TOWN OF ACTON

COMPETITIVE ELECTRIC SERVICE AGREEMENT

April 19, 2023

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Preamble

This Competitive Electrical Services Agreement (the "Agreement") is entered into on this the 19th day of April, 2023 by and between Town of Acton (community name) with an address of 472 main Street, Acton, MA 01720 ("Town") by and through its Board of Selectmen and First Point Power, LLC with an address of 2000 Chapel View Blvd, Suite 450, Cranston, RI 02920 a Rhode Island Corporation (the "Competitive Supplier").

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

WHEREAS, the Town is authorized pursuant to a vote of the April 4, 2016 Town Meeting to establish a municipal electrical aggregation plan and program; and

WHEREAS, the Town has developed an electricity supply program ("Program") to aggregate the electric loads of consumers located within the Town and to negotiate competitive rates for the supply of electricity for such consumers; and

WHEREAS, the Town has received approval of its Program from the Massachusetts Department of Public Utilities ("Department") on May 22, 2017 and

WHEREAS, the Competitive Supplier, desires to provide All-Requirements Power Supply to consumers located within the Town, pursuant to the terms and conditions of the Program and this Agreement ; and

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

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and for the mutual promises set forth below the Town and the Competitive Supplier agree as follows:

ARTICLE 1 DEFINITIONS

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

1.1 Agreement – This Competitive Electric Service Agreement.

1.2 Aggregation Plan - The Town of Acton's Municipal Aggregation Plan, as adopted or amended by the Town from time to time.

1.3 All-Requirements Power Supply – The service under which the Competitive Supplier provides all of the electrical energy, capacity, reserves, and ancillary services, transmission services, transmission to the Point of Delivery, distribution losses, congestion management, and all other services or products necessary to provide firm power supply to Participating Consumers at the Point of Sale in accordance with this Agreement. This supply service also includes any costs associated with meeting "Renewable Portfolio Standards" ("RPS") at the levels required by applicable law.

1.4 Bankruptcy – With respect to a Party, such Party (i) ceases doing business as a going concern, generally does not pay its debts as they become due or admits in writing its inability to pay its debts as they become due, files a voluntary petition in bankruptcy or is adjudicated bankrupt or insolvent, or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other Governmental Rule, or seeks or consents to or acquiesces in the appointment of any trustee, receiver, custodian or liquidator of said Party or of all or any substantial part of its properties, or makes an assignment for the benefit of creditors, or said Party takes any corporate action to authorize or that is in contemplation of the actions set forth in this clause (i); or (ii) a proceeding is initiated against the Party seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other Governmental Rule, and such proceeding is not dismissed within ninety (90) days after the commencement thereof, 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 stay of such appointment, has not been vacated.

1.5 Basic Service – Electric supply service by the LDC as defined in M.G.L. c. 164, § 1 and in orders of the Department, as amended or promulgated, as the case may be, from time to time.

1.6 Business Day – Monday thru Friday except the following state holidays in MA: New Year's Day, Martin Luther King Day, Presidents Day, Patriots Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

1.7 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 diligence, reliability, safety, expedition, and applicable laws and regulations.

1.8 Competitive Supplier - The entity identified as such in the Preamble of this Agreement.

1.9 Intentionally Omitted.

1.10 Customer Service Policies and Practices – Has the meaning set forth in Exhibit D.

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

1.12 Department – The Massachusetts Department of Public Utilities or any successor state agency.

1.13 DOER – The Massachusetts Department of Energy Resources.

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

1.15 Effective Date – The date on which this Agreement is executed by the Parties (or, if the Parties execute on different dates, the date on which the last Party to execute the Agreement has executed such Agreement).

1.16 Eligible Consumers – (i) Residential, commercial, industrial, municipal, and/or other consumers of electricity who receive Basic Service from the LDC as of the Effective Date, at one or more locations within the geographic boundaries of the Town ("Basic Service Customers"); or (ii) New Consumers that subsequently become eligible to participate in the Program at one or more locations within the geographic boundaries of the Town. Pursuant to the Department's Order on Eligible Customers, D.P.U. 16-10 (2017), Eligible Consumers for automatic enrollment shall include (1) Basic Service Customers except as specifically excluded herein, (2) Basic Service Customers who have indicated that they do not want their contact information shared with Competitive Suppliers for marketing purposes, and (3) customers receiving Basic Service plus an optional Green Power product that allows concurrent enrollment in either Basic Service or competitive supply; and shall exclude (1) Basic Service Customers who have asked their Local Distributor to not enroll them in competitive supply, (2) Basic Service Customers enrolled in a Green Power product that prohibits switching to a Competitive Supplier, and (3) customers

receiving competitive supply service. Eligible Consumers is equivalent in meaning to Eligible Customers as used in the Aggregation Plan. For the avoidance of doubt, all Eligible Consumers must reside or be otherwise located at one or more locations within the geographic boundaries of the Town.

1.17 FERC – The Federal Energy Regulatory Commission.

1.18 *Force Majeure* – Any cause not within the reasonable control of the affected Party that, through no fault of the affected Party, 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; acts of a public enemy; acts, failures to act or orders of any kind of any governmental authorities acting in their regulatory or judicial capacity; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil disturbances or explosions. Economic hardship of either Party shall not constitute an event of *Force Majeure.*

1.19 General Communications – The type of communications described and defined in Article 7.6 herein.

1.20 Governmental Authority – Any national, state or local government or political subdivision thereof, independent system operator, regional transmission owner or operator, or any other governmental, judicial, regulatory, legislative, public or statutory instrumentality, authority, body, agency, department, bureau, board, commission, or entity.

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

1.22 ISO-NE – 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.

1.23 kWh, kW – Kilowatt-hour and kilowatts, respectively.

1.24 LDC – Local distribution company, or any successor company(ies) or entity(ies) providing electricity distribution services in the Town.

1.25 NEPOOL – The New England Power Pool.

1.26 New Eligible Consumers – Residential, commercial, industrial, municipal, or other consumers of electricity that become Eligible Consumers after the Effective Date.

1.27 New Eligible Consumer Notice – Has the meaning set forth in Section 5.2.

1.28 New Taxes – Any taxes enacted by any Governmental Authority after the Effective Date or by any Governmental Rule effective after the Effective Date resulting in the application, for the first time, of any tax to Participating Consumers with respect to All-Requirements Power Supply.

1.29 Opt-Out Notice –. That notice provided to Eligible Consumers notifying them of their right to "Opt-Out" of purchasing All-Requirements Power supply from the Competitive Supplier and which said Opt-Out Notice is further defined in Article 5.1.

1.30 Opt-Out Procedure –The procedure that enables Eligible Consumers to affirmatively elect not to participate in the program and either remain on or revert to Basic Service.

1.31 Participating Consumers – Eligible Consumers enrolled in the Program. Eligible Consumers who have opted out of the Program are not Participating Consumers.

1.32 Parties – The Town and Competitive Supplier, as the context requires. In the singular, "Party" shall refer to either one of the Parties.

1.33 Point of Delivery – The point of interconnection between NEPOOL Pool Transmission Facilities and the transmission facilities of the LDC.

1.34 Point of Sale – The electric meter for each Participating Consumer's account, as designated by the LDC.

1.35 Program Acton Power Choice Aggregation Program implemented pursuant to the Aggregation Plan.

1.36 Regulatory Event – A change in a Governmental Rule by a Governmental Authority. A "change" as used herein may include, without limitation, any amendment, modification, nullification, suspension, repeal, finding of unconstitutionality or unlawfulness of a Governmental Rule by a Governmental Authority, or any change in construction or interpretation of a Governmental Rule by a Governmental Authority.

1.37 Related Documents - Aggregation Plan and Exhibits, A, B, C, and D and E.

1.38 Retail Price – As set forth in Exhibit A.

1.39 Service Commencement Date – The date of the Participating Consumers' first meter read date after December 1, 2023, as may be reasonably extended due to Force Majeure Events or due to act or omission of the LDC

1.40 Service Contacts – Has the meaning set forth in Section 7.3.

1.41 Small Commercial Consumer –A non-residential consumer who, at the Time of Opting In, is determined to have a historical demand, for the preceding 12 months, of less than 10 kW.

1.42 Term – Has the meaning set forth in Article 6.1.

1.43 Very Large New Eligible Consumer –. A New Eligible Consumer which is expected to consume more than 1,000,000 kWhs per year.

ARTICLE 2 CONDITIONS PRECEDENT

2.1 The Town's obligations under this Agreement shall be conditioned upon the Competitive Supplier fulfilling the following requirements:

a) maintain its Competitive Supplier license from the Department;
b) execute a competitive electric supplier service agreement with the LDC in a form reasonably satisfactory to Competitive Supplier;
c) execute any appropriate ISO-NE applications and agreements;
d) obtain authorization from the FERC to sell power at market-based rates; and
e) complete EDI testing with the LDC.

If Competitive Supplier has not fulfilled all such requirements by the Effective Date, it shall notify the Town in writing of the same, and the Town may terminate this Agreement without any liability.

ARTICLE 3 RIGHTS GRANTED

3.1 GENERAL DESCRIPTION AND LIMITATIONS

Competitive Supplier is hereby granted the exclusive right to provide All-Requirements Power Supply to Participating Consumers pursuant to the terms of the Program and this Agreement., Competitive Supplier shall be authorized to supply All-Requirements Power Supply only to Participating Consumers, and the LDC will continue to have the right and obligation to supply electricity to Eligible Consumers who opt-out of the Program and remain on, or return to, Basic Service. Competitive Supplier recognizes and agrees that this Agreement does not guarantee that any individual Eligible Consumer will be served by the Competitive Supplier.

In accordance with Article 5 below, all Eligible Consumers shall be automatically enrolled in the Program unless they choose to opt-out. The Competitive Supplier has the sole obligation of making all necessary and appropriate arrangements, including, without limitation, with the LDC, and the ISO-NE, to ensure that Participating Consumers receive, at the Point of Sale, the electricity to be supplied by the Competitive Supplier pursuant to this Agreement.

