

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 rates 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 provide All-Requirements Power Supply to the Compact's Member Municipalities and to Consumers residing within the Member Municipalities under the Aggregation Plan, pursuant to the terms and conditions of this Agreement; and

WHEREAS, the Compact desires that Supplier provide competitive retail power supply to the Member Municipalities and 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 or amended by the Compact, from time to time.

1.2 **Aggregation Program** - The Community Choice 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 service, transmission and distribution losses, congestion management, and such other services or products necessary for firm power supply to Consumers at the Point of Sale.

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 **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.

1.7 **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 Duke Counties and the two counties themselves for which the Compact acts as agent.

1.8 **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.

1.9 **Consumers** - A residential, commercial, industrial, municipal, 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.

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

1.11 **Distribution Company** - The Commonwealth Electric Company (d/b/a NSTAR Electric), or any successor company(ies) or entity(ies) providing electricity distribution services in each Member Municipality.

1.12 **DTE** - The Massachusetts Department of Telecommunications and Energy, or any successor state agency.

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

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

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

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

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

1.18 **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.

1.19 **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.

1.20 **kWh, kW** - Kilowatt-hour and kilowatts, respectively.

1.21 **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.

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

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

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

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

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

1.27 **Reserve Fund** - The fund described in Article 15.3 (Reserve Fund) of this Agreement.

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

1.29 **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, except that the Compact agrees that, for Consumers for which the Compact has legal authority to choose a source of electricity supply (such as town buildings and facilities owned or operated by Member Municipalities or other municipal agencies, where applicable), it will maintain Supplier as its provider of electricity supply beginning on the Effective Date for the remaining term of this Agreement, subject to any existing obligation under contract. 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 specifically authorizes the Distribution Company to provide, and Supplier the right to obtain and utilize as required, all billing and energy consumption information for Member Municipalities' accounts that are reasonably available from the Distribution Company. If further action is required by the Distribution Company to authorize Supplier to receive such historical energy consumption and billing data, the Compact agrees to use reasonable efforts, at Supplier's cost, to assist Supplier, if so requested by it, in obtaining such information; and with respect to Consumers, including, without limitation, assisting Supplier, at Supplier's cost, in obtaining permission from such Consumers and/or the DTE, where necessary as a prerequisite to the provision of such information.

Notwithstanding the foregoing paragraph or anything else in this Agreement to the contrary, the Member Municipalities may construct, directly or in jointly with others, Green Power projects located within their boundaries.

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 DTE, the Attorney General of the Commonwealth, and the Massachusetts Division 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) obtaining a license from the DTE to become a Competitive Supplier (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 October 1, 2004, any Party may terminate this Agreement without any liability to the other Parties.

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 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 Member Municipalities, 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 DTE 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 DTE or other lawful authority regarding the process of opting out or of switching from one source of electric supply to another; provided, however, that the Compact agrees that the Member Municipalities will not switch their source of generation supply from Supplier during the term of this Agreement, for uses over which they exercise legal control.

3.2 Notification of Rights - Consistent with the requirements of law, and following in a timely fashion approval by the DTE of this Agreement, 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 but subject to any required DTE approval, 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 Standard Offer service by the Distribution Company; and (3) state how the Consumer may gain access to Standard Offer service, and that any ratepayer qualified for Standard Offer service choosing to opt-out within one hundred eighty (180) days after automatic enrollment may do so without penalty and be entitled to return to Standard Offer service. All such notices must be approved in advance by Supplier, such approval not to be unreasonably withheld.

3.3 Enrollment - All Consumers receiving Standard Offer or Default Service will be automatically enrolled in the Aggregation Program under the terms of Exhibit A. This enrollment shall be administratively arranged by Supplier and the Distribution Company with the cooperation and reasonable support from the Compact by identifying all Standard Offer and Default Service Consumers within the Member Municipalities and verifying any required meter and customer codes. The Parties shall work together with the Distribution Company to develop procedures with the objective of automatically enrolling Consumers at the close of the monthly billing cycle in the month of introduction of their respective customer group(s), according to the schedule in Exhibit A, and whereby new Consumers will be added to and Consumers who opt out dropped from the Aggregation Program.

