf of all Member Municipalities or acting on behalf of one or more Member Municipalities), or Supplier, if either Party fails to remedy or cure any breach or default of any material provision or condition of this Agreement (including, but not limited to, Article 9 and Article 2.6) within sixty (60) days following written notice to do so by the nonbreaching Party;

(2) by the Compact (acting on behalf of all Member Municipalities or acting on behalf of one or more Member Municipalities), or Supplier, if any material provision or condition of this Agreement be finally adjudged invalid by any court of competent jurisdiction, or if the DPU exercises any lawful jurisdiction so as to invalidate or disapprove this Agreement in whole or in significant part; or

(3) notwithstanding the foregoing, the failure of Supplier to provide or arrange for All-Requirements Power Supply to residential Consumers, in the absence of *Force Majeure* or the Compact failure to perform, shall constitute an act of default, and the Compact may terminate this Agreement upon the giving of written notice but without providing any cure period. In the event Supplier has performed its obligations hereunder and its failure to provide or arrange All-Requirements Power Supply is a direct result of actions or non-actions by any transmission service provider, the Distribution Company, or the ISO, Supplier's failure shall not be deemed an act of immediate default; or

(4) by the Compact, in the event that the financial sureties and guaranties provided by Supplier in connection with this Agreement are revoked, terminated or otherwise fail.

**4.3 Obligations upon Termination** - Following termination of this Agreement, the Parties shall each discharge by performance all obligations due to any other Party that arose up to the date of termination of the Agreement. Upon the effective date of termination of the Agreement, all rights and privileges granted to Supplier shall cease, with the exception of the right to collect all monies due for services rendered to that date.

**4.4 Extension** - This Agreement may be extended beyond January 31, 2017, by mutual, written agreement of the Parties, for up to two years. Any new pricing terms shall be added to and replace Exhibit A as necessary, with Exhibit A-1, Exhibit A-2, etc. Upon any such extension, this Agreement shall continue to be in effect, and all provisions of the Agreement shall retain the same force and effect as before the extension, unless it is terminated by either Party pursuant to the provisions of Article 4.2 or until the date stated in such extension.

## **ARTICLE 5 CONTINUING COVENANTS**

Supplier agrees and covenants to perform each of the following obligations during the term of this Agreement.



**5.1 Standards of Management and Operations** - In performing its obligations hereunder, during the term of this Agreement, 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 a safe and reliable supply of such amounts of electricity to the Point of Delivery as are required under this Agreement; that it complies with all relevant industry standards and practices for the generation and supply of electricity to residential Consumers; and that, at all times with respect to residential Consumers, it exercises the highest commercial standards and employs Commercially Reasonable skills, systems and methods available to it.

**5.2 Local Customer Service Access** - Supplier agrees to provide, or cause to be provided, certain customer services to residential Consumers. Such services shall be reasonably accessible to all residential Consumers, shall be available during normal working hours, shall allow such Consumers to transact business they may have with Supplier, and shall serve as a communications liaison among Supplier, the Compact, such Consumers and the Distribution Company. A toll-free telephone number specific to the Compact's residential Consumers, will be established and be available for residential Consumers to contact Supplier to resolve concerns, answer questions and transact business with respect to the service received from Supplier. Such toll-free phone line shall be attended by service personnel during regular business hours (9:00 AM – 5:00 PM) and routed to a voice message after hours. Supplier will also provide a link on its parent's website to a website which will be available to residential Consumers for general information, product and service information, and other purposes.

**5.3 Responding to Requests for Information** - To the extent authorized by the Consumers and to the extent such individual permission is required by law, Supplier shall, during normal business hours, respond promptly and without charge therefore to reasonable requests of the Compact for information or explanation regarding the matters covered by this Agreement and the supply of electricity to Consumers. Supplier agrees to designate a service representative or representatives (the "Service Contacts") who shall be available for these purposes, and shall identify the office address and telephone number of such representative(s). Whenever necessary to comply with this Article 5.3, the Service Contact Person shall call upon other employees or agents of 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 Supplier to respond to complaints or inquiries from residential Consumers, or to comply with any regulation of the DPU or the Attorney General of the Commonwealth regarding customer service.

**5.4 Arranging for Firm All-Requirements Power Supply** - Supplier shall participate in or make appropriate arrangements with the ISO, any relevant regional transmission organization, wholesale suppliers or any other entity to ensure an uninterrupted flow of reliable, safe, firm, All-Requirements Power Supply to the Distribution Company for delivery to residential Consumers, and take Commercially Reasonable steps to cooperate with the NEPOOL, the ISO or any other entity to ensure a source of back-up power in the event that the facilities owned or controlled by Supplier's affiliates or other sources of power supply are unable to generate and/or deliver All-Requirements Power Supply to the Point of Delivery. In the event Supplier is unable to deliver sufficient electricity to the grid to serve residential Consumers, Supplier shall utilize such arrangements as may be necessary to continue to serve such Consumers under the terms of

this Agreement, and shall bear any costs it may incur in carrying out these obligations. Supplier shall not be responsible to the Compact in the event the Distribution Company disconnects, curtails or reduces service to residential Consumers (notwithstanding whether such disconnection is directed by the ISO) in order to facilitate construction, installation, maintenance, repair, replacement or inspection of any of the Distribution Company's facilities, to maintain the safety and reliability of the Distribution Company's electrical system, or due to any other reason, including emergencies, forced outages, potential overloading of the Distribution Company's transmission and/or distribution circuits, *Force Majeure* or the non-payment of any distribution service costs or other such costs due for services provided by the Distribution Company to a Consumer.