The Town specifically authorizes the LDC to provide to Competitive Supplier all billing and energy consumption information for Participating Consumers as is reasonably available from the LDC, which Competitive Supplier may receive and use in fulfillment of its obligations under this Agreement. Competitive Supplier shall request consumption data for individual Participating

Consumers from the LDC via EDI. If further action is required by the LDC to authorize Competitive Supplier to receive such consumption and billing data, upon request of Competitive Supplier, the Town agrees to use Commercially Reasonable efforts, at Competitive Supplier's cost, to assist Competitive Supplier in obtaining such information for Participating Consumers. Competitive Supplier shall not be responsible for any errors that Competitive Supplier makes in the provision of All-Requirements Power supply to the extent such errors are caused by unknown errors or omissions contained in the information provided to it by the LDC.

ARTICLE 4 ROLE OF THE TOWN

4.1 ROLE OF TOWN

Notwithstanding anything to the contrary in this Agreement, the Town shall not receive, take title to, or be liable or responsible for the supply or delivery of, or the payments for, any All-Requirements Power Supply. It is and shall remain the sole obligation of the Competitive Supplier to arrange for delivery of All-Requirements Power Supply to Participating Consumers.

The Parties specifically agree that the role of the Town is to:

i) notify Competitive Supplier, through this Agreement or amendments thereto, of any Town-imposed contractual terms and conditions under which All-Requirements Power Supply is to be provided by the Competitive Supplier under this Agreement;

ii) reasonably assist the Competitive Supplier as set forth in Section 3.1, above, and Section 7.9 below, of this Agreement ;

iii) oversee the public education program provided that such responsibility shall not relieve the Competitive Supplier of its obligations, if any, set forth in this Agreement with respect to such program;

iv) propose the text of the opt-out notice to the Department for review and approval; and

v) to the extent the Town elects, in its sole discretion and without having the obligation to do so and without creating any rights on behalf of any third party, act as consultant and advocate for Eligible Consumers with respect to the matters addressed in this Agreement.

Both Parties expressly agree that the remedies available to the Competitive Supplier in the event of Town default are limited to the specific performance remedy described in Article 6.

4.2 CLAIMS OF ELIGIBLE/PARTICIPATING CONSUMERS

The Town is authorized under G.L. c. 164, § 134, to act on behalf of the Eligible Consumers in contracting for electric supply for such Eligible Consumers under the Program, and may consult with and communicate with any or all Eligible Consumers and Participating Consumers in

connection therewith. Unless prohibited by state or federal law, the Town has the right (but not the obligation) to bring claims on behalf of Eligible Consumers or Participating Consumers against the Competitive Supplier in litigation arising under this Agreement. Nothing in this section is intended to create any rights under this Agreement on behalf of any third party.

4.3 OWNERSHIP AND USE OF ELIGIBLE CONSUMER DATA

Competitive Supplier acknowledges and agrees that, as between the Town and Competitive Supplier, the Town shall have exclusive ownership of all right, title, and interest in and to all Eligible Consumer data (including addresses, telephone numbers or other identifying information) made available by any person or entity to Competitive Supplier, in connection with or as a result of this Agreement. Competitive Supplier shall use Eligible Consumer data solely to provide All-Requirements Power Supply to Participating Consumers and to render other services expressly required or permitted under this Agreement, and for no other purpose. Competitive Supplier may only communicate with Program participants and/or use the lists of Eligible Consumers/Program participants to send Department-approved education materials, opt-out notices, or other communications essential to the operation of the Program. Such lists may not be used by Competitive Supplier to market any additional products or services to Eligible Consumers or Program Participants. Any other use of Eligible Consumer data without the prior written consent of the Town is strictly prohibited. Pursuant to such authorized use, Competitive Supplier may share such Eligible Consumer data with third-party vendors as reasonably necessary to accommodate Competitive Supplier's provision of All-Requirements Power Supply or other performance pursuant to this Agreement (including, without limitation, collection of receivables), provided that Competitive Supplier will inform any such vendor of the confidential nature of such data and impose upon them the use restrictions set forth in this Article 4.3 and elsewhere in this Agreement. Except as expressly provided in this Agreement, Competitive Supplier shall not disclose any Eligible Consumer data to any third-party and Competitive Supplier shall take all Commercially Reasonable measures to protect Eligible Consumer data from access by, or beneficial use for, any third-party. To the extent that the provision of All-Requirements Power Supply or other services under this Agreement requires that Competitive Supplier have access to or make use of any Eligible Consumer data, Competitive Supplier shall treat such Eligible Consumer data as confidential information. Competitive Supplier may use Eligible Consumer data to engage in direct marketing to Eligible Consumers regarding electric supply services under the Program, but only during the term of this Agreement and subject to the terms set forth in Article 19.2. A violation of this Article 4.3 by the Competitive Supplier shall be grounds for termination under Article 6.2. Competitive Supplier agrees violation of this Article 4.3 shall constitute irreparable harm.

ARTICLE 5 CONSUMER CHOICE, NOTIFICATION OF RIGHTS, ENROLLMENT

5.1 CONSUMER CHOICE AND OPT OUT RIGHTS AT PROGRAM INCEPTION

The Parties acknowledge and agree that all Participating Consumers have the right, pursuant to M.G.L. c. 164, § 134 and the Program, to change their source of electricity supply, as set forth in Article 5. The Parties shall not interfere with the right of Participating Consumers to opt-out of the Program, and shall comply with any rules, regulations or policies of the Department, the LDC and/or other lawful Governmental authority regarding the procedures for opting out of the Program, or switching from one source of electric supply to another.

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

(i) about the Program;
(ii) of the date on which such Eligible Consumer will be automatically enrolled in the Program; and
(iii) that the Competitive Supplier will be providing All-Requirements Power Supply to such Eligible Consumer as of the same date, subject to the opt-out provisions of the M.G.L. c. 164, § 134, and the Plan; and
(iv) of the Opt-Out Procedure.

The Town shall specify the design and content of the Opt-Out Notice which may be in color and shall include the reply form and Language Access Document. Competitive Supplier shall review the Opt-Out Notice and notify the Town of any comments or concerns regarding the form or content of the notice. The design and content of the opt-out notice shall be approved by the Department. Once the design and content of the notice are finalized, Competitive Supplier shall, in the event the Town is launching a new aggregation, at its cost and in accordance with the approved design and content, prepare, print, and mail, to each such Eligible Consumer, the Opt-Out Notice at least thirty-seven (37) days prior to the date of automatic enrollment. The Opt-Out Notice shall:

(i) prominently state all charges to be assessed by the Competitive Supplier,
(ii) provide a summary of the prices and terms included in Exhibit A;
(iii) fully disclose the prices and terms then being offered for Basic Service by the LDC;
(iv) state how such Eligible Consumer may opt-out of the Program prior to enrollment and remain on Basic Service from the LDC;
(v) state how all Participating Consumers, subsequent to enrollment, will also have the right to opt-out at any time and return to Basic Service or choose a new Competitive Supplier without paying a fee, charge or penalty to Competitive Supplier;

(vi) include a Language Access Document as specified by the Department; and
(vii) include a reply form and postage-paid reply envelope that Eligible Consumers may use to exercise their opt-out rights.

In the event the Town is launching a new aggregation Competitive Supplier shall commence All-Requirements Power Supply as of the Service Commencement Date to such Eligible Consumers that have not exercised their right to opt out and whose Opt-Out Notice was not returned to the Competitive Supplier as undeliverable. All such Consumers shall then be deemed Participating Consumers and shall be entitled to receive supply at the prices listed in Exhibit A and pursuant to the terms and conditions of this Agreement.

If any Opt-Out Notices are returned as undeliverable, the Competitive Supplier shall promptly make Commercially Reasonable Efforts to identify a correct mailing address and re-send the notice.

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

The parties acknowledge that the low income discounts provided by the LDC to low income consumers are not impacted by this Agreement.

5.2 NOTIFICATION TO NEW ELIGIBLE CONSUMERS OF OPT-OUT RIGHTS

Throughout the term of this agreement Competitive Supplier shall maintain a **Master Opt Out File,** described in Article 12**,** that includes accurate records of a) all consumers in the community that Opted Out after receiving an Opt Out notice but prior to enrollment and b) all consumers that left the program for any reason after they were enrolled in the program. Once each month, throughout the term of this agreement, Competitive Supplier shall obtain from the LDC an updated list of Eligible Consumers, hereinafter the **Updated Eligible Consumer File**. Once each month Competitive supplier shall create a **Refresh Mailing List of New Eligible Consumers** which shall include all consumers in the Updated Eligible Consumer File excluding only consumers listed in the Master Opt Out File.

In accordance with the requirements of all applicable Governmental Rules, Competitive Supplier shall notify such New Eligible Consumer that the Competitive Supplier will be providing All-Requirements Power Supply to such New Eligible Consumer, subject to the opt-out provisions of the M.G.L. c. 164, § 134, the Plan, and the Program Opt-Out Notice. Competitive Supplier shall mail an Opt-Out Notice (as described in Article 5.1) to each such New Eligible Consumer listed in the Refresh Mailing List no later than thirty (30) days after the Service Commencement Date and then once every month for the balance of the term. Such New Eligible Consumers shall be automatically enrolled in the Program on the first meter read date following the Opt out deadline in the Opt out Notice as described in section 5.1. If the New Eligible Consumer is in the largest industrial rate class, Competitive Supplier may contact such New Eligible Consumer and

reasonably determine if such New Eligible Consumer is expected to consume more than 1,000,000 kWh per year. If Competitive Supplier reasonably determines that such New Eligible Consumer is expected to consume more than 1,000,000 kWh per year, such consumer shall be designated a "Very Large New Eligible Consumer."