At any time during the term of this Agreement, Consumers who have previously opted out or 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.

In addition, each consumer being served under other competitive supply programs offered by the Compact will be automatically enrolled as a Consumer under this Agreement when such program terminates or is otherwise completed. 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 consumers under such third-parties competitive supply programs may affirmatively opt-in and receive All-Requirements Power Supply hereunder. Supplier agrees that when such third-party competitive supply programs terminate, Supplier will negotiate with the Compact in good faith to include consumers that had been enrolled in other programs as 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 January 1, 2005 (the "Effective Date") and terminate on December 31, 2005, unless the Agreement is terminated before such date under the provisions of Article 4.2 (Termination).

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 DTE 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 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.

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 Consumers; and that, at all times with respect to 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 Consumers. Such services shall be reasonably accessible to all Consumers, shall be available during normal working hours, shall allow Consumers to transact business they may have with Supplier, and shall serve as a communications liaison among Supplier, the Compact, Consumers and the Distribution Company. A toll-free telephone number will be established by and available for 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 and the Compact agree to develop an augmented schedule for staffing the customer service center during periods when All-Requirements Power Supply commences to a major Consumer class under the Aggregation Program. Supplier will also provide a link on its parent's website to a website which will be available to 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 Consumers, or to comply with any regulation of the DTE 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 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 Consumers, Supplier shall utilize such arrangements as may be necessary to continue to serve 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 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 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 DTE, and other applicable provisions of law. To the extent required by law and/or the conditions of any DTE approval of this Agreement, 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. Provision of electric energy supply shall be subject to Supplier's standard credit policies, to the extent permitted by law, as described in Exhibit A.

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, shall cooperate with the Compact 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. Supplier will use Commercially Reasonable efforts to identify any actions which might have a material adverse effect on the implementation of any programs involving demand-side management, energy efficiency and Green Power and will use Commercially Reasonable efforts to consult with the Compact 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 DTE, the Division 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 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 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 DTE, 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 agents 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 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 Consumers to the Point of Delivery. Supplier, except as explicitly limited in the terms included in Exhibit A, shall be obligated to accept all Consumers who are or become participants in the Compact's Aggregation Program, regardless of their location and energy needs, subject to the credit requirements enumerated in Exhibit A, Article 5.5 (Non-Discriminatory Provision of Service) hereof and applicable law and the terms of any approval or other order of the DTE with respect to this Agreement.

7.3 Metering and Billing - As between the Parties, Supplier bears sole responsibility for any metering which may be required to bill Consumers, and for rendering of any bills to Consumers. Supplier may discharge this obligation by making appropriate arrangements with the Distribution Company or any other entity. Any metering and billing functions carried out by Supplier shall be conducted in compliance with relevant rules and regulations of the DTE 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 January 1, 2005 as specified in Exhibit A, or as soon as necessary arrangements can be made with the Distribution Company thereafter and will end on the last meter reading date prior to the expiration or termination of this Agreement. 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, or shall cause the Distribution Company or any other entity to, prepare and mail bills to Consumers monthly. If Supplier arranges for the Distribution Company to perform billing services, Supplier shall adopt the billing and payment terms offered

by the Distribution Company. Payment shall be net thirty (30) days from the date of billing. The Consumer will pay a late charge of 1.5% per month, or the maximum rate allowed by state law if that rate is less, for payments received after the due date. Billing may take place through the Distribution Company at Supplier's option. In the event that necessary billing data is not received from the Distribution Company in time to prepare monthly bills, Supplier reserves the right to issue a bill based on an estimate of the Consumer's total kWh usage for that billing period. Any over-charge or under-charge will be accounted for in the next billing period for which actual meter data is available.

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.