**5.5 Non-Discriminatory Provision of Service** - Supplier shall supply electric energy to the Point of Delivery for all residential Consumers who receive local distribution and transmission service from the Distribution Company in the Member Municipalities and who do not opt out, or having opted out, request service, except as provided below in this Article 5.5. Subject to the prices and terms contained in Exhibit A, electricity shall be provided on a non-discriminatory basis; provided, however, that prices and other terms may vary in accordance with reasonably-established classes of customers (e.g., residential, commercial, municipal, industrial) or by such other categories as appear in Exhibit A. To the extent applicable, Supplier's prices, terms and conditions shall be in accordance with the Massachusetts General Laws, the regulations of the DPU, and other applicable provisions of law. To the extent required by law, Supplier may not deny service to a prospective customer for failure to pay the bills of any other electric company (whether engaged in the distribution, transmission, or generation of electricity) or of any other aggregator, marketer or broker of electricity, but may reasonably deny or condition new service, or terminate existing service, based upon the Consumer's failure to pay bills from Supplier, subject to applicable provisions of law.

**5.6 Energy Efficiency and Green Power Programs** - The Parties have a mutual interest in advancing the utilization of demand-side management, energy efficiency programs and technology, and Green Power programs. Supplier, upon reasonable request of the Compact or its affiliated entity, the Cape & Vineyard Electric Cooperative, Inc. ("Cooperative"), shall cooperate with the Compact or the Cooperative, as the case may be, in the implementation of such programs. At no time will Supplier take any actions with the intention of materially adversely affecting the operations of any of these programs implemented by the Compact, the Cooperative or Supplier. Supplier will use Commercially Reasonable efforts to identify any actions which might have a material adverse effect on the implementation of any programs by the Compact, the Cooperative or Supplier involving demand-side management, energy efficiency and Green Power and will use Commercially Reasonable efforts to consult with the Compact or the Cooperative, as the case may be, prior to taking such actions. Supplier shall also comply with the obligations set forth in Article 8 (Development or Offering of Green Power) of this Agreement.

**5.7 Approval of General Communications** - Supplier shall cooperate with the Compact in the drafting and sending of messages and information to Consumers concerning the Compact or any matter arising under or related to this Agreement. Supplier shall, prior to sending any direct mail, advertising, solicitation, bill insert, electronic mail, or other similar written or electronic

communication (collectively, "General Communications") to 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 Compact for its review to determine whether it is consistent with the purposes and goals of the Compact. The Compact shall have the right to disapprove such General Communications and suggest revisions if it finds the General Communication inconsistent with the purposes and goals of the Compact, factually inaccurate or likely to mislead; provided, however: (i) that the General Communication shall be deemed approved if the Compact fails to respond within seven (7) calendar days (not including weekends and holidays); and (ii) that no approval shall be necessary for any General Communication (a) regarding any emergency situation involving any risk to the public health, safety or welfare; (b) which has been approved by the DPU, the Department of Energy Resources, or any other Governmental Authority; or (c) in the nature of routine monthly or periodic bills, or collection notices, except that any bill insert or message included at the bottom of such bill not within the scope of (a) or (b) above shall require approval. If the Compact, acting on behalf of one or more Member Municipalities, objects to a mailing or other communication on the grounds it is inconsistent with the goals of the Compact, Supplier, after consultation as provided in this Article 5.7, may nevertheless elect to send such mailing or communication provided that it: i) clearly indicates on such mailing that it has not been endorsed by the Member Municipality and/or the Compact, ii) has previously provided all Consumers a meaningful chance to opt not to receive such General Communications, and iii) has stated in connection with such chance to opt not to receive such communications that "the Compact and the Member Municipalities want to protect Consumers from receiving marketing materials if you do not wish to do so," and iv) has otherwise sought input from the Compact as to the means by which Consumers are given a chance to remove their names from any list which may receive General Communications.

**5.8 Bill Inserts and Messages** – Supplier agrees that if it bills or communicates with Consumers directly, and unless prevented for regulatory or other such reasons from doing so, it shall allow the Compact to include no less than three bill inserts per year into such billings, provided that the Compact pays the cost of printing and reproducing such insert and any incremental postage or handling costs Supplier may incur as a result of including such insert. Supplier shall provide a copy of such communications to the Compact. Supplier further agrees that it shall, at its direct cost, if any, and to the extent that it does not conflict with planned use of any message space by Supplier, provide the Compact access to any message space on any bills Supplier sends to Consumers, to the extent any bills it sends directly or indirectly through the Distribution Company or other entity contain a bill message space under the control of Supplier.

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

**5.10 Compliance with Laws** - The Parties shall promptly and fully comply with all existing and future Governmental Rules of all Governmental Authorities having jurisdiction over the activities covered by this Agreement.

**5.11 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 Supplier requests the Compact's assistance in obtaining such consent or approval and the Compact anticipates that it will incur costs in fulfilling Supplier's request, it shall give Supplier an estimate of such costs. Upon receiving the cost estimate, Supplier shall determine if it continues to request the Compact's assistance, and if so, Supplier shall reimburse the Compact for all costs, up to the estimated dollar amount, reasonably incurred by the Compact in connection with such efforts.

## **ARTICLE 6 ROLES OF THE COMPACT AND THE MEMBER MUNICIPALITIES**

Under this Agreement, the Compact and the Member Municipalities (except as they or entities under their control are direct customers) shall not actually receive, take title to, or be liable for the supply or delivery of All-Requirements Power Supply in any manner whatsoever. The Parties specifically agree that the role of the Compact is to a) set the terms and conditions under which All-Requirements Power Supply will be provided by Supplier under this Agreement and to ensure that Supplier complies with those terms and conditions, and b) act as agent for the Member Municipalities in accordance with Article 2.2 with respect to the matters addressed in this Agreement. It is the sole obligation of Supplier to arrange for delivery of All-Requirements Power Supply to residential Consumers. The Parties agree that neither the Compact nor the Member Municipalities are "aggregators," "distribution companies," "electric companies," "generation companies" or "transmission companies" within the meaning of G.L. c. 164, §1 as a result of this Agreement, unless a court, the DPU, or other lawful authority shall adjudicate to the contrary. Supplier hereby agrees that it will take no action that would make the Compact or its officers, directors, employees, agents, representatives and independent contractors liable to any Consumer due to any act or failure to act on the part of Supplier relating to the delivery or supply of All-Requirements Power Supply.