Any New Eligible Consumer, other than a Very Large New Eligible Consumer, that does not elect to opt-out of the Program as provided in this section will be automatically enrolled in the Program, will be deemed a Participating Consumer, and shall be entitled to receive supply at the prices listed in Exhibit A pursuant to the terms and conditions of this Agreement. For Very Large New Eligible Consumers, promptly after determining that a New Eligible Consumer is a Very Large New Eligible Consumer, Competitive supplier shall quote a price at then prevailing market rates. Any Very Large New Eligible Consumer that accepts such market rate shall be enrolled in the Program, be deemed a Participating Consumer, and be entitled to receive supply at the market price quoted by the Competitive Supplier pursuant to the terms and conditions of this Agreement. The Competitive Supplier shall notify the Town of all market prices offered to Very Large Eligible New Eligible Consumers.

5.3 CONSUMERS SUPPLIED BY THIRD PARTIES

Consumers being served under other competitive supply programs offered by third parties are not eligible to participate in the Program and will not be automatically enrolled as Participating Consumers under this Agreement at the inception of the Program. If any such consumer terminates its third party supply agreement, they will then be eligible to participate in the Program. Any such residential consumer or Small Commercial Consumer may affirmatively opt-in to the Program and pay the same price that is offered to New Eligible Consumers. All other consumers are entitled to participate at then prevailing market rates. Promptly after receiving notice of the interest of any consumer described in this section, the Competitive Supplier shall quote a price for participation in the Program at the price listed in Exhibit A for residential and Small Commercial Consumers, and at then prevailing market rates for all other consumers described in this section. Once enrolled in the Program, such consumer shall be deemed a Participating Consumer and be entitled to receive supply at the price quoted by the Competitive Supplier and otherwise pursuant to the terms and conditions of this Agreement.

The Competitive Supplier shall notify the Town of all market prices offered to consumers under this section.

5.4 CONSUMERS THAT OPT OUT AND THEN OPT BACK IN

Any consumer that elects to opt out of the Program may subsequently elect to opt back in.

Promptly after receiving notice of the interest of such consumer in the Program, the Competitive Supplier shall quote a price for participation in the Program at then prevailing market rates. If the price is acceptable to such consumer, the Competitive Supplier will assist the consumer with the

Opt In procedure to enroll in the Program. Once enrolled, such consumer shall be deemed a Participating Consumer and be entitled to receive supply at the market price quoted by the Competitive supplier pursuant to the terms and conditions of this Agreement. The Competitive Supplier shall notify the Town of all market prices offered to consumers under this section.

5.5 ENROLLMENT

The Competitive Supplier shall be responsible for enrolling all Eligible Consumers through EDI transactions submitted to the LDC for all enrollments of Eligible Consumers during the term of this Agreement.

5.6 ERRORS OF LDC

In providing the notifications and conducting the activities set forth in this Article 5, the Competitive Supplier may reasonably rely upon information provided to it by the LDC for the purpose of performing its obligations. Competitive Supplier will not be responsible for any unknown errors or omissions in connection with its notification of Eligible Consumers resulting from unknown errors or omissions contained in the information provided to it by the LDC

Notwithstanding the foregoing, to the extent that any such error or omission resulted in the omission of Eligible Consumers from initial notification by the Competitive Supplier, upon becoming aware of such omission, the Competitive Supplier shall promptly provide All-Requirements Power supply to such consumers on the same terms and conditions available to Eligible Consumers as of the date on which the Competitive Supplier receives notice of such omission.

ARTICLE 6 TERM OF CONTRACT AND TERMINATION

6.1 TERM

This Agreement shall commence on the Effective Date, *provided, however,* that Competitive Supplier's obligation to provide All-Requirements Power supply shall commence on the Service Commencement Date, and shall terminate with the Participating Consumers' first meter read date after December 1, 2026 unless terminated earlier under Article 6.2 below ("Term").

6.2 TERMINATION

This Agreement may be terminated at any time upon written notice:

a) by either Party if the other Party fails to remedy or cure its breach of any material provision or material condition of this Agreement (excluding the failure to provide or arrange for All

Requirements Power Supply, which is addressed in Article 6.2(c)), within thirty (30) days following written notice to do so by the non-breaching Party; or

b) by either Party if this Agreement or any material provision or material condition of this Agreement be finally adjudged invalid by any court or tribunal of competent jurisdiction, or if the Department or Government Authority exercises any lawful jurisdiction so as to invalidate or disapprove this Agreement in whole or in significant part; or

c) by the Town in the event of the failure of the Competitive Supplier to provide or arrange for All-Requirements Power Supply to Participating Consumers unless and only to the extent that such failure is the direct result of *Force Majeure, except as provided in section 19.6* or the Town's material default of this Agreement; *provided, however,* that the Town shall not be permitted to terminate this Agreement if the Competitive Supplier's failure to provide or arrange All-Requirements Power Supply is entirely a direct result of actions or non-actions by any transmission service provider, the LDC, or the ISO-NE, unless such failure continues for one hundred twenty (120) days or longer. No delay by either Party in enforcing any of its rights hereunder shall be deemed a waiver of such rights; nor shall such a waiver of one default be deemed a waiver of any other subsequent default; or

d) by the Town in the event of the Bankruptcy of the Competitive Supplier or its Guarantor.

6.3 OBLIGATIONS UPON TERMINATION

Following termination of this Agreement, the Parties' obligations under this Agreement shall cease, except that each Party shall remain responsible for any liabilities that arose prior to the date of termination of this Agreement, and all rights and privileges granted to, and all other obligations imposed on, the Competitive Supplier shall be extinguished, with the exception of the right to collect all monies due from Participating Consumers for services rendered to such consumers through the date of termination, and any obligation of Competitive Supplier to indemnify the Town under this Agreement.

The Parties expressly agree that the remedies available to the Competitive Supplier in the event of Town default are limited to specific performance as described in this Article 6.

In the event of any default by the Town, therefore, the Parties expressly agree that Competitive Supplier is not eligible to seek recovery of any monetary damages or other losses from the Town.

In addition to the right to seek monetary damages and exercise all rights and remedies available to it as a result of a material default of the Competitive Supplier under this Agreement, the Town has the right, but not the obligation, to seek monetary damages from the Competitive Supplier on behalf of all or any Eligible Consumers or Participating Consumers. Accordingly, the Competitive Supplier specifically waives all rights it may have at law to claim that the Town has no standing or otherwise lacks the authority to seek such monetary damages and exercise such rights and remedies on behalf of individual Eligible Consumers or Participating Consumers. Notwithstanding

the foregoing, nothing herein is intended to create any rights under this Agreement in any third party.

6.4 SPECIFIC PERFORMANCE

Notwithstanding any other provision herein, the Parties agree that if the Town, after receiving a default notice, and after the opportunity to cure that default within the cure periods described in section 6.2(a), fails to cure the default, Competitive Supplier shall be entitled to seek specific performance of this Agreement, and this shall be Competitive Supplier's sole and exclusive remedy for any default of the Town. The Parties acknowledge and agree that because monetary damages are not available to Competitive Supplier under this Agreement, there is no remedy at law adequate to compensate Competitive Supplier for a material default of the Town under section 6.2(a), and further agree that Competitive Supplier may suffer, in the event of such a default, irreparable harm.

6.5 EXTENSION

This Agreement may be extended beyond the expiration date of the Term by written, signed amendment to this Agreement. Any new pricing terms shall be included in such amendment. Upon any such extension, this Agreement shall continue to be in effect throughout the extension period set forth in the amendment, and all provisions of this Agreement, as amended by the Amendment, shall retain the same force and effect as before the extension, unless earlier terminated by either Party pursuant to the provisions of Article 6.2.

ARTICLE 7 CONTINUING COVENANTS

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

7.1 STANDARDS OF MANAGEMENT AND OPERATIONS

In performing its obligations hereunder, during the Term, the Competitive Supplier shall prudently and efficiently carry out its obligations under this Agreement; employ an adequate number of competently trained and experienced personnel to fulfill its responsibilities; deliver or arrange to deliver a safe and reliable supply of such amounts of electricity to the Point of Delivery as are required under this Agreement; comply with all applicable Governmental Rules and industry standards and practices for the supply of electricity to Participating Consumers; and, at all times with respect to Participating Consumers, implement the good customer service policies and practices as defined in Article 7.2, and employ all Commercially Reasonable efforts, skills, practices, systems and methods in performance of its obligations.

7.2 CUSTOMER SERVICE POLICIES AND PRACTICES

The Competitive Supplier agrees to provide, or cause to be provided, Customer Service Policies and Practices to Participating Consumers as described more fully in Exhibit D. The Town reserves the right to post Program-related information on the Town's website which will be available to Participating Consumers for general information, product and service information, and other purposes.

7.3 RESPONDING TO REQUESTS FOR INFORMATION

The Competitive Supplier shall, during normal business hours (as set forth in Exhibit D), respond promptly and without charge to reasonable requests of the Town for information or explanation regarding the matters covered by this Agreement and the supply of electricity to Participating Consumers. If such matter pertains to a particular consumer, and consumer consent is required by law, the Town will secure such consent before requesting any information under this section. Competitive Supplier agrees to designate a service representative or representatives (the "Service Contacts") who shall be available for these purposes, and shall identify the office address and telephone number of such representative(s). Such Service Contacts shall be initially identified in Exhibit E. The Competitive Supplier shall update the names of such Service Contacts as necessary during the Term of this Agreement. Whenever necessary to comply with this Article, the Service Contacts shall call upon other employees or consultants of the Competitive Supplier to obtain such information or explanation as may be reasonably requested. Nothing in this Article shall be interpreted as limiting the obligation of the Competitive Supplier to respond to complaints or inquiries from Participating Consumers, or to comply with any regulation or requirement of the Department, Government Authority or Attorney General regarding customer service.