F. EDI/EFT

Supplier may provide Electronic Funds Transfer ("EFT") as a payment option to Consumers provided the Consumers and Supplier can mutually access a common Value Added Network ("VAN") and provided further that Supplier is allowed to pass through the costs imposed by VAN providers or the provider of other electronic transmission vehicle.

ARTICLE 8 DEVELOPMENT OR OFFERING OF 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 Compact and Supplier have a mutual interest in advancing the use of Green Power. Supplier and the Compact agree that subsequent to execution of this agreement, and prior to initiation of service, the Parties will consider options to incorporate Green Power purchases beyond those that may be required by law, regulations or policies that may be adopted pursuant to the provisions of G.L. c.

25A, section 11 F. The purpose of such consideration will be to determine viable options that may be included as part of the power supply portfolio, and/or offered individually to Consumers, and to determine the costs of such options. The Parties also agree to such considerations at mutually acceptable times following initiation of service as new sources of Green Power become available. Upon mutual agreement on cost and viability based on such considerations, the Parties will amend Exhibit A to incorporate a Green Power supply option or options as part of the power supply to be procured by Supplier. The Parties agree that all of Supplier's reasonable costs for examination and implementation of any Green Power options hereunder, other than those normally incurred in marketing and similar activities, will be reimbursed by the Compact.

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 DTE may adopt in accordance with G.L. c. 164, §1F(7). Supplier shall, on or before October 1, 2004, 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 or the terms of any DTE order with respect to this Agreement, 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 DTE 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 DTE 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 - Upon request, Supplier shall provide to Compact detail about kWh and kW sales in the Member Municipalities; 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.

11.2 Power Supply Report -On an annual basis, Supplier shall present a copy of the current "Disclosure Label" required by the DTE of all Competitive Suppliers to be disclosed to their customers 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

11.3 Books and Records - Supplier shall keep its books and records in accordance with any applicable regulations or guidelines of the DTE, 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(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 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. 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, venue for judicial enforcement 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 action, 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 \$5,000,000 combined single limit and excess liability coverage of at least \$5,000,000 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 B attached hereto.

15.2 Additional Financial Sureties and Guarantees – In addition to the insurance set forth in Article 15.1, above, Supplier shall, within two (2) days of the Effective Date of this Agreement, deliver to the Compact financial security for its obligations hereunder, including, without limitation, the indemnification set forth in Article 13 (Indemnification), in the form of a payment guarantee in the form attached hereto as Exhibit C.

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 in an amount to be determined in accordance with the formula described in the preceding paragraph. 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 Reserve Fund - In order to ensure timely access to funds and: (a) provide the Compact with further financial security in the event Supplier declines to or otherwise fails to indemnify it pursuant to Article 13 (Indemnification) and that the insurance coverage pursuant to Article 15.1 (Insurance) and the other financial sureties provided pursuant to Article 15.2 (Additional Financial Sureties and Guarantees) are unavailable or insufficient, and (b) provide the Compact with a special reserve fund ("Reserve Fund") to give further assurances that the Compact will be able to respond appropriately to any risks associated with this Agreement, Supplier agrees to collect on behalf of the Compact, one mill (\$.001) for every kWh sold to Consumers for the duration of service under this Agreement. The County may elect to release Supplier, in whole or in part, from this obligation. If the County elects to do so, it shall provide Supplier with sixty (60) days advance written notice of its decision. Supplier shall remit to the Compact or its designee on a monthly basis, 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.

Once paid to the Compact or its designee, Supplier shall have no further interest or claim in such Reserve Fund. The Compact may use the 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.

ARTICLE 16 CONFIDENTIALITY

The Parties' confidentiality obligations are governed by a Confidentiality Agreement dated as of November 25, 2003 (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 - Prior to the introduction of any new product or service which Supplier may wish to make available to Member Municipalities or other Consumers located within a Member Municipality, Supplier agrees to (i) give the Compact 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 Compact the possible inclusion of such new product or service in this or another aggregation program undertaken by the Compact and Member Municipalities in the geographic area encompassing the Member Municipalities. The Parties agree to negotiate in good faith the terms, conditions, and prices for such products and services which the Parties agree should be included in a Compact aggregation program.