## **ARTICLE 7 PRICES AND SERVICES; BILLING**

**7.1 Schedule of Prices and Terms** - Supplier agrees to provide All-Requirements Power Supply and other related services as expressly set forth herein in accordance with the prices and terms included in Exhibit A to this Agreement, which Exhibit is hereby incorporated by reference into this Agreement.

**7.2 Obligation to Serve** - As between the Parties, Supplier has the sole obligation to obtain sources of supply, whether from generating facilities owned or controlled by its affiliates, through bilateral transactions, or the market, as may be necessary to provide All-Requirements Power Supply for all of the residential Consumers who do not opt out of the Compact's Aggregation Program. Supplier shall make appropriate arrangements to obtain such capacity, electrical energy, and ancillary services for load-following purposes, including, but not limited to, spinning reserves, supplemental reserves, backup supplies and services as may be needed in

the event of outages or emergencies, and all other ancillary services as necessary to provide a firm, reliable, and safe All-Requirements Power Supply for residential Consumers to the Point of Delivery. Supplier, except as explicitly limited in the terms included in Exhibit A, shall be obligated to accept all residential Consumers who are or become participants in the Compact's Aggregation Program, regardless of their location and energy needs, subject to applicable law.

**7.3 Metering and Billing** - As between the Parties, Supplier bears sole responsibility for any metering which may be required to bill residential Consumers, and for rendering of any bills to such Consumers. Supplier shall discharge this obligation by making appropriate arrangements with the Distribution Company for the Distribution Company's provision of a complete bill to Consumers in compliance with relevant rules and regulations of the DPU and the Attorney General of the Commonwealth.

#### **7.4 Terms and Conditions Pertaining to Individual Account Service -**

##### **A. Title**

Title to All-Requirements Power Supply will transfer from Supplier to Consumers at the Point of Sale. Possession of, and risk of loss related to, All-Requirements Power Supply will transfer from Supplier to the Distribution Company at the Point of Delivery.

##### **B. Term**

Delivery of All-Requirements Power Supply will begin on the first residential Consumer meter read dates in December, 2014 as specified in Exhibit A and will end on the last residential Consumer meter read dates in January, 2017, unless extended or modified in accordance with Article 4.4. Supplier has the right to request a "special" meter reading by the Distribution Company to initiate energy delivery and agrees to accept all costs (if any) for such meter reading.

##### **C. Billing and Payment**

Unless otherwise specified in an Exhibit to this Agreement, all billing under this Agreement shall be based on the meter readings of each Consumer's meter(s) performed by the Distribution Company. Supplier shall cause the Distribution Company to prepare and mail bills to Consumers monthly and Supplier shall adopt the billing and payment terms offered by the Distribution Company.

##### **D. 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 Company under its distribution service tariff or local transmission costs as may be imposed by the regional power pool or individual electric utilities that have FERC transmission tariffs. It is Supplier's understanding that these costs will be collected by the Distribution Company under its transmission tariff charge. If in the future Supplier becomes responsible for distribution costs, Supplier shall be entitled to collect such

costs from Consumers to the extent permitted by any Governmental Rules. These costs are “pass through” costs as determined by the appropriate regulatory agencies.

#### **E. Taxes**

All sales, gross receipts, excise or similar taxes imposed with respect to the sale or consumption of All-Requirements Power Supply shall be included on each Consumer’s bill and shall be remitted to the appropriate taxing authority by Supplier. Consumers shall be responsible for all taxes (except for taxes on Supplier’s income) associated with sales under the Agreement. Consumers shall be responsible for identifying and requesting any exemption from the collection of any tax by providing appropriate documentation to Supplier and, upon providing such documentation, all taxes that have been billed to the Consumer but remain unpaid shall be credited to the Consumer’s accounts.

### **ARTICLE 8 DEVELOPMENT OR OFFERING OF GREEN POWER**

#### **8.1 Offering of Green Power -**

##### **A. Cape Light Compact Green<sup>sm</sup>**

Supplier hereby agrees that it will incorporate the Cape Light Compact Green<sup>sm</sup> program into Supplier’s provision of All Requirements Power Supply under this Agreement and offer such program to any Consumers who affirmatively choose to participate. Any Consumer enrolled in the Cape Light Compact Green<sup>sm</sup> program shall remain enrolled in the program upon the Effective Date of this Agreement. The Supplier and the Compact agree that Supplier shall be reimbursed by the Compact (or participating Consumers, if the Compact so directs) for any reasonable costs Supplier incurs in the implementation of Cape Light Compact Green<sup>sm</sup>. Supplier acknowledges and agrees that it will collect the premium the Compact charges Consumers for the Cape Light Compact Green<sup>sm</sup> program from Consumers on a monthly basis and remit such premium to the Compact or its designee within thirty (30) days of the end of the month, by electronic funds transfer or such other mutually acceptable method. Supplier shall provide the Compact with a monthly report of Consumers enrolled in Cape Light Compact Green<sup>sm</sup> and the kWh consumption of such Consumers. By January 15<sup>th</sup> of each calendar year, Supplier shall provide the Compact with a report for each residential Consumer enrolled in the program for any period within the prior year of all premiums paid by the Consumer for that prior calendar year.