7.4 ARRANGING FOR FIRM ALL-REQUIREMENTS POWER SUPPLY

Competitive Supplier shall make all appropriate arrangements with the ISO-NE, any relevant regional transmission organization, wholesale suppliers or any other entity to ensure an uninterrupted delivery of reliable, safe, and firm All-Requirements Power Supply (free and clear of any claims, liens and encumbrances) to the Point of Delivery, and shall make all appropriate arrangements and Commercially Reasonable efforts to cause the LDC to deliver such electricity (free and clear of any claims, liens and encumbrances) to Participating Consumers at the Point of Sale. In the event the Competitive Supplier is unable to deliver sufficient electricity to the Point of Delivery to serve Participating Consumers, the Competitive Supplier shall promptly make all arrangements and Commercially Reasonable efforts for an alternative supply as may be necessary to continue to serve Participating Consumers under the terms of this Agreement without interruption, and shall bear any costs it may incur in carrying out these obligations. Competitive Supplier shall not be responsible to the Town or any Participating Consumers in the event that, through no fault of Competitive Supplier, the LDC disconnects, curtails or reduces service to Participating Consumers.

7.5 NON-DISCRIMINATORY PROVISION OF SERVICE

Competitive Supplier shall supply electric energy to all Participating Consumers on a non-discriminatory basis; provided, however, that the prices and other terms of such supply may vary in accordance with Article 5 or the rate classifications as appear in Exhibit A. Competitive Supplier's prices, terms and conditions shall be in accordance with the Massachusetts General Laws, the regulations of the Department and any other Governmental Authority having jurisdiction, and other applicable Governmental Rules. The Competitive Supplier may not deny service to a Participating Consumer for failure to pay the bills of a third party, including the LDC, any electric company (whether engaged in the distribution, transmission, supply, or generation of electricity) or of any other aggregator, marketer or broker of electricity, but may to the extent allowed by law and regulation, reasonably deny or reasonably condition new service, or terminate existing service, based upon any Participating Consumer's failure to pay bills from the Competitive Supplier. Provision of electric energy supply to Participating Suppliers shall be subject to Competitive Supplier's reasonable credit policies described in Exhibit A, to the extent permitted by law and regulation.

7.6 APPROVAL OF GENERAL COMMUNICATIONS

Competitive Supplier may only communicate with Program participants and/or use the lists of Eligible Consumers/Program participants to send Department-approved education materials, opt-out notices, or other communications essential to the operation of the Program. Such lists may not be used by Competitive Supplier to market any additional products or services to Eligible Consumers or Program Participants. Competitive Supplier shall cooperate with and assist the Town in the drafting and sending of messages and information to Eligible Consumers concerning the Program or any matter arising under or related to this Agreement or the Program. Competitive 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 Participating Consumers (but excluding individually drafted or tailored communications responding to a specific complaint or communication of an individual consumer), provide a copy of such General Communication to the Town for its review (for consistency with the Town's purposes and goals) and approval. The Town shall have the right to disapprove such General Communications and suggest revisions if it finds the communication inconsistent with the purposes and goals of the Town, factually inaccurate, not essential to the operation of the program, or likely to mislead provided, however, that: (i) the communication shall be deemed approved if the Town fails to respond within ten (10) Business Days, and (ii) no approval shall be necessary for any communication (a) regarding any emergency situation involving any risk to the public health, safety or welfare; (b) that has been approved by the Department, the DOER; 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 advanced review and approval by the Town; and (iii) no approval or lack of approval shall relieve

the Competitive Supplier of its obligations and responsibility for its actions and omissions under this Agreement, or other than as set forth in sub-clause 'i' of this Section 7.6, result in a waiver of any rights, remedies or defenses of the Town. The Town may reject or exclude any proposed General Communication that, in its reasonable judgment, is contrary to the interests and objectives of the Program or the Town.

7.7 PARTICIPATING CONSUMER LIST

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

7.8 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.

7.9 CONSENT

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

ARTICLE 8 PRICES AND SERVICES; BILLING

8.1 SCHEDULE OF PRICES AND TERMS

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

8.2 OBLIGATION TO SERVE

Competitive Supplier has the sole obligation to obtain sources of supply, whether from generating facilities owned or controlled by its affiliates, through bilateral transactions, or the market, as may be necessary to provide All-Requirements Power Supply for all Participating

Consumers. Competitive Supplier, except as explicitly limited by the terms included in Article 5, shall be obligated to accept all Participating Consumers, regardless of their location or energy needs, subject to Competitive Supplier's credit policies described in Exhibit A and to the extent permitted by law, and subject to the terms of any approval or other order of the Department with respect to this Agreement.

8.3 METERING

The parties acknowledge that the LDC will be responsible for all metering and the metered usage as reported by the LDC shall be the basis for all routine bills under this Agreement.

8.4 TERMS AND CONDITIONS PERTAINING TO INDIVIDUAL ACCOUNT SERVICE

8.4.1 Title

Title and risk of loss to All-Requirements Power Supply will transfer from Competitive Supplier to Participating Consumers at the Point of Sale. The prices quoted in Exhibit A shall be inclusive of, and the Competitive Supplier will be responsible for, any and all losses incurred on the local network transmission systems and distribution systems, as determined by the LDC.

8.4.2 Billing and Payment

Unless otherwise specified in an exhibit to this Agreement, or agreed to by the Parties in writing, all billing under this Agreement shall be based on the meter readings of each Participating Consumer's meter(s) performed by the LDC, and Competitive Supplier shall cause the LDC to prepare and render bills to Participating Consumers on a monthly basis; and the billing and payment terms offered by the LDC to Basic Service customers shall apply to all billing under this Agreement. Any over-charge or under-charge will be accounted for in the next billing period for which actual meter data is available.

8.4.3 Regional and Local Transmission

The prices quoted in Exhibit A do not include current and future charges for distribution service costs collected by the LDC under its distribution service tariff or local transmission costs as may be imposed by the regional power pool, ISO-NE, or individual electric utilities that have FERC transmission tariffs. The parties understand that these costs will be collected by the LDC in the same manner that such local transmission and distribution costs are collected from Basic Service customers.

8.4.4 Taxes

All sales, gross receipts, excise or similar taxes imposed with respect to the sale or consumption of All-Requirements Power Supply shall be included on the Participating Consumer's bill as part

of the Program's supply charge and shall be remitted to the appropriate taxing authority by Competitive Supplier. Participating Consumers shall be responsible for identifying and requesting any exemption from the collection of any tax by providing appropriate documentation to Competitive Supplier.

ARTICLE 9 DEVELOPMENT OR OFFERING OF RENEWABLE ENERGY SOURCES

9.1 COMPLIANCE WITH RENEWABLE PORTFOLIO STANDARD

Competitive Supplier hereby agrees that it will comply with the applicable provisions of G.L. c. 25A, §11F, §11F1/2, and any regulations, orders or policies adopted pursuant thereto.

9.2 GREEN OPTION

Competitive Supplier hereby agrees that it will incorporate the Green Option program as described in Exhibit A into Supplier's provision of All Requirements Power Supply under this Agreement and offer such program to interested Eligible Consumers.

ARTICLE 10 CUSTOMER SERVICE PROTECTIONS

Competitive Supplier shall post a copy of this Agreement on its web site so that it is available to all Eligible Consumers and promptly provide a copy of this Agreement to any consumer that contacts the Competitive Supplier and requests a copy. Competitive Supplier agrees that it shall comply with the provisions of 220 C.M.R. 11.00, 25.00, 26.00, 27.00, 28.00 and 29.00, as applicable to Competitive Suppliers, and any amendments thereto, and any code of conduct or policies the Department may adopt in accordance with M.G.L. c. 164, § 1F(7). The Competitive Supplier shall comply with the Customer Service Policies and Practices attached as Exhibit D and incorporated by reference into this Agreement, which Customer Service Policies and Practices shall include the Competitive Supplier's plan for maintaining "service quality standards," as that phrase is used in § 1F(7); for complying with the "affirmative choice" requirements of § 1F(8); and for handling consumer complaints, including any arbitration or dispute resolution procedures. The Competitive Supplier agrees to provide notice to the Town of any consumer complaints received from a Participating Consumer, and to grant the Town the right to participate in resolution of the dispute, to the extent that such complaints relate directly to the Program, and to the extent permitted by Department regulations and other applicable law.

In addition, and in accordance with the M.G.L. c. 164, § 1F(2) and 220 CMR 11.05(2)(b)(19) as such may be amended, restated, and replaced from time to time, in event of a dispute regarding an invoice or Competitive Supplier's service under this Agreement, a Participating Consumer may contact the Department, which may refer the dispute to the Massachusetts Office for Dispute Resolution for mediation of such dispute, if the amount in dispute is greater than one

hundred dollars ($100.00) and the subject of the dispute is within the Department's statutory and regulatory authority.

ARTICLE 11 NON-DISCRIMINATION IN HIRING AND EMPLOYMENT

Competitive 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 12 POWER SUPPLY INFORMATION AND ACCESS TO INFORMATION

12 POWER SUPPLY INFORMATION

12.1 Monthly Reports

Once each month, Competitive Suppliers shall provide the following reports to the Town's Consultant listed in Appendix A:

a) **Master Account List,** which shall include all accounts, active or inactive, that were ever enrolled in the program;
b) **Master Opt Out File,** which shall list a) all consumers who opted out after receiving an Opt Out notice, but prior to enrollment and b) all consumers that have left the program for any reason after they were enrolled;
c) **Monthly Refresh Mailing list**, which shall include all consumers on the Updated LDC basic service file obtained from the LDC each month, excluding only any consumer listed in the Master Opt Out file;
d) **Monthly Usage Report**, which shall describe the usage reported to the Competitive Supplier by the LDC in the relevant LDC Read Month;
e) **Monthly Commissions Report**, which shall describe the commissions earned with respect to the usage in the relevant Monthly Usage Report.

All of the above reports shall be provided on or before the deadlines described in Appendix B and shall include the data described in Appendix B.

Competitive Supplier shall exercise reasonable care and use all Commercially Reasonable practices in reviewing, preparing and providing any information or data required under this Agreement. To the extent that Competitive Supplier determines that any information or data provided hereunder is in error, it shall promptly provide corrected information or data to the Town or its consultant

12.2 POWER SUPPLY REPORT

Within fifteen (15) days of the end of each quarterly reporting period, Competitive Supplier shall present a copy of the current "Disclosure Label" required by the Department, pursuant to 220 CMR § 11.06, of all Competitive Suppliers to be disclosed to their Participating Consumers which includes information pertaining to Competitive Supplier's power supply and a reasonably detailed description of the sources of Competitive Supplier's power supply used to serve Participating Consumers pursuant to this Agreement. Competitive Supplier shall post the "Disclosure Label" on its web site under Town of Acton power supply program.