Supplier also agrees not to engage in any direct marketing to any Consumer that relies upon Supplier's unique knowledge of, or access to, particular Consumer data gained as a result of this Agreement.. For the purposes of this provision, "direct marketing" shall include any telephone call, mailing, electronic mail, or other contact between Supplier and the Consumer. Broad-based programs of Supplier that do not rely on unique knowledge or access gained through this Agreement will not constitute such "direct marketing."

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:

Mr. Anthony Giorgio
 Director, Commodity Sales
 Consolidated Edison Solutions, Inc.
 701 Westchester Ave; Suite 301 East
 White Plains, NY 10604
 (914) 286-7778 (voice)
 (914) 286-7736 (fax)
 giorgioa@conedsolutions.com

Mr. James Dixon
 Vice President & General Counsel
 Consolidated Edison Solutions, Inc.
 701 Westchester Ave; Suite 301 East
 White Plains, NY 10604
 (914) 286-7085 (voice)
 (914) 686-1413 (fax)
 dixonj@conedsolutions.com

if to the Compact to:

Ms. Margaret Downey
 Administrator
 Cape Light Compact
 P.O. Box 427
 Superior Court House
 Barnstable, Massachusetts 02630
 (508) 375-6636 (voice)
 (508) 362-4136 (fax)
 mags@cape.com

Mr. Joseph Soares
 Power Supply Planner
 Cape Light Compact
 P.O. Box 427
 Superior Court House
 Barnstable, MA 02630
 (508) 375-6623 (voice)
 (508) 362-4136 (fax)
 jas@cape.com

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 treat such an event as an event of default and may terminate this Agreement by sending the other party a written notice to cure 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 - This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single agreement.

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 Cooperation - All Parties acknowledge that this Agreement must be approved by the DTE in an adjudicatory hearing and agree that they shall use commercially reasonable efforts in good faith and in full cooperation with the other Parties to secure such approval.

17.13 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.

17.14 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 (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.

17.15 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.

17.16 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.

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

17.18 Remedies

A. General

Subject to the limitations set forth in Section 17.18(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) to seek indemnification from Supplier or consequential, punitive, or incidental damages or other such losses claimed by third-parties, subject to any limitations set forth in the Payment Guarantee.

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

CONSOLIDATED EDISON SOLUTIONS, INC.

BY:

By: JoAnn F. Ryan

Name: _____

Title: _____

Dated: July 16, 2004

**JoAnn F. Ryan
President and CEO
ConEdison Solutions**

CAPE LIGHT COMPACT

By: _____

Ms. Margaret Downey

Administrator

Cape Light Compact

P.O. Box 427

Superior Court House

Barnstable, MA 02630

(508) 375-6636 (voice)

(508) 362-4166 (fax)

mags@cape.com

Dated: July 16, 2004

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

CONSOLIDATED EDISON SOLUTIONS, INC.

BY:

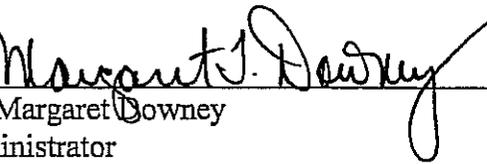
By: _____

Name: _____

Title: _____

Dated: July 16, 2004

CAPE LIGHT COMPACT

By:  _____

Ms. Margaret Downey
Administrator
Cape Light Compact
P.O. Box 427
Superior Court House
Barnstable, MA 02630
(508) 375-6636 (voice)
(508) 362-4166 (fax)
mags@cape.com

Dated: July 16, 2004

EXHIBIT A

PRICES AND TERMS

(insertion of historical pricing)

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</u>	<u>Commercial</u>	<u>Industrial</u>
January 1, 2005	December 31, 2005	7.132	7.132	7.169

Definitions:

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

- **Start Date:** All-requirements retail power supply will commence on January 1, 2005 for the default service load and March 1, 2005 for the standard offer service load.
- **Minimum Term:** The term for all-requirements retail power supply is **one year**, from January 1, 2005 through December 31, 2005.
- **Annual Pricing** (stated in \$/MWh of metered retail sales):
 - January 1, 2005 through December 31, 2005: \$71.26/MWh.
- This price includes a cost of retail related services of \$1.50/MWh.
- This price does **not include the Cape Light Compact's one-half mil adder; Con Edison Solutions will adjust the price to include the adder if so requested by the Compact prior to the Start Date.**
- This price does **not include any applicable taxes.**
- This price includes Renewable Portfolio Standard Renewable Energy Certificates (REC's) at the current price of \$51.41 per MWh.
- **Other conditions:**
 - The Cape Light Compact will not issue another solicitation for competitive supply covering the term of this Agreement.
 - To the extent the Cape Light Compact procures RECs, or assigns its firm rights to enter into contracts to purchase RECs, to Con Edison Solutions at less than the assumed price set forth above of \$51.41 per MWh, Con Edison Solutions shall reduce its price of \$71.26/MWh (the "Price") on a proportionate basis to reflect such dollar for dollar reduction in the price of the RECs.

Confidential Treatment of This Exhibit A:

The terms set forth in this Exhibit A are being voluntarily provided, subject to the Cape Light Compact's promise that it be provided confidential treatment for one hundred twenty (120) days, pursuant to M.G.L. c. 4, §7, cl. 26(g) which provides an exemption to the definition of "Public Records" that allows withholding from public disclosure of "trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy and upon a promise of confidentiality...." Con Edison Solutions has requested that Exhibit A be withheld from public disclosure since the most efficacious and cost-effective arrangement by Con Edison Solutions and the Cape Light Compact of the power supply and Renewable Energy Certificates set forth herein might be compromised by premature disclosure of this Exhibit A.

EXHIBIT B
INSURANCE

EXHIBIT B 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).
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).
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 \$5 million each occurrence. Separate aggregate limits of \$5 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 \$5 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. The policies shall be endorsed to require 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 C
FORM OF SECURITY

EXHIBIT C

PAYMENT GUARANTEE

July 16, 2004

To: The Cape Light Compact

Ladies and Gentlemen:

From time to time, Consolidated Edison Solutions, Inc. ("CES") may enter into one or more transactions with Cape Light Compact ("Counterparty") for the sale of energy, capacity, ancillary services, based on such terms and conditions set forth in Form of Competitive Electric Supply Agreement (the "Agreement"). In consideration of Counterparty entering into the Agreement with CES, Consolidated Edison, Inc. ("Guarantor"), to the aggregate extent of \$3,500,000.00 (three million five hundred thousand DOLLARS) provided however, that CES' aggregate liability for consequential, punitive, or incidental damages or other such losses pursuant to Section 17.18 of the Agreement shall be limited to \$400,000.00 (four hundred thousand DOLLARS) (the "Guarantee Limit"), and subject to the terms and conditions hereof, hereby irrevocably and unconditionally guarantees to Counterparty, with effect from the date hereof, the due and punctual payment of all amounts payable as a result of CES' obligations under the Agreement, including without limitation any CES' indemnification obligation arising from Article 13 of the Agreement, when the same shall become due and payable, whether on scheduled payment dates, upon oral or written demand, upon declaration of termination or otherwise, in accordance with the terms of the Agreement and giving effect to any applicable grace or cure period. Upon failure of CES punctually to pay any such amounts, and upon written demand by Counterparty to Guarantor at its address set forth in the signature block of this Guarantee (or to such other address as Guarantor may specify in writing to Counterparty), Guarantor, subject to the Guarantee Limit, agrees promptly to pay or cause to be paid such amounts; provided that delay by Counterparty in giving such demand shall in no event affect Guarantor's obligations under this Guarantee. This is a guarantee of payment and not of collection.