##### **B. Renewable Energy Portfolio Standard and Green Power**

Supplier hereby agrees that it will comply with the applicable provisions of G.L. c. 25A, §11F and any regulations, orders or policies adopted pursuant thereto. The Parties agree that in view of opportunities to reduce the environmental cost of electric power generation, the Parties have a mutual interest in advancing the use of Green Power. Supplier agrees that it will negotiate in good faith with the Compact to include renewable energy certificate purchases of the Compact in Supplier’s portfolio for compliance with G.L. c. 25A, §11F.

## **ARTICLE 9                    SERVICE PROTECTIONS FOR RESIDENTIAL CUSTOMERS**

Supplier agrees that it shall comply with the provisions of 220 CMR Parts 25, 27, 28 and 29, any amendments thereto, and any code of conduct or policies the DPU may adopt in accordance with G.L. c. 164, §1F(7). Supplier shall, on or before November 20, 2014, provide a written, detailed description of its billing and termination procedures, customer services, confidentiality and related practices and procedures for approval by the Compact (which approval shall not be unreasonably withheld). Such written description shall also include Supplier's plans for maintaining "service quality standards," as that phrase is used in §1F(7); for complying with the "affirmative choice" requirements of §1F(7); and for handling customer complaints, including any arbitration procedures. If the Consumer(s) so permit(s) to the extent such permission is required by law, Supplier agrees to provide notice to the Compact of any customer complaints received from a Consumer, and to grant the Compact the right to participate in resolution of the dispute, to the extent permitted by DPU regulations and other applicable law. The failure to timely submit such written description, or the submission of practices and procedures which materially fail to comply with DPU regulations and policies, shall be deemed grounds for termination of this Agreement, at the discretion of the Compact after providing written notice of such failure to Supplier and allowing Supplier sixty (60) days to cure such failure.

## **ARTICLE 10                NON-DISCRIMINATION IN HIRING AND EMPLOYMENT**

Supplier agrees to conduct its operations and activities under this Agreement in accordance with all applicable state and federal laws regarding non-discrimination in hiring and employment of employees.

## **ARTICLE 11                POWER SUPPLY INFORMATION AND ACCESS TO INFORMATION**

### **11.1    Power Supply Information -**

#### **A.        Quarterly Reports of Sales**

The Supplier will provide the Compact with a quarterly report of sales which will contain: (i) the actual kWh sales for each calendar month of the reporting period; (ii) the number of customer accounts active in each calendar month of the report; and (iii) the hourly load data from the Supplier's ISO load asset(s) for all customers served by Supplier during the period of the report. The quarterly report will be due to the Compact within thirty (30) days following the close of each quarter (March 31, June 30, September 30, December 31). The kWh sales and number of customer accounts shall be listed in the report both by rate code and rate name as shown on Exhibit B attached hereto. This information shall be provided in electronic format.

#### **B.        Customer-Related Data**

During the term of All Requirements Power Supply to individual accounts (as defined in Article 7.4B), Supplier will maintain customer-related data in electronic form as specified in Exhibit C attached hereto, and will make such data available to the Compact upon request.

### C. **Additional Information**

Upon request, Supplier shall provide to the Compact, within a reasonable time, information regarding efforts to comply with the Green Power provisions of this Agreement; and such other matters as may be mutually agreed upon by the Parties, acting in good faith.

### D. **Standard of Care**

The Supplier shall use good industry practice in preparing and providing any information or data required under this Agreement. To the extent the Supplier determines that any information or data provided hereunder is in error, it shall provide such information or data to the Compact within a Commercially Reasonable time.

**11.2 Power Supply Report** - Within fifteen (15) days of the end of each New England Power Pool Generation Information System quarterly trading period, Supplier shall present to the Compact a copy of the current "Disclosure Label" required by the DPU of all Competitive Suppliers which includes information pertaining to their power supply and a reasonably detailed description of the sources of Supplier's power supply used to serve Consumers pursuant to this Agreement, except to the extent such disclosure would violate any confidentiality obligations of Supplier. Supplier shall post the "Disclosure Label" on their web site under Cape Light Compact power supply program. On such quarterly basis, Supplier shall also provide the Compact with information on the renewable energy certificates purchased by Supplier for compliance with G.L. c. 25A §11F and cognate regulations.

**11.3 Books and Records** - Supplier shall keep its books and records in accordance with any applicable regulations or guidelines of the DPU, the Federal Energy Regulatory Commission, and any other Governmental Authority. The Compact will have access to all reports mandated by the Securities and Exchange Commission which are available on the Internet "EDGAR" system. Upon reasonable request by the Compact and at the Compact's expense, Supplier shall provide back-up for any charge under this Agreement questioned by the Compact.

**11.4 Copies of Regulatory Reports and Filings** - Upon reasonable request, Supplier shall provide to the Compact a copy of each public periodic or incident-related report or record relating to this Agreement which it files with any Massachusetts or federal agency regulating rates, service, compliance with environmental laws, or compliance with affirmative action and equal opportunity requirements, unless Supplier is required by law or regulation to keep such reports confidential from the other Parties. The Compact shall treat any reports and/or filings received from Supplier as confidential information subject to the terms of Article 16 (Confidentiality). Supplier shall be reimbursed its reasonable costs of providing such copies.

## **ARTICLE 12 RESOLUTION OF DISPUTES; CHOICE OF LAW**

**12.1 Choice of Law** - This Agreement and the rights of the Parties shall be interpreted and determined in accordance with the laws of the Commonwealth of Massachusetts.