12.3 BOOKS AND RECORDS

Competitive Supplier shall keep its books and records in accordance with any applicable regulations or guidelines of the Department, FERC, and any other Governmental Authority.

12.4 COPIES OF REGULATORY REPORTS AND FILINGS

Upon reasonable request, Competitive Supplier shall provide to the Town a copy of each public periodic or incident-related report or record relating to this Agreement that 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 the Competitive Supplier is required by law or regulations to keep such reports or records confidential.

ARTICLE 13 RESOLUTION OF DISPUTES; CHOICE OF LAW

13.1 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. Sole venue for any judicial proceeding involving a dispute arising from this Agreement shall be, as appropriate, the United States District Court for Massachusetts, if jurisdiction exists, or Middlesex County Superior Court.

13.2 DISPUTE RESOLUTION

Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Article 13.2 shall be the exclusive mechanism to resolve disputes arising under this Agreement. The Parties agree to use reasonable efforts to resolve any dispute(s) that may arise regarding this Agreement. Any dispute that arises under or with respect to this Agreement shall in the first instance be the subject of informal negotiations between the Parties involved in the dispute. The dispute shall be considered to have arisen when one Party sends the other Party a written notice of the 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. In the event that the Parties cannot resolve a dispute by informal negotiations, the Parties shall submit the dispute to non-binding 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 mediation shall occur within fifteen (15) business days from the appointment of the mediator, unless such time period is extended by written agreement of the Parties. The Parties shall not be required to mediate their dispute for longer than a single, 6-hour day. The decision to continue mediation shall be in the sole discretion of each Party. The Parties will bear their own costs of the mediation. The mediator's fees shall be shared equally by the Parties. In the event that the Parties cannot resolve a dispute by such mediation, either Party may seek judicial enforcement subject to the provisions of this Agreement. Notwithstanding the foregoing, injunctive relief may be immediately sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this Agreement. Furthermore, nothing in this Article shall prevent a Party from terminating this Agreement in accordance with the terms thereof notwithstanding this Article or any then-pending dispute resolution process.

ARTICLE 14 INDEMNIFICATION

14.1 INDEMNIFICATION BY THE COMPETITIVE SUPPLIER

Competitive Supplier shall indemnify, defend and hold harmless the Town and its officers, employees, officials, consultants, representatives and independent contractors (the "Indemnified Parties"), from and against any and all costs, liabilities, losses, judgments, damages, and expenses (including reasonable attorney's fees), arising out of third-party claims, demands, causes of action, suits or other proceedings and incurred by, on behalf of or involving the Indemnified Parties to the extent such claims, demands, causes of action, suits or other proceedings arise from or in connection with (i) any material breach by Competitive Supplier of its obligations, covenants, representations or warranties contained in this Agreement, or (ii) Competitive Supplier's actions or omissions in connection with its performance of this Agreement to the extent that such actions or omissions were negligent or not Commercially Reasonable. Competitive Supplier further agrees, if requested by the Town in writing to do so, to investigate, handle, respond to, and defend any such claim, demand, cause of action, suit or other proceeding at Competitive Supplier's expense. The indemnification obligation of Competitive Supplier set forth above is in addition to and not in limitation or in lieu of any other rights and remedies available to the Town. This provision shall survive the expiration or earlier termination of this Agreement.

14.2 NOTICE OF INDEMNIFICATION CLAIMS

If the Town seeks indemnification pursuant to this Article, it shall notify Competitive Supplier of the existence of a claim as soon as practicable after learning of such claim, describing with reasonable particularity the circumstances, if known, giving rise to such claim. In that notice, the Town may also request Competitive Supplier to investigate, handle, respond to and defend the

Town against any such claim. The Competitive Supplier shall respond to the Town's notice within ten (10) business days of receipt of such notice with a written communication as to whether it agrees to indemnify (and, if requested by the Town in its notice, to provide a defense to) the Town for such claim. Upon written acknowledgment by the Competitive Supplier that it will assume the defense and indemnification of such claim, the Competitive Supplier may assert any defenses which are or would otherwise be available to the Town.

14.3 DUTY TO MITIGATE

Each Party agrees that it has a duty to mitigate damages and covenants that it will use Commercially Reasonable efforts to minimize any damages that may be incurred as a result of the other Party's performance or non-performance of this Agreement.

14.4 NO CLAIMS AGAINST THE TOWN

The Competitive Supplier shall make no claims against the Town or its officers for any injury to any of its officers or employees or for damage to its equipment arising out of work contemplated by this Agreement.

ARTICLE 15 REPRESENTATIONS AND WARRANTIES

15.1 BY THE COMPETITIVE SUPPLIER

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

a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary for it to perform its obligations under this Agreement;
b) it has all authorizations from any Governmental Authority necessary for it to legally perform its obligations under this Agreement or, if such authorizations are not required by law on the Effective Date, it will obtain such authorizations in a timely manner prior to when any performance by it requiring such authorization becomes due;
c) the execution, delivery and performance of this 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 applicable Governmental Rule;
d) subject to the conditions precedent set forth in Article 2, this Agreement constitutes a legal, valid and binding obligation of the Competitive Supplier enforceable against it in accordance with its terms, and the Competitive Supplier has all rights such that it can and will perform its obligations in conformance with the terms and conditions of this Agreement, subject to bankruptcy, insolvency, reorganizations and other laws affecting creditor's rights generally and general principles of equity;
e) no Bankruptcy is pending against it or to its knowledge threatened against it;

f) none of the documents or other written information furnished by or on behalf of Competitive Supplier to the Town pursuant to this Agreement contains any untrue statement of a material fact or omits any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading; and
g) all information furnished by Competitive Supplier in response to the Town's Request for Proposals for competitive electric supply services is true and accurate.

15.2 BY THE TOWN

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

a) this Agreement constitutes the legal, valid and binding obligation of the Town enforceable in accordance with its terms, subject to applicable laws;
b) the execution, delivery and performance of this Agreement are within the Town's powers, have been, or will be duly authorized by all necessary action;
c) the Town 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
d) no Bankruptcy is pending or threatened against the Town.

ARTICLE 16 INSURANCE

In order to help support the indemnifications provided in Article 14, and its other promises and covenants stated herein, Competitive Supplier shall provide and maintain throughout the term of this Agreement and any extension or renewal thereof the following insurance with companies that are authorized and licensed in the Commonwealth of Massachusetts to issue policies for the coverages and limits so required.

a. Workers' Compensation Insurance as required by the laws of the Commonwealth of Massachusetts and employer's liability insurance in the amount equal to the statutory limits.
b. Commercial General Liability Insurance, $5,000,000 combined single limit. Commercial General Liability insurance shall include coverage for bodily injury liability, advertising injury liability, personal injury liability, broad form property damage liability, products/completed operations liability, broad form contractual liability and coverage for failure to perform material contract obligations (if commercially and reasonably available). The insurance shall include a separation of interests clause, whereby the actions of one insured will not negate coverage for another insured. If the Commercial General Liability Insurance limit is less than the amount required above, the difference must be made up by maintaining and evidencing an incrementally increased limit of Excess Liability Insurance above that amount

required in d. below.

c. Automobile Liability Insurance, covering all leased, owned, non-owned, and hired vehicles - Combined single limit of $1,000,000.

d. Excess Liability Insurance, Umbrella Form - $5,000,000 combined single limit, which shall be following form, providing coverage over commercial general liability insurance, automobile liability insurance, and employer's liability under workers' compensation insurance.

e. If any of the above insurance is written on a claims made basis, the policy retroactive date must always predate the effective date of this initial contract. Further it must provide for an extended period of indemnity of at least 36 months.

f. The Town and its public officials and employees shall be named as additional insureds on each such policy of Commercial General Liability Insurance, Excess Liability Insurance, Umbrella Form, and Automobile Liability Insurance.

g. All certificates and policies shall contain the following provision:

"Notwithstanding any other provision herein, should any of the above policies be cancelled or materially amended before the expiration date thereof, the issuing company will mail thirty (30) days prior written notice thereof to the named certificate holder at the address listed in section 19.3 before such cancellation or amendment shall take place."

h. Certificates evidencing such insurance in five (5) copies shall be furnished to the City at the execution of this Agreement. Such certificates shall not merely name the types of policy provided, but shall specifically refer to this Agreement and shall state that such insurance is as required by this Agreement and that the general liability coverage includes failure to perform the material contract obligations under this Agreement.

i. The Competitive Supplier shall also be required to provide to the City with its proof of insurance coverage endorsements or riders to the policies of commercial general liability insurance, automobile liability insurance, and excess liability insurance, umbrella form, which indicate that the City and its public officials and employees are included additional insureds on each such policy. Upon request, the Competitive Supplier will provide the City a copy of insurance policies maintained to satisfy the requirements herein.

j. No insurance shall be obtained from an insurer which:

(1) is not licensed to sell insurance in the Commonwealth of Massachusetts or is not authorized to provide insurance as an excess or surplus lines insurer, and

(2) does not have a current A.M. Best's rating/financial size category of A minus/VIII or better.

k. Failure to provide and continue in force such insurance as aforesaid shall be deemed a material breach of this Agreement and shall operate as an immediate termination thereof.

ARTICLE 17 CONFIDENTIALITY

Competitive Supplier acknowledges that the Town is subject to certain laws pertaining to the use and release of documents and records prepared or received by a public body, including without limitation, MG.L. c. 4, § 7, cl. 26; M.G.L. c. 66, § 10; and M.G.L. c. 30A, §§ 18-25, and that any document that is deemed a "public record" under such laws (hereinafter a "Public Record") will be released to any requesting person without notice to any Party notwithstanding anything to the contrary in this Agreement, including this Article 17.