Guarantor hereby agrees that its obligations hereunder shall not be affected by the Agreement's validity, enforceability or the lack of authority of CES to execute or deliver the Agreement, or any change in or amendment to the Agreement.

Guarantor hereby waives diligence, presentment, and demand on CES for payment or otherwise (except as provided hereinabove), filing of claims, requirement of a prior proceeding against CES and protest or notice, except as provided for in the Agreement with respect to amounts payable by CES. If at any time payment by CES to Counterparty under the Agreement is rescinded or must be otherwise restored or returned by Counterparty to CES due to the insolvency, bankruptcy or reorganization of CES or otherwise, Guarantor's obligations hereunder with respect to such payment shall be reinstated upon such restoration or return to CES being made by Counterparty.

Guarantor represents to Counterparty as of the date hereof, that:

1. it is duly organized and validly existing under the laws of the jurisdiction of its incorporation and has full power and legal right to execute and deliver this Guarantee and to perform the provisions of this Guarantee on its part to be performed;
2. its execution, delivery and performance of this Guarantee have been and remain duly authorized by all necessary corporate action and do not contravene any provision of its certificate of incorporation or by-laws or any law, regulation or contractual restriction binding on it or its assets;
3. all consents, authorizations, approvals and clearances (including, without limitation, any necessary exchange control approval) and notifications, reports and registrations requisite for its due execution, delivery and performance of this Guarantee have been obtained from or, as the case may be, filed with the relevant governmental authorities having jurisdiction and remain in full force and effect and all conditions thereof have been duly complied with and no other action by, and no notice to or filing with, any governmental authority having jurisdiction is required for such execution, delivery or performance; and
4. this Guarantee is its legal, valid and binding obligation enforceable against it in accordance with its terms except as enforcement hereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights or by general equity principles.

In the event of any default by CES, Counterparty shall have the right to proceed first and directly against Guarantor under this Guarantee without proceeding against any other person or entity or exhausting any other remedies which it may have and without resorting to any other security held by it.

By accepting this Guarantee and entering into the Agreement, Counterparty agrees that Guarantor shall be subrogated to all rights of Counterparty against CES in respect of any amounts paid by Guarantor pursuant to this Guarantee.

This Guarantee shall be binding upon Guarantor and upon its successors and assigns and shall be for the benefit of Counterparty and its successors and assigns. Guarantor expressly acknowledges and agrees that the Counterparty and its members (as identified in the definition of "Member Municipalities" in the Agreement) are intended beneficiaries of this Guarantee.

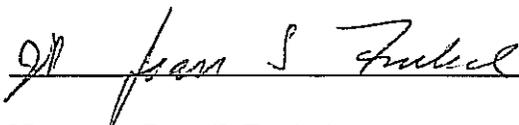
This Guarantee and Guarantor's obligations hereunder will remain in force and effect until the third anniversary of the termination or expiration of the Agreement. However this Guarantee may be terminated upon at least 15 days' prior written notice to that effect being actually received by Counterparty. Such expiration or termination shall not, however, affect or reduce Guarantor's obligation hereunder for any liability of CES pursuant to the Agreement incurred prior to such expiration or termination.

In case any clause, provision, or section of this Guarantee, or any application thereof, is for any reason held to be illegal, invalid or inoperable, such illegality, invalidity or inoperability shall not affect the remainder thereof or any other clause, provision, or section, and each such clause, provision, or section shall be deemed to be effective and operative in the manner and to the full extent permitted by law.

This Guarantee shall not be binding and shall be null and void and without any force and effect unless and until it is fully executed and delivered by each of Guarantor and Counterparty.

This Guarantee shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without reference to its choice of law doctrine.

CONSOLIDATED EDISON, INC.



Name: Joan S. Freilich
Title: Executive Vice President and
Chief Financial Officer
Address: 4 Irving Place
New York, New York 10003

ACCEPTED AND AGREED:

By: **THE CAPE LIGHT COMPACT**
Name: Margaret J. Downey
Title: Compact Administrator
Address: 3195 Main Street
Barnstable, MA 02630