**12.2 Dispute Resolution** - Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Article 12.2 shall be the exclusive mechanism to resolve disputes arising under this Agreement. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this Agreement. Any dispute that arises under or with respect to this Agreement 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 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 period 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 agree to submit the dispute to mediation. Within fourteen (14) days following the expiration of the time period for informal negotiations, the Parties shall propose and agree upon a neutral and otherwise qualified mediator. In the event that the Parties fail to agree upon a mediator, the Parties shall request that the American Arbitration Association, Boston, Massachusetts, appoint a mediator. The period for mediation shall commence upon the appointment of the mediator and shall not exceed sixty (60) days, unless such time period is modified by written agreement of the Parties. The decision to continue mediation shall be in the sole discretion of each party involved in the dispute. The Parties will bear their own costs of the mediation, and either Party may terminate the mediation at any time following the third session. The mediator's fees shall be shared equally by all Parties involved in the dispute. In the event that the Parties cannot resolve a dispute by informal negotiations or mediation, either Party may seek judicial enforcement. The venue for judicial enforcement shall be the United States District Court in Boston, Massachusetts, provided, however, that in the event federal jurisdiction does not apply, the venue shall be Barnstable County Superior Court, Massachusetts. Notwithstanding the foregoing, injunctive relief may be sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this Agreement. In any judicial proceeding, the "Prevailing Party" shall be entitled to payment from the opposing party of its reasonable costs and fees, including but not limited to attorneys' fees and travel expenses, arising from the civil action. As used herein, the phrase "Prevailing Party" shall mean the party who, in the reasonable discretion of the finder of fact, most substantially prevails in its claims or defenses in the civil action.

## **ARTICLE 13                    INDEMNIFICATION**

**13.1 Indemnification by Supplier** - Supplier shall indemnify, defend and hold harmless the Member Municipalities and the Compact (collectively "Indemnified Parties" and singularly "Indemnified Party") and each Indemnified Party's officers, employees, agents, representatives and independent contractors, from and against any and all costs, claims, liabilities, damages, expenses (including reasonable attorneys' fees), causes of action, suits or judgments, incurred by, on behalf of or involving any one of the foregoing parties to the extent arising, directly or indirectly, from or in connection with (i) any material breach by Supplier of its obligations, covenants, representations or warranties contained in this Agreement and not resulting from the actions of the Distribution Company, the Compact or any Member Municipality or their employees or agents, or (ii) Supplier's actions or omissions taken or made in connection with Supplier's performance of this Agreement. Supplier further agrees, if requested by the Compact

or any Member Municipality, to investigate, handle, respond to, and defend any such claim, demand, or suit at its own expense arising under this Article 13.1.

**13.2 Notice of Indemnification Claims** - If the Compact or any Member Municipality seeks indemnification pursuant to this Article 13, the Compact shall notify Supplier of the existence of a claim, or potential claim as soon as practicable after learning of such claim, or potential claim, describing with reasonable particularity the circumstances giving rise to such claim. Upon written acknowledgment by Supplier that it will assume the defense and indemnification of such claim, Supplier may assert any defenses which are or would otherwise be available to the Compact and/or a Member Municipality, as the case may be.

**13.3 Survival** - Notwithstanding any provision contained herein, the provisions of this Article 13 and the Financial Sureties and Guaranties provided by Supplier pursuant to Article 15.2 (Additional Financial Sureties and Guarantees) shall survive the termination of this Agreement for a period of three (3) years with respect to a) any claims which occurred or arose prior to such termination and b) any losses occurring as a result of the termination.

**13.4 Duty to Mitigate** – All Parties agree that they have a duty to mitigate damages and covenants that they will use Commercially Reasonable efforts to minimize any damages they may incur as a result of any other Party's performance or non-performance of this Agreement.

## **ARTICLE 14 REPRESENTATIONS AND WARRANTIES**

**14.1 Representations and Warranties by Supplier** - As a material inducement to entering into this Agreement, Supplier hereby represents and warrants to the Compact as of the Effective Date of this Agreement as follows:

(i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary for it to perform its obligations under this Agreement;

(ii) it has all authorizations from any Governmental Authority necessary for it to legally perform its obligations under this Agreement or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due;

(iii) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents or any contract to which it is a party or any Governmental Rule applicable to it;

(iv) subject to the conditions set forth in Article 2.5 (Conditions Precedent), this Agreement constitutes a legal, valid and binding obligation of Supplier enforceable against it in accordance with its terms, and Supplier has all rights such that it can and will perform its obligations to Supplier in conformance with the terms and conditions of this Agreement, subject to bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally and general principles of equity;

(v) no Bankruptcy is pending against it or to its knowledge threatened against it;

(vi) none of the documents or other written information furnished by or on behalf of Supplier to the Compact and/or the Member Municipalities pursuant to this Agreement, 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

(vii) all information furnished by Supplier in response to the request for proposals for competitive electric supply services is true and accurate.

**14.2 Representations and Warranties by the Compact** - As a material inducement to entering into this Agreement, the Compact hereby represents and warrants to Supplier as of the effective date of this Agreement as follows:

(i) the Compact was formed by intergovernmental agreement in accordance with the laws of the Commonwealth of Massachusetts;

(ii) this Agreement will constitute the legal, valid and binding obligation of the Compact enforceable in accordance with its terms;

(iii) the execution, delivery and performance of this Agreement are within the Compact's powers, have been or will be duly authorized by all necessary action and the Compact is the duly authorized agent of the Member Municipalities with respect to the matters addressed in this Agreement;

(iv) the Compact has all authorizations from any Governmental Authority necessary for it to legally perform its obligations under this Agreement or will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due; and

(v) no Bankruptcy is pending or threatened against it or any Member Municipality.

## **ARTICLE 15 INSURANCE AND OTHER FINANCIAL SURETIES AND GUARANTEES**

**15.1 Insurance** - In order to help support the indemnifications provided in Article 13 (Indemnification), and its other promises and covenants stated herein, Supplier shall secure and maintain, at its own expense, throughout the term of this Agreement, comprehensive commercial general liability insurance of at least \$2,000,000 aggregate/\$1,000,000 single limit and excess liability coverage of at least \$10,000,000 with insurers and with the Compact and Member Municipalities named as additional insureds. Supplier shall provide the Compact with evidence, reasonably satisfactory to the Compact, of its insurance hereunder, upon request. The detailed terms of Supplier's insurance are set forth in Exhibit D attached hereto.