Subject to the foregoing:

To the extent information shared between the Parties is not a Public Record and is not otherwise in the public domain as set forth below, including any consumer data that is covered by confidentiality rules and regulations of the Department, or information relating to proprietary information of the Competitive Supplier that fits within a statutory exemption under said laws with respect to such information (hereinafter, "Confidential Information") each Party shall comply with such laws and any other Governmental Rules addressing the confidentiality of such information. Except as otherwise provided by law, information shall not be treated as Confidential Information hereunder if such information: (i) is or becomes generally available to the public other than as a result of disclosure by the receiving Party; (ii) was in its possession prior to disclosure hereunder and which was not acquired directly or, to the Party's knowledge, indirectly from the disclosing Party, (iii) was received from a non-party to this Agreement who to the receiving Party's knowledge, was not subject to a confidentiality agreement or fiduciary obligation regarding information; or (iv) was independently developed by the receiving Party without reference to the information.

This Agreement once executed will be deemed a Public Record and treated as such.

Subject to the foregoing, the information related to this Agreement that is considered Confidential Information shall include the following:

a) any account information related to the Participating Consumers including, without limitation, historic usage data, metering, and billing and payment information;
b) any information regarding transactions entered into by Competitive Supplier and any third parties in connections with the provision of All-Requirements Power Supply;
c) any list of Participating Consumers;
d) any information disclosed by a Party during any settlement discussions that is not reduced to an executed settlement agreement;
e) Competitive Supplier's insurance policies;
f) any financial security instruments(s) provided by Competitive Supplier;

g) any additional information which either Party marks as "Confidential" at the time of the release of the Information and persuasively justifies that such information fits within one of the exemptions to the Public Records Law.

ARTICLE 18 REGULATORY EVENT/NEW TAXES

18.1 REGULATORY EVENT

If, after the Effective Date, a Regulatory Event occurs or any New Taxes are imposed, and such event or taxes have a direct, material and adverse effect on the economic benefits to a Party of this Agreement, the affected Party shall send written notice to the other Party, setting forth the Regulatory Event or New Taxes and reasonably demonstrating the effect of the same on the affected Party. Upon delivery of such notice, the Parties shall use reasonable efforts to negotiate an amendment to this Agreement to mitigate such effect. Alternatively, if as a direct result of such a Regulatory Event or New Tax, Competitive Supplier incurs additional, material costs, Competitive Supplier shall provide a written notice to the Town that documents: a) the effective date of the Regulatory Event or New Tax; b) a detailed explanation and reasonable demonstration of the material cost incurred as a result of the Regulatory Event or New Tax; c) the timing of the cost impact to be incurred by the Competitive Supplier; d) the proposed price increase per kWh to be passed on to Participating Consumers; e) a proposed plan for coordinating with the LDC for an increase in the price per kWh that is billed by the LDC, designed to reimburse the Competitive Supplier for such cost impact. If the Town and the Competitive supplier cannot agree on the amendment to this Agreement or reimbursement contemplated by this section, the matter shall be subject to dispute resolution in accordance with section 13.2.

ARTICLE 19 MISCELLANEOUS

19.1 NO ASSIGNMENT WITHOUT PERMISSION

Other than in connection with a sale of all or substantially all of its competitive electric supply business, Competitive Supplier shall not assign its rights and privileges under this Agreement without the prior written approval of the Town. Such approval may by denied at the reasonable discretion of the Town if it determines that the proposed assignee does not have at least the same financial ability, experience, and qualifications as the assigning Competitive Supplier. Notwithstanding the foregoing, the Town may not unreasonably withhold its consent to an assignment to an affiliated entity under common control or management with Competitive Supplier or Competitive Supplier's corporate parent that has the financial ability, qualifications, and experience to fulfill all obligations of Competitive Supplier under this Agreement, and which agrees, in writing to be bound by the terms and conditions of this Agreement. By making any assignment under this Article, Competitive Supplier shall be deemed to have represented and warranted to the Town that the assignee possesses such financial ability, qualifications, and experience. The Town may assign this Agreement without the prior consent of Competitive

Supplier provided that the proposed assignee has at least the same creditworthiness as the Town and such assignment would not in any way impair the rights and interests of Competitive Supplier under this Agreement. The rights and obligations created by this Agreement shall inure to the benefit of, and be binding upon, the successors and permitted assigns of, the respective Parties hereto.

19.2 NEW PRODUCTS/SERVICES; DIRECT MARKETING

Except as provided in this section 19.2, Competitive Supplier shall not engage in any "direct marketing" to any Town consumer. "Direct marketing" shall mean marketing, selling or promoting to any Town consumer anything, product or service excluding the sale of electricity conducted under the Program in accordance with the terms and conditions of this Agreement. Notwithstanding the foregoing, "direct marketing" shall not include generic corporate marketing programs directed at all Competitive Supplier's consumers in general, as opposed to marketing efforts directed at Town consumers.

Prior to the introduction of any new product or service that Competitive Supplier desires to make available to Participating Consumers or other Eligible Consumers, Competitive Supplier agrees to (i) give the Town advance written notice of such new product of service and (ii) discuss with the Town the possible inclusion of such new product or service in the Program or another Town aggregation program. The Parties agree to negotiate in good faith the terms, conditions, and prices for such products and services that the Parties agree to include in the Program or another Town aggregation program. Any agreement of the Parties, including such terms, conditions and prices, shall be in writing. Any new product or service that the competitive supplier and/or the Town seek(s) to make available to Program participants is subject to Department approval.

19.3 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 Competitive Supplier:

Peter Schieffelin
2000 Chapel View Blvd., Suite 450
Cranston, RI 02920

If to Town:

Office of the Town Manager
472 Main Street
Acton, MA 01720

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 19.3 by giving written notice thereof in the manner required herein.

19.4 CHANGES IN EMERGENCY AND SERVICE CONTACT PERSONS

In the event that the name or telephone number of any emergency or service contact for the Competitive Supplier changes, Competitive Supplier shall give prompt oral or written notice to the Town.

19.5 ENTIRE AGREEMENT; AMENDMENTS

This 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.

19.6 FORCE MAJEURE

If by reason of *Force Majeure* either 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 fourteen (14) days after the event of the *Force Majeure*, gives the other Party hereto written notice describing the particulars of the event; (ii) the suspension of the performance is of no greater scope and of no longer duration than is required by the event of *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 event; and (iv) the non-performing Party shall use all Commercially Reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations and to mitigate the effects thereof. If any event of *Force Majeure* continues for a period of one hundred twenty (120) days or longer, either Party may terminate this Agreement by sending the other Party a written notice; *provided, however*, that neither the existence of such an event nor the termination of this Agreement on account thereof as aforesaid shall constitute a default of any Party and shall not give rise to any damages.

19.7 EXPENSES

Each Party hereto shall pay all expenses incurred by it in connection with its entering into this Agreement, including, without limitation, all of its attorneys' fees and expenses, except as otherwise expressly provided in this Agreement.

19.8 NO JOINT VENTURE

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

19.9 JOINT WORK PRODUCT

This Agreement shall be considered the work product of the Parties hereto, and, therefore, no rule requiring construction of the Agreement against a Party alleged to be responsible for drafting the Agreement shall be applied against either Party.

19.10 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. Facsimiles and or copies of signatures shall be deemed originals for purposes of the execution of this Agreement.

19.11 COST RECOVERY

The Parties acknowledge that the price for energy as described in Exhibit A includes the Consultant Commission described in Exhibit A to cover the cost of developing, implementing and operating the Aggregation. The Competitive Supplier agrees to include this cost adder in the Price for energy, and to make the monthly commission payments on behalf of Participating Consumers, in the manner described in Exhibit A, and acknowledges this obligation as a material obligation of this Agreement.

19.12 WAIVER

No waiver by either Party hereto of any one or more defaults by the 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 either Party hereto to complain of any action or omission on the part of the other Party, no matter how long the same may continue, shall be deemed to be a waiver of any right hereunder by the Party failing to complain. A waiver of any of the provisions of this Agreement shall only be effective if unequivocal, and made in writing and signed by the Party who is making such waiver.

19.13 AGGREGATION PLAN

Competitive Supplier agrees that it has been provided with and had a reasonable opportunity to examine, and has examined, the Aggregation Plan, and has not discerned any conflicts between this Agreement and the Aggregation Plan. The Parties agree that the Aggregation Plan, in the form as it exists on the Effective Date, shall be construed harmoniously with this Agreement to the greatest practicable extent. Notwithstanding the foregoing, in the event of any conflict between this Agreement and the Aggregation Plan, the Agreement shall govern.

19.14 ADVERTISING LIMITATIONS

Competitive Supplier agrees not to use the name of the Town, or make any reference to the Town, in any advertising, publication, or other information to be distributed publicly for marketing or educational purposes, unless the Town expressly agrees to such usage. Any proposed use of the name of the Town must be submitted in writing for agreement and prior approval. The Town acknowledges that the Competitive Supplier and/or the Competitive Supplier's corporate affiliates own the exclusive rights to the trademarked logo and trade name used by Competitive Supplier. No right, license or interest in this trademark and/or trade name is granted to the Town hereunder, and the Town agrees that it shall not assert any right, license or interest with respect to such trademark and/or trade name.

19.15 PRESS RELEASES

The Town reserves the right to issue press releases with respect to this Agreement and the Program in general without the prior review, approval, or agreement of the Competitive Supplier, provided that the Town shall give three (3) business days' notice to the Competitive Supplier of any press release that mentions the Competitive Supplier by name. The purpose of this notice requirement is to provide opportunity to the Competitive Supplier to reasonably comment on the content of such press release and to give the Town the opportunity to take such comments into consideration before making the final discretionary decision regarding the content of any such press release. Whether or not a response is received by the Town within such three (3) business day period, the Town may, in its sole discretion, issue the press release.

19.16 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.

19.17 SURVIVAL OF OBLIGATION

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

19.18 REMEDIES

A. General

Subject to the limitations set forth in this Article and Article 6, the Town and the Competitive Supplier reserve, and shall have, all rights and remedies available to each of them at law or in equity with respect to the performance or non-performance of the other Party under this Agreement.