**15.2 Additional Financial Sureties and Guarantees** – In addition to the insurance set forth in Article 15.1, above, Supplier's corporate parent provides financial security to the Compact for Supplier's obligations hereunder, including, without limitation, the indemnification set forth in Article 13 (Indemnification), in the form attached hereto as Exhibit E.

Supplier may change the type and amount of its financial security provided hereunder with the consent of the Compact, such consent not to be unreasonably withheld.

Upon reasonable request during the term of this Agreement and on a continuing basis, Supplier will provide the Compact with Commercially Reasonable proof of its ability to meet its indemnification obligations to the Compact and the Member Municipalities pursuant to this Agreement. Supplier will provide the Compact with a copy of its parent's annual report. Supplier also agrees to notify the Compact in the event that its parent's unsecured, senior long-term debt or current corporate credit rating (not supported by third-party credit enhancements) is less than BBB- by Standard & Poor's Rating Group or less than BBB- by Fitch Investor Services, Inc. (a "Downgrade Event"). Should a Downgrade Event occur, the Compact may request that Supplier provide a substitute form of security. Upon receipt of such notice, Supplier shall have three (3) business days in which to provide such substitute form of security to the Compact.

**15.3 Operational and Reserve Fund** - In order to ensure timely access to funds necessary to support the operations of the Compact and to provide the Compact with further financial security to backstop Supplier's obligations under Article 13 (Indemnification) and Article 15 (Insurance and Other Financial Sureties and Guarantees), Supplier agrees to collect on behalf of the Compact, up to 1 mil (\$.001), or such other amount as the Compact may determine, for every kWh sold to Consumers for the duration of service under this Agreement (the "Operational and Reserve Fund"). Supplier shall remit to the Compact or its designee within thirty (30) days of the end of the month, by electronic funds transfer or such other mutually acceptable method, the amounts due pursuant to this Article 15.3 and provide reasonable supporting documentation as to the total number of kWh sold in each preceding month upon which such payment is calculated. Supplier acknowledges and agrees that the Compact shall have the right, but not the obligation, to change the amount collected by Supplier under this Article 15.3 every six (6) months during the term of supply to Consumers under this Agreement.

Once paid to the Compact or its designee, Supplier shall have no further interest or claim in such Operational and Reserve Fund. The Compact may use the Operational and Reserve Fund to cover any costs, claims, liabilities, damages, expenses (including reasonable attorney's fees), causes of action, suits or judgments, incurred by or on behalf of the Compact or Member Municipalities. The Compact shall cause all funds collected for it by Supplier hereunder to be deposited in a dedicated, interest-bearing account. The Compact may expend such funds for any purpose as may be allowed by law and as determined in the reasonable discretion of the Compact's Governing Board, including, but not limited to, the Governing Board's adoption of budget appropriation policies and procedures.

## ARTICLE 16            CONFIDENTIALITY

The Parties' confidentiality obligations are governed by a Confidentiality Agreement dated as of August 26, 2014 (the "Confidentiality Agreement").

## ARTICLE 17            MISCELLANEOUS

**17.1 No Assignment Without Permission** - Supplier shall not assign its rights and privileges under this Agreement without the prior written approval of the Compact. Such approval may be denied in the reasonable discretion of the Compact if it determines that the proposed assignee does not have at least the same financial and technical ability as the assigning Supplier.

Notwithstanding the foregoing, the Compact may not unreasonably withhold its consent to an assignment to an affiliated entity under common control or management with Supplier.

Supplier's assignee shall agree in writing to be bound by the terms and conditions of this Agreement. The Compact may assign this Agreement without the prior consent of Supplier. The rights and obligations created by this Agreement shall inure to the benefit of, and be binding upon, the successors and permitted assigns of, the respective Parties hereto.

**17.2 Direct Marketing** - Supplier shall not engage in any direct marketing to Consumers located within a Member Municipality during the term of this Agreement without the prior written approval of the Compact.

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

if to Supplier to:

Consolidated Edison Solutions, Inc.  
100 Summit Lake Drive, Suite 410  
Valhalla, NY 10595  
Attention: Paul F. Mapelli, General Counsel  
(914) 286-7041 (voice)  
(914) 686-1413 (fax)  
mapellip@conedsolutions.com

*For Operational Issues Only:*

Consolidated Edison Solutions, Inc.  
25 Corporate Drive  
Burlington, MA 01803  
Attention: Sam Morgan, Regional Sales Manager  
(781) 203-2707 (voice)  
(781) 273-2745 (fax)  
morgans@conedsolutions.com

if to the Compact to:

Ms. Margaret Downey  
 Administrator/Chief Procurement Officer  
 Cape Light Compact  
 P.O. Box 427  
 Superior Court House  
 Barnstable, Massachusetts 02630  
 (508) 375-6636 (voice)  
 (508) 362-4136 (fax)  
[mdowney@barnstablecounty.org](mailto:mdowney@barnstablecounty.org)

Mr. Stephan Wollenburg  
 Senior Power Supply Planner  
 Cape Light Compact  
 P.O. Box 427  
 Superior Court House  
 Barnstable, MA 02630  
 (508) 375-6623 (voice)  
 (508) 362-4136 (fax)  
[swollenburg@capelightcompact.org](mailto:swollenburg@capelightcompact.org)

Notices hereunder shall be deemed properly served (i) by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in this Agreement; (ii) if sent by mail, on the third business day after the day on which deposited in the United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in this Agreement; or (iii) if by Federal Express or other reputable express mail service, on the next business day after delivery to such express mail service, addressed to the intended recipient at its address set forth in this Agreement. Any party may change its address and contact person for the purposes of this Article 17.3 by giving notice thereof in the manner required herein.