B. Limitations

NEITHER 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. THIS LIMITATION SHALL NOT APPLY TO CLAIMS OF THE TOWN AGAINST THE COMPETITIVE SUPPLIER FOR INDEMNIFICATION OF THIRD-PARTY CLAIMS UNDER ARTICLE 14 OR APPLICABLE LAW, BUT ONLY TO THE EXTENT OF SUCH THIRD-PARTY CLAIMS.

19.19 COMPLIANCE WITH LAWS

By entering into this Agreement, the Competitive Supplier specifically represents that it has exercised due diligence to review and has fully complied with all relevant regulations and orders of the FERC, the Department, the Massachusetts Attorney General, and the DOER and any other governmental authorities having jurisdiction over any element of the transactions contemplated by this Agreement.

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

COMPETITIVE SUPPLIER

By: 

Name: Peter Schieffelin

Title: CEO

Address: 2000 Chapel View Blvd., Suite 450

Cranston, Rhode Island 02920

Dated: April 19, 2023

TOWN OF ACTON, MASSACHUSETTS

By: 

Name: John Mangiaratti

Title: Town Manager

Address: 472 Main Street

Acton, MA 01720

Dated: April 19, 2023

EXHIBIT A

PRICES AND TERMS

Price Structure

All prices are for **All-Requirements Power Supply** quoted in $ per kWh, one combined price for all rate classes and include a minimum of the RPS / APS supply mix required by MGL c 25A.

Start date: first meter read dates on or after **December 1, 2023**
End date: first meter read dates on or after **December 1, 2026**

Standard Product: all participants are enrolled in this option unless they opt out. This product includes Voluntary **MA Class I RECs** equal to **45%** of the load.

REC Requirements		Price
(RPS/APS)	*Statutory requirement*	0.14411
MA Class 1 Voluntary RECs (Excludes biomass)	**45% of load**	0.01620
Total		0.16031

Optional Greener Product: to enroll in this option participant must affirmatively opt in. This product includes Voluntary **MA Class I RECs** equal to **100%** of the load minus the RPS Class I statutory requirement.

REC Requirements		Price
(RPS/APS)	*Statutory requirement*	0.14411
MA Class 1 Voluntary RECs (Excludes biomass)	**78% of load – 2023** **76% of load – 2024** **73% of load – 2025** **70% of load – 2026**	0.02628
Total	**100%** of the load minus the RPS Class I statutory requirement	0.17039

Optional Basic/Brown Product: to enroll in this option participant must affirmatively opt in. This product includes the statutory mix, no additional voluntary RECs.

REC Requirements		Price
RPS/APS compliant supply	*Statutory requirement*	0.14411
MA Class 1 Voluntary RECs	**n/a**	_
Total		0.14411

"Voluntary RECs" means Renewable Energy Certificates that are in addition to RECs required by MGL c 25A.

Terms for System Supply Service

Renewable Energy in System Supply:

1. **Renewable Portfolio Standard:** The Competitive Supplier shall include Renewable Energy in the All Requirements Power Supply mix in an amount no less than that required by any Governmental Authority, including laws, regulations or policies adopted pursuant to the provisions of G.L. c. 25A, section 11F and 11F1/2, starting with the requirement on the Start-Up Service Date, or pay all penalties imposed by any Governmental Authority related to Renewable Energy requirements.

2. **Standard Product:** (See above)

3. **Green Option:** Competitive Supplier shall identify the technology, vintage, and location of the renewable generators that are the sources of the RECs for the Standard and the Green Option. All such RECs shall be created and recorded in the New England Power Pool Generation Information System or be certified by a third party satisfactory to the City such as Green-e.

Eligible Consumer Opt-Out: Participating Consumers are free to opt-out of the Program. There are no fees, penalties or charges for Participating Consumers to opt-out or terminate service at any time.

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

Consultant Commission: All prices quoted above include a commission fee equal to $0.001 (1 mil) per kWh of Participating Consumers' actual usage payable to Peregrine Energy Group Inc., the consultant hired by the Town to develop, implement, and administer the Program. The

Competitive Supplier agrees to include this commission fee in the Price for energy and to make the monthly commission payments on behalf of Participating Consumers, and acknowledges this obligation as a material obligation of this Agreement. The Competitive Supplier shall pay the commission fee in monthly installments on the fifteenth (15th) of each month (or, if the 15th falls on a weekend or holiday, then on the next Business Day thereafter) based on monies received from the LDC pertaining to Participating Consumers in the prior calendar month. This provision shall be binding upon the Parties and all permitted assigns and other successors-in-interest of the Parties. Except as provided in this provision, there shall be no other third-party beneficiaries to this Agreement.

Refresh Mailing Schedule

Unless otherwise agreed by the parties, the Competitive Supplier shall mail Opt-Out Notices to customer on the Refresh Mailing list according to the following schedule:

Mailing month	Expected enrolling month
February	March/April
April	May/June
August	September/October
December	January/February

EXHIBIT B

In the month following every month of the contract, the Competitive supplier shall provide the following five reports to the Consultant listed in Appendix A

1) **Master Account List:** This list shall be updated monthly by the Competitive Supplier and shall include Information, as described in Table 1 below, regarding any consumer that ever enrolls in the aggregation and shall be provided no later than 10 Business Days following the close of any LDC Read Month.

2) **Master Opt Out File:** This File shall be updated monthly by the Competitive Supplier and shall include Information, as described in Table 1 below, regarding any consumer that opted out of the aggregation after receiving an opt out notice but prior to enrollment, as well as any consumer that enrolled in the aggregation and then left the aggregation for any reason, and shall be provided no later than 10 Business Days following the close of any LDC Read Month.

3) Refresh Mailing List: This mailing shall be created every month by the Competitive Supplier and shall include the information as described in Table 1 below regarding every consumer listed in the Updated LDC Basic Service File, described in Article 5, excluding only consumers in the Master Opt Out File. This mailing list shall be provided to the Town's consultant listed in Appendix A, 3 business days prior to printing the monthly Refresh Mailing.

4) Monthly Usage Report: This monthly report shall be prepared by the Competitive Supplier, shall include the data listed in Table 2 below regarding any accounts for which the LDC provided meter read data to the Competitive Supplier since the previous Monthly Usage Report, or with respect to the first such report, data concerning any accounts for which the LDC provided meter read data to the Competitive Supplier since the Service Commencement Date, and shall be provided no later than 10 Business Days following the close of any LDC Read Month.

5) Monthly Commission Report: This monthly report shall be prepared by the Competitive Supplier, shall include the data listed in Table 2 below regarding commissions earned for any usage which the LDC provided meter read data to the Competitive Supplier, as described in the relevant Monthly Usage Report, and shall be provided no later than 15 Business Days following the close of any LDC Read Month.

Table 1: Data Fields to be included the following three monthly reports:

Master Account List	**Master Opt Out List**	**Refresh Mailing List**
Name of Aggregation	Name of Aggregation	Name of Aggregation
LDC Account Number	LDC Account Number	LDC Account Number
Name of Utility	Name of Utility	Name of Utility
Rate Class	Rate Class	Rate Class
Customer Name	Customer Name	Customer Name
Name Code	Name Code	Name Code
Service Street and number	Service Street and number	Service Street and number
Service City	Service City	Service City
Service State	Service State	Service State
Service Zip Code	Service Zip Code	Service Zip Code
Mailing Street and number	Mailing Street and number	Mailing Street and number
Mailing City	Mailing City	Mailing City
Mailing State	Mailing State	Mailing State
Mailing Zip Code	Mailing Zip Code	Mailing Zip Code
Opt Out Notice Mailing Date	Opt Out Notice Mailing Date	Opt Out Notice Mailing Date
Acct Status (Active/Inactive)	Acct Status (Active/Inactive)	
Acct Start date	Acct Start date (if ever enrolled)	
Acct End date (if Inactive)	Acct End date (if ever enrolled)	
Tax Exempt (Yes/No)	Opt Out Method (return card, by phone, moved, by utility initiative, or other)	
Read Cycle	Opt Out Date	
Load Zone		
Opt In Date (if applicable)		

Table 2: Data Fields to be included the following two monthly reports:

Monthly Usage Report	**Monthly Commission Report**
Name of Aggregation	Name of Aggregation
LDC Account Number	LDC Account Number
Name of Utility	Name of Utility
Rate Class	Rate Class
Customer Name	Customer Name
Name Code	Name Code
Service Street and number	Service Street and number
Service City	Service City
Service State	Service State
Service Zip Code	Service Zip Code
Read Cycle	Read Cycle
LDC Read Month	LDC Read Month
Account Status (Active/Inactive)	Account Status (Active/Inactive)
Account Start date	Account Start date
Account End date	Account End date
Usage From Date	Usage From Date
Usage To date	Usage To date
Usage (kWh)	Usage (kWh)
ICAP (kW)	ICAP (kW)
Load Zone	Load Zone
Product (Standard / Green / Other)	Commission rate ($/kWh)
Price	Commission paid ($/ Month)

EXHIBIT C (RESERVED)

EXHIBIT D

CUSTOMER SERVICE POLICY AND PRACTICES

The detailed terms of service are more fully described in the Agreement executed on April 19, 2023, which is posted and available on the MassPowerChoice web site at the following link: https://www.masspowerchoice.com/acton. Competitive Supplier will provide a copy of this Agreement to any participating Consumer that requests a copy.

It is the Policy of the Competitive Supplier to provide responsive customer service to all Participating Consumers and Eligible Consumers in accordance with the following:

1) Provide for Customer services that are reasonably accessible to all consumers during normal working hours and that allow consumers to transact business they may have with the Competitive Supplier; such customer service to include availability of Bilingual (Spanish) customer service representative(s); customer emails responded to within one business day, and after-hours voice messages answered by experienced customer service representative the following business day.