**17.4 Changes in Emergency and Service Contact Persons** - In the event that the name or telephone number of any emergency or service contact for Supplier changes, Supplier shall give prompt notice to the Compact in the manner set forth in Article 17.3 (Notices). In the event that the name or telephone number of any such contact person for the Compact changes, prompt notice shall be given to Supplier in the manner set forth in Article 17.3 (Notices).

**17.5 Entire Agreement; Amendments** - This Agreement, the Confidentiality Agreement and the Related Documents constitute the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. This Agreement may only be amended or modified by a written instrument signed by all Parties hereto.

**17.6 Force Majeure** - If by reason of *Force Majeure* any Party is unable to carry out, either in whole or in part, its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (i) the non-performing Party, within two (2) weeks after the occurrence of the *Force Majeure*, gives all other Parties hereto written notice describing the particulars of the occurrence; (ii) the suspension of performance be of no greater scope and of no longer duration than is required by the *Force Majeure*; (iii) no obligations of the Party which were to be performed prior to the occurrence causing the suspension of performance shall be excused as a result of the occurrence; and (iv) the non-performing Party shall use Commercially Reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations. If an event of *Force Majeure* continues for a period of one hundred eighty (180) days or longer, either Party may terminate this Agreement by sending the other party a written notice as set forth in Article 4.2 (Termination).

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

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

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

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

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

**17.12 Related Documents** - Supplier agrees that it has been provided with and had a reasonable opportunity to read the Related Documents and to ask questions about the terms and conditions of the Related Documents. The Parties agree that the Related Documents, in the forms as they exist on the Effective Date of this Agreement, are incorporated into this Agreement by reference, and that they shall be construed harmoniously to the greatest practicable extent; notwithstanding the foregoing, in the event of any conflict between this Agreement and the Related Documents, this Agreement shall govern. The Compact will provide Supplier with amendments to any of the foregoing documents as they are adopted; provided, however, that such amendments are not incorporated into this Agreement as a result of such adoption. Any amendments hereto must be made in accordance with Article 17.5 (Entire Agreement; Amendments) of this Agreement.

**17.13 Advertising Limitations** - Supplier agrees not to use the name of the Cape Light Compact or any Member Municipality, or make any reference to the Cape Light Compact or any Member Municipality in any advertising or other information to be distributed publicly for marketing or educational purposes, unless the Compact expressly agrees to such usage. Any proposed use of the name of the Cape Light Compact or any Member Municipality must be

submitted in writing for agreement and prior approval, which shall not be unreasonably withheld, consistent with Article 5.7 (Approval of General Communications) hereof. The Compact acknowledges that Supplier's corporate affiliates own the exclusive right to the trademarked logo and trade name used by Supplier. No right, license or interest in this trademark and/or trade name is granted to the Compact hereunder, and the Compact agrees that it shall not assert any right, license or interest with respect to such trademark and/or trade name.

**17.14 Press Releases** - The Parties shall not issue a press release or make any public statement with respect to this Agreement without the prior written agreement of the other Party with respect to the form, substance and timing thereof, except either Party may make any such press release or public statement when the releasing Party is advised by its legal counsel that such a press release or public statement is required by law, regulation or stock exchange rules, provided however, in such event, the Parties shall use their reasonably good faith efforts to agree as to the form, substance and timing of such release or statement.

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

**17.16 Survival of Obligations** - Termination of this Agreement for any reason shall not relieve the Compact or Supplier of any obligation accrued or accruing prior to such termination.

**17.17 Remedies -**

A. **General** - Subject to the limitations set forth in Section 17.17(B) below, the Compact, each of the Member Municipalities, and the Supplier reserve and shall have all rights and remedies available to each of them at law or in equity with respect to the performance or non-performance of the other parties hereto under this Agreement.


B. **Limitations** - NO PARTY HERETO SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT. Notwithstanding the foregoing, Supplier acknowledges that the preceding sentence shall not limit the Compact's rights under Article 13.1 (Indemnification by Supplier) to seek indemnification from Supplier for consequential, punitive, or incidental damages or other such losses claimed by third-parties, subject to any limitations set forth in the Payment Guarantee.

**17.18 Cooperation** – The Parties agree that they shall use Commercially Reasonable efforts in good faith and in full cooperation with the other Party to secure any approvals required to implement this Agreement and to otherwise carry out their obligations hereunder.



IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

**CONSOLIDATED EDISON SOLUTIONS, INC.**

By:   
 Name: Jorge J. Lopez  
 Title: President and Chief Executive Officer  
 Address: 100 Summit Lake Drive, Suite 410, Valhalla, NY 10595  
 Dated: October 28, 2014

**CAPE LIGHT COMPACT**

By: \_\_\_\_\_  
 Ms. Margaret Downey  
 Administrator/Chief Procurement Officer  
 As authorized by the Barnstable County Commissioners  
 Cape Light Compact  
 P.O. Box 427  
 Superior Court House  
 Barnstable, MA 02630  
 (508) 375-6636 (voice)  
 (508) 362-4166 (fax)  
[mdowney@barnstablecounty.org](mailto:mdowney@barnstablecounty.org)

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

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

**CONSOLIDATED EDISON SOLUTIONS, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Dated: \_\_\_\_\_

**CAPE LIGHT COMPACT**

By: Margaret Downey  
Ms. Margaret Downey  
Administrator/Chief Procurement Officer  
As authorized by the Barnstable County Commissioners  
Cape Light Compact  
P.O. Box 427  
Superior Court House  
Barnstable, MA 02630  
(508) 375-6636 (voice)  
(508) 362-4166 (fax)  
[mdowney@barnstablecounty.org](mailto:mdowney@barnstablecounty.org)

Dated: 10/28/14

*(insertion of historical pricing)*

The pricing exhibit for this power supply contract is redacted because it contains confidential and competitively sensitive information and/or proprietary pricing strategies and is exempt from public records disclosure pursuant to Massachusetts General Laws, Chapter 4 Section 7, cl. 26(s) (energy related trade secrets or confidential information).

The Table below shows actual historical pricing for each pricing period during the duration of the contract, separated by rate class. All rates are shown in cents per kilowatt hour.

<u>Term Start</u>	<u>Term End</u>	<u>Residential Price</u>
December 2014	July 2015	15.371
July 2015	January 2016	10.16
January 2016	January 2017	9.613

**Definitions:**

**Term Start** is the month of the first meter read of the pricing term

**Term End** is the month of the last meter read of the pricing term

**Residential** rate includes rate codes R-1, R-2, R-3, R-4, R-5, R-6

**Commercial** rate includes rate codes G-1, G-4, G-5, G-6, G-7, S-1

**Industrial** rate includes rate codes G-2 and G-3

*(end of insertion)*

## **EXHIBIT A**

### **PRICES AND TERMS**

*Exempt from public records disclosure pursuant to G.L. c. 4, §7, cl. 26(s) (energy-related trade secrets or confidential information).*

## EXHIBIT B

### TEMPLATE KWH SALES AND CUSTOMER ACCOUNTS DATA SUMMARY

Rate Code	Rate Name	Accounts	Customers	kWh
R-1	Res. Non-Heat/Annual	[x]	[x]	[x]
R-2	Res. Assist	[x]	[x]	[x]
R-3	Res. Space Heating	[x]	[x]	[x]
R-4	Res. Assist. Space Heating	[x]	[x]	[x]
R-5	Res. General-Water Heating	[x]	[x]	[x]
R-6	Res. TOU – opt-in	[x]	[x]	[x]
Total:		[x]	[x]	[x]

## EXHIBIT C

### TERMS AND CONDITIONS FOR PROVISION OF CUSTOMER-RELATED DATA

The layout of the electronic files containing the customer data should adhere to the terms and conditions set forth below.

There are 6 files containing customer and meter information. The file labeled **capeTOU.zip** contains the time of use customer and meter usage data. Files labeled **capetown1.zip** to **capetown5.zip** contain customer and meter usage data for non-time of use customers. These files are delimited by a semicolon (;) and are broken down as follows:

File Name	# of records	# of customers
Capetown1.zip		
Capetown2.zip		
Capetown3.zip		
Capetown4.zip		
Capetown5.zip		
CapeTOU.zip		

The column headings for the **capetown1.zip** to **capetown5.zip** files are listed below.

**Field name**  
Account  
Customer  
Service Street #  
Service Street Name  
Service Street Suffix  
Service Town  
Service Zip  
Tax Id  
Rev/Rate  
Standard or Default  
Phone #  
January Use  
January Demand  
February Use  
February Demand  
March Use  
March Demand  
April Use  
April Demand  
May Use  
May Demand  
June Use  
June Demand  
July Use

July Demand  
 August Use  
 August Demand  
 September Use  
 September Demand  
 October Use  
 October Demand  
 November Use  
 November Demand  
 December Use  
 December Demand  
 Mail Street # Name  
 Mail Town  
 Mail State  
 Mail Zip

The column headings for the **capeTOU.zip** file are listed below. This file is different than the non-TOU accounts. This file lists each customer 12 times with each month's usage listed on one line.

**Field name**  
 Account  
 Customer  
 Service Street #  
 Service Street Name  
 Service Street Suffix  
 Service Town  
 Service Zip  
 Tax Id  
 Rate  
 Revenue  
 Standard or Default  
 Phone #  
 KWH  
 From Date  
 To Date  
 Peak KVA  
 Mail Street # Name  
 Mail Town  
 Mail State  
 Mail Zip

## **EXHIBIT D**

### **INSURANCE**

1. Supplier shall maintain commercial general liability insurance throughout the term of the Agreement and for a period of at least two years following the contract term.
2. The insurance may be provided on a claims made basis. In the event such insurance is cancelled or non-renewed, Supplier agrees to provide a 36 month discovery period endorsement for obligations under this agreement.
3. The insurance shall include coverage for bodily injury liability, property damage liability, advertising injury liability and personal injury liability.
4. To the extent available at commercially reasonable terms and conditions, personal injury liability coverage shall include non-employment discrimination in accordance with AEGIS form 8100 (1/1/98), or its more recent edition if applicable.
5. To the extent available at commercially reasonable terms and conditions, the insurance shall include Failure to Supply coverage and such coverage shall be in accordance with AEGIS form 8100(1/1/98), or its more recent edition if applicable.
6. The insurance shall include blanket contractual liability coverage, including the Competitive Electric Supply Agreement between Supplier and the Cape Light Compact.
7. The limit of commercial general liability insurance shall be at least \$2 million aggregate/\$1 million single limit. Separate aggregate limits of \$2 million may be applicable to products and completed operations liability coverage and failure to supply liability coverage.
8. Supplier shall maintain umbrella or excess liability insurance subject to a limit of at least \$10 million in addition to commercial general liability insurance policy limits.
9. Such liability insurance shall include Cape Light Compact and Member Municipalities as additional insureds, but only for obligations arising out of this agreement.
10. Supplier shall ensure that such additional insureds receive at least 30 days notice of cancellation or non-renewal.
11. Such insurance shall contain a standard separation of insureds clause, whereby the actions of one insured will not negate coverage for another insured.
12. Supplier shall provide Cape Light Compact with a certificate of insurance to evidence compliance with the requirements. Renewal certificates shall be provided automatically within 30 days of policy renewal throughout the term of the contract and two years following the contract term.



**EXHIBIT E**

**FORM OF FINANCIAL SURETY**

***Exempt from public records disclosure pursuant to G.L. c. 4, §7, cl. 26(s) (energy-related trade secrets or confidential information).***