2) Provide a toll-free telephone number that will be established by Competitive Supplier and be available for consumers to contact Competitive Supplier during normal business hours (9:00 A.M. – 5:00 P.M. Eastern Standard Time or Eastern Daylight Saving Time, as applicable, Monday through Friday) to resolve concerns, answer questions and transact business with respect to the service received from Competitive Supplier.

3) Process all customer transactions, including opt-ins, opt-outs, and election of optional products, within five (5) business days.

4) Include the offer to resolve any dispute with any consumer pursuant to the dispute resolution procedures described in 220 CMR 25.02 (4), or MGL c 164 (1) (F) (2).

5) All Participating Consumers will have the right to opt out of the Program at any time without fee, charge or penalty. Participating Consumers who opt out will have the right to return to the Program at a price that reflects market prices at the time of their return.

6) Competitive Supplier will assign a senior Customer Service Team representative, as described in Exhibit E to be primary contact for the Town of Acton.

EXHIBIT E

SERVICE CONTACTS

As required by Article 7.3, the Town may contact the following representatives of the Competitive Supplier with requests for information or clarification at the telephone numbers and or email addresses listed below:

Name: Jeff Gordon
Title: Pricing Manager
Office Address: 200 Chapel View Blvd Suite 450 Cranston RI 02920
Telephone: 401-267-4480
Fax
Email: jeff@firstpointpower.com

Name: Bryan Amaral
Title: Vice President of Operations
Office Address: 2000 Chapel View Blvd Suite 450 Cranston RI 02920
Telephone: 401-267-4479
Fax
Email : bryan@firstpointpower.com

These Service Contacts may be updated from time to time without the need for an amendment of this Agreement

EXHIBIT F

AGGREGATION PLAN

Town of Acton MA_ 36 Month First Point Agreement

Final Audit Report 2023-04-19

Created:	2023-04-19
By:	Kim Pare (kpare@peregrinegroup.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAA9rYflgSbzmVZu7x3ZfF-YiOuDaydMC_5

"Town of Acton MA_ 36 Month First Point Agreement" History

Document created by Kim Pare (kpare@peregrinegroup.com)
2023-04-19 - 4:34:15 PM GMT- IP address: 97.95.181.26

Document emailed to John Mangiaratti (jmangiaratti@acton-ma.gov) for signature
2023-04-19 - 4:35:07 PM GMT

Email viewed by John Mangiaratti (jmangiaratti@acton-ma.gov)
2023-04-19 - 4:37:48 PM GMT- IP address: 104.28.39.129

Document e-signed by John Mangiaratti (jmangiaratti@acton-ma.gov)
Signature Date: 2023-04-19 - 4:38:50 PM GMT - Time Source: server- IP address: 174.242.134.44

Agreement completed.
2023-04-19 - 4:38:50 PM GMT

Names and email addresses are entered into the Acrobat Sign service by Acrobat Sign users and are unverified unless otherwise noted.

THIRD AMENDMENT TO COMPETITIVE ELECTRIC SERVICE AGREEMENT

This Third Amendment to the Agreement ("Third Amendment") is entered into on March 20, 2026 by and between the **Town of Acton** ("Town") and **First Point Power, LLC.** ("Competitive Supplier").

WHEREAS:

A. The Town and the Competitive Supplier are both parties to the Competitive Electric Service Agreement dated April 19, 2023, as amended on July 23, 2025, and March 18, 2026, together with any appendices thereto (collectively, the "Agreement"). Capitalized terms used herein and not defined shall have the same meaning ascribed to them in the Agreement.

B. The Town and the Competitive Supplier have agreed to amend the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and the Competitive Supplier agree as follows (all section references herein are in reference to the Agreement):

1. The Second Amendment to the Agreement is deleted in its entirety.

2. Section 6.1 Term is amended by deleting "December 1, 2026" and inserting "December 1, 2029" therefor.

3. Exhibit A to the agreement is deleted in its entirety and replaced by Exhibit A-3, attached hereto.

4. This Amendment contains the entire understanding of the Parties with respect to the amendment contained herein. All other provisions of the Agreement remain in full force and effect.

5. This Amendment may be executed in counterparts without the necessity that both Parties execute the same counterpart, each of which will be deemed an original, but which together will constitute one and the same agreement. The exchange of copies of this Amendment by email or facsimile will constitute effected execution and delivery of this Amendment and may be used in lieu of the original for all purposes. Signatures of representatives of the Parties transmitted by email or facsimile will be deemed to be original signatures for all purposes.

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Amendment on their behalf, which will be effective upon signature of the Parties. If the Parties sign on different dates, then it will be effective on the later date of signature.

TOWN OF ACTON

By: John S. Mangiaratti (Mar 20, 2026 11:36:26 EDT)
Name: John S. Mangiaratti
Title: Town Manager

Dated: March 20, 2026

FIRST POINT POWER, LLC

By:
Name: Peter Schieffelin
Title: CEO

Dated: March 20, 2026

EXHIBIT A-3

PRICES AND TERMS

Price Structure

All prices are for **All-Requirements Power Supply** quoted in $ per kWh, one combined price for all rate classes and include a minimum of the RPS / APS supply mix required by MGL c 25A.

Start date: first meter read dates on or after **December 1, 2023**
End date: first meter read dates on or after **December 1, 2029**

Period 1:
Start date: first meter read dates on or after **December 1, 2023**
End date: first meter read dates on or after **May 1, 2026**

Period 2:
Start date: first meter read dates on or after **May 1, 2026**
End date: first meter read dates on or after **December 1, 2026**

Period 3:
Start date: first meter read dates on or after **December 1, 2026**
End date: first meter read dates on or after **December 1, 2029**

Standard Product: all participants are enrolled in this option unless they opt out. This product includes Voluntary MA Class I RECs as specified below.

REC Requirements		Price ($/kWh)		
		Period 1	Period 2	Period 3
(RPS/APS)	*Statutory requirement*	0.14411	0.15372	0.14959
MA Class 1 Voluntary RECs (Excludes biomass)	45% of load Dec 2023 – Dec 2024	0.01620	-------	------
Total		0.16031	0.15372	0.14959

Optional Greener Product: to enroll in this option participant must affirmatively opt in. This product includes Voluntary MA Class I RECs equal to 100% of the load minus the RPS Class I statutory requirement.

REC Requirements		Price ($/kWh)		
		Period 1	Period 2	Period 3
(RPS/APS)	*Statutory requirement*	0.14411	0.14411	0.14959
MA Class 1 Voluntary RECs (Excludes biomass)	78% of load – 2023 76% of load – 2024 73% of load – 2025 70% of load – 2026 67% of load – 2027 64% of load – 2028 61% of load – 2029	0.02628	0.02628	0.02604
Total	100% of the load minus the RPS Class I statutory requirement	0.17039	0.17039	0.17563

Optional Basic/Brown Product: to enroll in this option participant must affirmatively opt in. This product includes the statutory mix, no additional voluntary RECs.

REC Requirements		Price ($/kWh)		
		Period 1	Period 2	Period 3
(RPS/APS)	*Statutory requirement*	0.14411	0.14411	0.14959
MA Class 1 Voluntary RECs	n/a	-----	-----	-----
Total		0.14411	0.14411	0.14959

"Voluntary RECs" means Renewable Energy Certificates that are in addition to RECs required by MGL c 25A.

Terms for System Supply Service

Renewable Energy in System Supply:

1. **Renewable Portfolio Standard:** The Competitive Supplier shall include Renewable Energy in the All Requirements Power Supply mix in an amount no less than that required by any Governmental Authority, including laws, regulations or policies adopted pursuant to the provisions of G.L. c. 25A, section 11F and 11F1/2, starting with the

requirement on the Start-Up Service Date, or pay all penalties imposed by any Governmental Authority related to Renewable Energy requirements.

2. **Standard Product:** (See above)

3. **Green Option:** Competitive Supplier shall identify the technology, vintage, and location of the renewable generators that are the sources of the RECs for the Standard and the Green Option. All such RECs shall be created and recorded in the New England Power Pool Generation Information System or be certified by a third party satisfactory to the City such as Green-e.

Eligible Consumer Opt-Out: Participating Consumers are free to opt-out of the Program. There are no fees, penalties or charges for Participating Consumers to opt-out or terminate service at any time.

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

Consultant Commission: All prices quoted above include a commission fee equal to $0.001 (1 mil) per kWh of Participating Consumers' actual usage payable to Peregrine Energy Group Inc., the consultant hired by the Town to develop, implement, and administer the Program. The Competitive Supplier agrees to include this commission fee in the Price for energy and to make the monthly commission payments on behalf of Participating Consumers, and acknowledges this obligation as a material obligation of this Agreement. The Competitive Supplier shall pay the commission fee in monthly installments on the fifteenth (15th) of each month (or, if the 15th falls on a weekend or holiday, then on the next Business Day thereafter) based on monies received from the LDC pertaining to Participating Consumers in the prior calendar month. This provision shall be binding upon the Parties and all permitted assigns and other successors-in-interest of the Parties. Except as provided in this provision, there shall be no other third-party beneficiaries to this Agreement.

Refresh Mailing Schedule

Unless otherwise agreed by the parties, the Competitive Supplier shall mail Opt-Out Notices to customer on the Refresh Mailing list according to the following schedule:

Mailing month	Expected enrolling month
January	February/March
March	April/May
June	July/August
September	October/November

Town of Acton_FirstPoint_Third Amendment to Agreement 032026

Final Audit Report 2026-03-20

Created:	2026-03-20
By:	Kim Pare (kpare@peregrinegroup.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAU-Dnlut9GCnleqpjIXFqvxia0M8-Nq4g

"Town of Acton_FirstPoint_Third Amendment to Agreement 032026" History

Document created by Kim Pare (kpare@peregrinegroup.com)
2026-03-20 - 2:12:26 PM GMT

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Document e-signed by John S. Mangiaratti (jmangiaratti@acton-ma.gov)
Signature Date: 2026-03-20 - 3:36:26 PM GMT - Time Source: server

Agreement completed.
2026-03-20 - 3:36:26 PM GMT

Adobe Acrobat Sign